

HOUSING (SCOTLAND) BILL

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Housing (Scotland) Bill as amended at Stage 2. Text has been added or amended as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

3. In these notes:

- “the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62)
- “the 1974 Act” means the Land Tenure Reform (Scotland) Act 1974 (c.38)
- “the 1983 Act” means the Mobile Homes Act 1983 (c.34)
- “the 1984 Act” means the Rent (Scotland) Act 1984 (c.58)
- “the Defects Act” means the Housing Defects Act 1984 (c.50)
- “the 1987 Act” means the Housing (Scotland) Act 1987 (c.26)
- “the 1988 Act” means the Housing (Scotland) Act 1988 (c.43)
- “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c.46)
- “the 2001 Act” means the Housing (Scotland) Act 2001 (asp 10)
- “the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)
- “the Tenements Act” means the Tenements (Scotland) Act 2004 (asp 11)
- “the 2006 Act” means the Housing (Scotland) Act 2006 (asp 1)
- “the 2010 Act” means the Housing (Scotland) Act 2010 (asp 17)
- “the 2011 Act” means the Property Factors (Scotland) Act 2011 (asp 8)
- “the Tribunals Bill” means the Tribunals (Scotland) Bill, introduced on 9th May 2013.

THE BILL

4. The purpose of the Housing (Scotland) Bill (“the Bill”) is to provide additional protection for tenants in the private rented sector and permanent residents of mobile home sites; to support improvements in housing quality in the private rented and privately-owned sectors; to make better use of the existing stock of social rented homes; and to provide more efficient access to justice for landlords and tenants in the private rented sector.

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

THE STRUCTURE AND A SUMMARY OF THE BILL

6. The Bill is in eight Parts.

- Part 1 contains provisions which will abolish the right to buy.
- Part 2 makes provision in relation to social housing allocations; the extension of the term of the short Scottish secure tenancy; the right to assign or sublet a tenancy, to establish a joint tenancy and to succeed to a secure tenancy.
- Part 3 transfers jurisdiction for civil cases relating to the private rented sector from the sheriff court to the First-tier Tribunal; makes provisions which deem a landlord as being registered on the landlord register where an application has not been determined by a local authority within 12 months; amends the repairing standard for private rented housing in Part 1 of the 2006 Act and provides third party reporting rights to the private rented housing panel for enforcement of the landlords’ repairing standard.
- Part 4 makes provision for the registration of letting agents (including a fit and proper person test); creates an offence of operating as a letting agent without being registered; sets out the process for handling disputes between letting agents and landlords or tenants; and allows the Scottish Ministers to provide for a letting agent code of practice by regulations.
- Part 5 makes provision for the licencing of relevant permanent sites in Scotland; (including a fit and proper person test); for offences relating to permanent sites and for local authority enforcement of statutory requirements, including powers of entry and recovery of expenses in relation to enforcement action.
- Part 6 amends local authority powers to enforce repairs and maintenance in private homes.
- Part 7 makes a number of miscellaneous amendments: granting the Scottish Ministers powers to exempt certain schemes, such as shared equity schemes, from the right to redeem a heritable security after 20 years in relation to private dwellings; the disqualification of certain persons from sitting on tribunals that are hearing housing cases; it amends the Scottish Housing Regulator’s powers to transfer assets following inquiries; provides for arrangements under which a registered social landlord (RSL) would become the subsidiary of another body and subject to the consent of the Regulator in the same way as arrangements by which a RSL would transfer its assets to another RSL; and repeals provisions in the Housing (Scotland) Act 1987 that designate pre-cast reinforced concrete houses as defective.

- Part 8 sets out various supplementary and final provisions.

PART ONE – RIGHT TO BUY

7. This Part repeals existing provisions on right to buy in the Housing (Scotland) Act 1987 (the “1987 Act”), so that right to buy is abolished for all tenants who have a Scottish secure tenancy with a relevant social landlord. Consequently, no tenant of social housing in Scotland will have the right to buy from the date of the coming into force of section 1. It also repeals provisions in the 1987 Act, the Housing (Scotland) Act 2001 (“the 2001 Act”) and the Housing (Scotland) Act 2010 (“the 2010 Act”), which are no longer required following the abolition of right to buy. In addition, it makes two amendments to the 1987 Act to ensure that changes to that Act made by the 2010 Act operate as intended until right to buy ends.

8. Section 1(1) repeals sections 61 to 81, 84 and 84A of the 1987 Act (the right to buy and associated provisions). These sections of the 1987 Act concern secure tenants’ right to buy; the procedure to follow when an application to purchase is made; circumstances in which houses provided for special purposes or liable for demolition are exempt from the right to buy; reference to the Lands Tribunal in cases of dispute; recoverability of discount; the rent to loan scheme; the powers of the Scottish Ministers in relation to right to buy; and the preservation of a tenant’s right to buy where a relevant landlord disposes of the home to a private sector landlord.

9. Section 1(2) repeals section 52 of the 2001 Act. Section 52 obliges the Scottish Ministers to report within four years of the provision coming into force on the extent to which tenants had exercised their right to buy and the effect of this on housing stock, the needs of people for, the demand for and availability of housing accommodation.

10. Section 1(3) repeals sections 145 to 147 of the 2010 Act. These sections require the Scottish Ministers to collect and publish information about right to buy sales in relation to each local authority and registered social landlord and about the number of tenants with the right to buy their house in relation to each local authority.

11. Section 2(a) amends section 61ZA(1) of the 1987 Act. Section 61ZA, inserted by section 141 of the 2010 Act, extends the range of circumstances under which the right to buy cannot be exercised to include new tenants to the social housing sector. This was intended to ensure that tenants taking up a Scottish secure tenancy for the first time (following commencement of section 141) and those returning to the social rented sector after a break would not have the right to buy the property they rent from a social landlord. This amendment to section 61ZA(1) is intended to ensure that occupation other than as a tenant before that date does not exempt a person from the new tenant provisions.

12. Section 2(b) amends section 61F of the 1987 Act. Section 61F, inserted by section 143 of the 2010 Act, extends the range of circumstances set out in sections 61A to 61E of the 1987 Act under which the right to buy cannot be exercised, to include new supply social housing (therefore exempting it from the right to buy, with some exceptions where a tenant with a Scottish secure tenancy moves to new supply social housing in circumstances outwith their control). This amendment is intended to ensure that tenants in this position have their right to buy protected, irrespective of when their tenancy was created.

13. Section 85(4) provides that the Scottish Ministers cannot appoint a date on which the right to buy will end which is less than two years from the date the Bill receives Royal Assent (in other words the Scottish Ministers cannot commence section 1(1) before the end of a two-year period from the date of Royal Assent).

PART TWO – SOCIAL HOUSING

14. Part 2 amends the Housing (Scotland) Act 1987 (“the 1987 Act”) and the Housing (Scotland) Act 2001 (“the 2001 Act”). The changes relate to social landlords’ powers to allocate social housing and grant Scottish secure tenancies and short Scottish secure tenancies.

Allocation of social housing

Reasonable preference in allocation of social housing

15. Section 3 amends section 20 of the 1987 Act to replace the existing categories of persons to whom social landlords must give reasonable preference when allocating social housing. It states that reasonable preference in allocations must be given to persons who are homeless or threatened with homelessness and persons who are living under unsatisfactory housing conditions, in each case where that person’s housing needs are not capable of being met by other housing options which are available. Reasonable preference must also be given to the tenants of any social landlord whom a social landlord considers to be under-occupying a property.

Rules on priority of allocation of housing: consultation

16. Section 4 inserts new section 20A into the 1987 Act. New section 20A requires social landlords to consult those mentioned in subsection 20A(2) and prepare and publish a report on the consultation, before determining the priority of allocation of houses held by it for housing purposes. When making or amending the allocation policy, subsection (2) amends section 21 of the 1987 Act to require social landlords to take account of any local housing strategy and any guidance issued by the Scottish Ministers. Before publishing any guidance on the priority of allocation of housing, the Scottish Ministers must consult such persons as they consider appropriate. Subsection (2) also enables the Scottish Ministers to make regulations subject to the affirmative procedure, which prescribe the type or description of persons whom social landlords must include in their rules governing the priority of allocation of houses. This is intended as a safeguard to ensure that categories of persons are not routinely omitted from an individual landlord’s allocation policies.

17. Section 6 amends section 20 of the 1987 Act to ensure that social landlords take no account of the ownership of or value of heritable property owned by the applicant or by a person who lives with or who it is proposed will live with the applicant, in the limited circumstances set out in new subsection (2C). These circumstances include, for example, where a property has not been let and the owner cannot secure entry to that property or where it is probable that occupation of the property will lead to abuse from some other person residing in that property.

18. Section 7 amends section 20 and inserts new section 20B in the 1987 Act to allow social landlords to impose a minimum period before the applicant is eligible for the allocation of housing, if certain circumstances apply. A minimum period requirement cannot be placed on homeless applicants to whom the local authority has a duty to provide settled accommodation (new subsection (2)(b)). A social landlord may determine that an applicant is ineligible for the

allocation of social housing if any of the circumstances in new section 20B(5) apply in relation to the applicant. Some of the circumstances also apply in relation to a person who it is proposed will reside with the applicant. The circumstances include antisocial behaviour, harassment, using a house for immoral or illegal purposes or offences punishable by imprisonment that were committed in the vicinity of the house. Subsection 20B(3) provides the Scottish Ministers with the power to issue guidance on any matter relating to section 20B and requires that the guidance should be consulted on before publication. Subsection 20B(4) provides the Scottish Ministers with the power by regulations to prescribe the maximum period preceding the application that a social landlord may consider any of the circumstances in section 20B(5). Subsection 20B(4) also provides the Scottish Ministers with the power by regulations to prescribe a maximum period for an application to have remained in force before an applicant is eligible for housing to be allocated when a landlord imposes such a period under any of those circumstances. Where a social landlord has imposed a minimum period before the applicant is eligible for the allocation of social housing, subsection 20B(7A) enables the landlord to withdraw or reduce the minimum period. Subsection (8) provides applicants with a right to appeal to the sheriff against a landlord's decision to make them ineligible for a period for the allocation of housing.

Short Scottish secure tenancy

19. Section 8(1) provides the Scottish Ministers with a power to issue guidance on the creation of a short Scottish secure tenancy for antisocial behaviour and on taking certain steps in relation to such a tenancy. Before publishing this guidance, the Scottish Ministers must consult with such persons as they consider appropriate. Subsection (1) also amends section 34(7) of the 2001 Act to require the landlord to provide, or ensure provision of, the housing support services it considers appropriate to enable the conversion of the tenancy to a Scottish secure tenancy.

20. Section 8(2) substitutes a new subsection (2) in section 35 of the 2001 Act. New section 35(2) extends the circumstances in which a landlord may serve a notice on a tenant under subsection (3) (a notice stating that the Scottish secure tenancy becomes a short Scottish secure tenancy). The circumstances include where a tenant or person associated with the tenant has, within the period of three years preceding the date of service of the notice, acted in an antisocial manner, pursued a course of conduct amounting to harassment or a course of conduct which is otherwise antisocial in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality. It also amends the information that must be included in the notice to the tenant to include the name of the person who has behaved in an antisocial manner, where no anti-social behaviour order applies. New section 35(3) makes a consequential amendment to section 37(1) (conversion to a Scottish secure tenancy) of the 2001 Act.

21. New section 35(4) inserts new paragraph 2A in schedule 6 to the 2001 Act to provide that the conduct referred to in new section 34(2)(b) if carried out by the persons referred to in new paragraph 2A(2), within the period of three years preceding the date of service of the notice, is a new ground for granting applicants a short Scottish secure tenancy. It also amends paragraph 6 of schedule 6 to the 2001 Act so that the ground for granting a short Scottish secure tenancy related to accommodation for a person in receipt of housing support only applies when no other paragraph in that schedule applies and where the person is in receipt of a housing support service. New section 34(5) makes another consequential amendment to section 31(5) of the 1987 Act to include new paragraph 2A as accommodation considered to be permanent accommodation under the duties of local authorities to persons found to be homeless.

22. Section 9 creates a new ground for granting a short Scottish secure tenancy, for homeowners, where the house is to be let expressly on a temporary basis to a person who owns heritable property, or where a person who it is proposed will reside with them owns heritable property. This is to allow them to make arrangements in respect of the heritable property they own, including sale or installation of adaptations, that will allow the person's housing needs to be met.

23. Section 10(1) amends section 34 of the 2001 Act to give short Scottish secure tenancies granted on the grounds of antisocial behaviour or a previous eviction order a term of 12 months. It also amends section 34 to provide that, at the end of the 12-month term, the tenancy cannot continue as a short Scottish secure tenancy on the same terms and conditions. Subsection (2) amends section 35 of the 2001 Act to provide that a short Scottish secure tenancy created by virtue of that section also has a term of 12 months. It also provides that, at the end of the 12-month term, the tenancy cannot continue as a short Scottish secure tenancy on the same terms and conditions. Subsection (3) inserts new subsection (5) and (6) into section 37 of the 2001 Act (conversion to Scottish secure tenancy) to provide that after this period, the short Scottish secure tenancy will automatically convert to a Scottish secure tenancy (unless the social landlord has taken steps to extend the short Scottish secure tenancy by a further six months or to seek repossession of the tenancy) on the term which applied before the tenancy became a short Scottish secure tenancy.

24. Section 11 inserts new section 35A in the 2001 Act to provide that the term of a short Scottish secure tenancy granted on antisocial behaviour or previous eviction grounds may be extended by a further period of six months from the date which would otherwise be the expiry day of that tenancy. Tenants must have been given two months' notice of the extension (including the reasons for the extension) and must be being given housing support services. An extension may be required because the tenant requires support for a further period in order for the tenant to be able to sustain a Scottish secure tenancy. Subsection (2) makes consequential amendments to section 37 of the 2001 Act.

25. Section 12 amends section 36 of the 2001 Act. Section 12(a) inserts a new subparagraph (aa) in section 36(2) to provide that proceedings for recovery of possession may not be raised, in the case of short Scottish secure tenancies created by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 (those granted on antisocial behaviour or previous eviction grounds), unless the landlord considers that any obligation of the tenancy has been broken. Section 12(b) inserts a new subparagraph (aa) into section 36(3) to require landlords of such tenancies to give tenants reasons why they are seeking recovery of possession of the tenancy (including, if new subsection (2)(aa) applies, the obligations the landlord considers have been broken). This section also gives tenants a right to request that their landlord review the decision to seek recovery of possession before the case goes to court (new subsection (4A)). New subsection (4C) gives the Scottish Ministers the power by regulations to make provisions about the procedure to be followed in such reviews. Section 12(ca) provides that, in cases where section 36(2)(aa) applies, the court must make an order for recovery of possession of the tenancy where the tenancy has reached the end of its 12-month term (or, in a case where an extension applies, the 18-month term applicable to it) and the landlord considers that an obligation of the tenancy has been broken. Section 12(e) inserts a new subsection (8) into section 36 of the 2001 Act to allow the procedure for recovery of possession (with respect to the serving of the notice for recovery of possession) under Scottish secure tenancies to also be used with short Scottish secure tenancies so long as the tenant has

been given four weeks' notice prior to the landlord raising proceedings for recovery of possession.

Scottish secure tenancy

26. Section 13(1) amends section 11 of the 2001 Act to introduce a 12-month qualifying period, where a person has used the house in question as the person's only or principal home, before a person can apply to be added to a tenancy as a joint tenant. Subsection (2)(a) amends section 32 of the 2001 Act to replace a six-month qualifying period with a 12-month qualifying period before a tenant can apply to assign the tenancy to another person. The proposed assignee will also have to have lived at the property and used it as their only or principal home for 12 months before they may be assigned the property. It also introduces a 12-month qualifying period before a tenant can apply to sublet the tenancy to another person. In joint tenancy and assignation cases, the individual or the tenant of the house in question must have notified the landlord that the individual is living in the property as their only or principal home before the 12-month period begins. The 12-month qualifying period for applying to sublet a tenancy is satisfied where the tenant was the tenant of the house in question throughout the 12-month period ending with the date of application (new subsection (1B) as inserted into section 32 by 13(2)(b)). Section 13(c) inserts new subparagraphs (f) and (g) into section 32(3) to provide new grounds for reasonable refusal of consent.

27. Section 14 amends schedule 3 to the 2001 Act for the purpose of succession to a Scottish secure tenancy. This schedule makes provision as to who are qualified persons to whom a Scottish secure tenancy passes by operation of law on the death of a tenant. Currently paragraph 2(2) of schedule 3 provides that a person living with a tenant as husband and wife or in a relationship of this character, except that they are of the same sex, is a qualified person if the house has been their only or principal home for a period of 6 months preceding the tenant's death. Section 14(a) replaces this six month qualifying period with a 12-month qualifying period.

28. Paragraph 3 of schedule 3 is amended to provide that a member of the tenant's family aged at least 16 years is a qualifying person for the purposes of succession to a Scottish secure tenancy, provided the house was their only or principal home throughout the 12 months ending in the tenant's death. This is a change to the existing requirement that such a family member is a qualifying person where the house was their only or principal home at the time of the tenant's death.

29. Paragraph 4(b) of schedule 3 is amended to provide that a carer providing, or who has provided, care for the tenant or a member of the tenant's family where the house was the carer's only or principal home throughout the period of 12 months ending with the tenant's death is a qualifying person. This is a change to the existing requirement that such a carer is a qualifying person where the house was the carer's only or principal home at the time of the tenant's death and the carer had given up a previous only or principal home.

30. In all cases where a qualifying period applies in section 14, the individual or the tenant must have notified the landlord that the individual is living in the property as their only or principal home before the 12-month period can begin (new paragraph 4A).

31. Section 15(1) provides the Scottish Ministers with the power to issue guidance on any matter relating to recovering possession of a house where such proceedings are to include a ground for recovery of possession set out in paragraph 2 of schedule 2 to the 2001 Act. The Scottish Ministers are also required to consult such persons as they consider appropriate before publication of the guidance. Subsection (2) inserts paragraph (aa) in section 16(2) of the 2001 Act to remove a requirement that the court considers whether it is reasonable to make an order for eviction, in cases where another court has already convicted a tenant of using the house for immoral or illegal purposes or of an offence punishable by imprisonment, committed in, or in the locality of, the house. The landlord will have to have such grounds for seeking recovery of possession of the property and have, within 12 months of the tenant's conviction or appeal, served a notice on the tenant that the landlord intends to seek recovery of possession of the property. The tenant retains a right to challenge the court action.

32. Section 16 amends schedule 2 to the 2001 Act to allow landlords to seek recovery of possession of adapted property where it has been allocated to persons who do not need adaptations. Landlords have an existing duty under section 16(2)(b) of the 2001 Act to rehouse any such persons in suitable alternative accommodation.

PART THREE – PRIVATE RENTED HOUSING

33. Part 3 makes provision in relation to the transfer of responsibility for hearing civil cases relating to the private rented sector from the Scottish courts to the Scottish Tribunals.

Transfer of sheriff's jurisdiction to First-tier Tribunal

34. Sections 17 to 21 and schedule 1 to the Bill make provision to transfer the types of civil private rented sector housing court actions specified in these provisions from the jurisdiction of the sheriff court to the jurisdiction of the First-tier Tribunal ("FTT"). These actions include repossession cases and various non-repossession related cases. The FTT is due to be established under the Tribunals (Scotland) Bill ("the Tribunals Bill") which was introduced in the Scottish Parliament on 9th May 2013. Provisions and powers provided in the Tribunals Bill will allow for operational detail such as the establishment of tribunal rules and appointment of members to the FTT. The Explanatory Notes in relation to this part of the Bill should, therefore, be read in conjunction with the Tribunals Bill.

35. Section 17 provides for the functions and jurisdiction of the sheriff court in relation to civil actions arising from regulated tenancies within the meaning of section 8 of the Rent (Scotland) Act 1984 ("the 1984 Act"), Part VII contracts within the meaning of section 63 of the 1984 Act and assured tenancies within the meaning of section 12 of the Housing (Scotland) Act 1988 ("the 1988 Act"), to be transferred to the FTT. This includes matters of eviction.

36. Part 1 of schedule 1 makes consequential amendments to this effect.

37. Section 18(2) amends section 18 of the Housing (Scotland) Act 2006 ("the 2006 Act") to provide that applications from a landlord or tenant for an order to exclude or modify the application of sections 14, 15 and 17 of the 2006 Act to the tenancy (with regards to the landlord's duty to repair and maintain, and the prohibition on contracting out of the landlord's

duty to repair and maintain) are transferred from the jurisdiction of the sheriff court to the jurisdiction of the FTT.

38. Section 18(4) amends section 57 of the 2006 Act to provide that where the section applies, the FTT, as opposed to the sheriff, may order a person who prevents or obstructs another person from doing anything which that person is required, authorised or entitled to do under Part 1 of the 2006 Act, to permit that person to do all things which they are required, authorised or entitled to do.

39. Part 2 of schedule 1 makes consequential amendments to this effect.

40. Section 19 inserts new section 66A into the 2006 Act. New section 66A provides the ability for tenants to appeal a landlord's refusal of, or imposition of conditions on, consent to adapt a rented house for a disabled person or for energy efficiency. The effect of the insertion of this section is to transfer jurisdiction to the FTT.

41. Part 3 of schedule 1 makes consequential amendments.

42. Section 20 provides for the jurisdiction to decide civil matters relating to landlord registration arising from the Antisocial Behaviour etc. (Scotland) Act 2004 ("the 2004 Act") (appeals against local authority decisions regarding landlord registration) to be transferred from the sheriff court to the FTT.

43. Part 4 of schedule 1 makes consequential amendments.

44. Section 21(1)(a) provides a power for the Scottish Ministers, by regulations, to transfer jurisdiction to decide cases under section 153(2) of the 2006 Act (where a person has obstructed another person from completing an action in relation to breaches of houses in multiple occupation ("HMO") licences or local authority amenity notices) from the sheriff to the FTT.

45. Section 21(1)(b) provides that the Scottish Ministers may also, by regulations, transfer appeals against decisions of local authorities to which section 158 of the 2006 Act applies (against decisions relating to HMOs) and applications to extend the period mentioned in paragraph 9(1) of schedule 4 to that Act and warrants for ejection under paragraph 2 of schedule 5 to that Act in relation to premises or land, from the sheriff to the FTT.

46. Section 21(2) provides that regulations under subsection (1) may also:

- disapply section 153(2) of the 2006 Act (regarding orders in cases where a person has obstructed another person under sections 145(2), 146(2), 151 or schedule 5 of that Act) which would become appropriate if all powers to make orders in these cases have been transferred to the FTT,
- disapply section 159(1) and paragraph 9(2) of schedule 4 to the 2006 Act (which allow any decision of a local authority in relation to HMOs to be appealed by summary application to the sheriff and the sheriff to extend the period in which a local authority must decide whether to grant or refuse an HMO licence application),

- disapply paragraph 3(1) of schedule 5 to the 2006 Act (which relates to warrants for ejection where a person has not complied with a requirement to evacuate to allow work to be carried out), and
- make other consequential amendments to the 2006 Act and any other enactment as the Scottish Ministers consider appropriate.

Landlord registration

47. Part 3 of the Bill also amends the 2004 Act by including provisions for the introduction of a time limit of 12 months for the determination of landlord registration applications.

48. Section 22 inserts a new section 85B into the 2004 Act and requires that local authorities determine applications for registration (as required by section 84 of the 2004 Act) made by relevant persons under section 83 of the 2004 Act, within 12 months of receipt of the application.

49. New section 85B(3) allows a local authority to apply to the FTT for an extension to this 12 month period. The period may be extended by such a period as the FTT thinks is appropriate, but may not be extended unless the application is made before the 12 month period expires (subsection (4)). The person making the application for registration is entitled to be party to any application for an extension to the 12 month period (subsection (5)). The decision of the FTT on the application will be final (subsection (6)).

50. New section 85B(7) provides that in the event of a local authority failure to determine the landlord application within the 12 month period, authorisation is deemed to have been granted automatically by the local authority. The authority is to be treated as having entered the relevant person in the register maintained by it under section 82(1) of the 2004 Act on the day by which the authority was required to determine the application. Unless the relevant person is otherwise removed from the register in accordance with Part 8 of the 2004 Act, that person is to be treated as being removed from the register on the expiry of the period of 12 months from that date (subsection (7)(b)).

51. Where new section 85B(7) applies (where the local authority has not determined an application within 12 months of its receipt), details of the relevant person's name and registration number must be entered in the register maintained by the authority under section 82(1) of the 2004 Act (subsection 8). Subsection (9) provides that (subject to the modifications specified in subsection (10)) the relevant person is treated for all purposes as having been registered by virtue of section 84(2)(a) of the 2004 Act (in other words, as if the authority has made a positive determination of the application). The requirement for an authority to remove the entry from the register three years from the day on which the entry is made in the register in terms of section 84(6) of the 2004 Act does not apply to deemed granted applications (in other words to those applications entered by virtue of a local authority having not determined it within 12 months of the date of receipt of the application) (subsection (10)(c)).

52. The modifications specified in subsection (10) are that in the case where an applicant does not specify the name of a person who acts for the landlord in respect of a property specified in the application under section 83(1)(c), the applicant is to be treated as being registered by virtue of section 84(3). Where an applicant specifies at least one house, and the name and

address of someone acting in respect of a property specified in the application under section 83(1)(c), the applicant is to be treated as being registered by virtue of section 84(4).

53. Section 22(2) amends section 86(1)(a) of the 2004 Act so that a person entered into the register by virtue of a deemed granted application is notified of that fact as soon as practicable after the entry has been made.

Repairing standard

54. Part 3 of the Bill also makes provision to amend the repairing standard for private rented housing in Part 1 of the 2006 Act.

55. Section 22A amends section 13 of the 2006 Act by inserted a subsection (1)(g) which requires that, in order to meet the repairing standard, a privately rented house must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. A new section 13(6) of the 2006 Act provides that, in determining whether a house has satisfactory provision for giving warning of carbon monoxide, regard is to be had to both building regulations and guidance issued by the Scottish Ministers.

56. Section 22B inserts a section 13(4A) into the 2006 Act which requires that, in determining whether a house meets the parts of the repairing standard which require that the installations in a privately rented house for the supply of electricity and any electrical appliances provided by the landlord are in a reasonable state of repair and in proper working order, regard is to be had to any guidance on electrical safety standards issued by the Scottish Ministers.

57. Section 22B also inserts section 19A into the 2006 Act. New section 19A requires landlords to arrange electrical safety inspections every five years to identify any work needed to meet the repairing standard in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances. An inspection must be carried out before a new tenancy starts, unless there has been an inspection within the previous five years. Where a tenancy has commenced before the date that section 22B(2) comes into force, the landlord must carry out an inspection within 12 months from the date section 22B(2) comes into force, unless the tenancy comes to an end in the 12-month period (and the property is not relet). Section 19A requires landlords to provide copies of inspection reports to tenants. The duty to carry out an inspection is treated as part of the repairing standard for the purposes of applications to the private rented housing panel and for enforcement of the repairing standard by the private rented housing panel.

58. Section 22B also inserts new section 19B into the 2006 Act. Section 19B provides that an inspection carried out for the purposes of section 19A must be carried out by a competent person and specifies information which must be included in the record of the inspection, which must be retained by the landlord for six years. Section 19B also provides that the Scottish Ministers must publish guidance and that, in determining whether someone is a competent person as required by section 19B(1), landlords must have regard to this guidance.

59. Section 22C inserts section 20A into the 2006 Act. Section 20A provides that the Scottish Ministers may amend the provisions of the 2006 Act which set out the repairing standard and the duty of landlords to ensure that privately rented homes meet the repairing standard. Section 22C(2) requires that any such regulations are made by the affirmative procedure.

Enforcement of repairing standard

60. Part 3 of the Bill also makes provision to expand access to the private rented housing panel by enabling third party applications by local authorities to enforce the repairing standard.

61. Section 23(1)(a) amends section 22 of the 2006 Act by inserting subsections (1A) and (1B), to enable a third party to apply to the private rented housing panel for a determination of whether a landlord has failed to comply with the repairing standard which is provided for in section 13 of the 2006 Act (section 14(1)(b) of the 2006 Act provides that the landlord in a tenancy must ensure that the house meets the repairing standard at all times during the tenancy). New section 22(1B) defines such a third party applicant as a local authority, or a person specified by order by the Scottish Ministers.

62. Section 23(1)(b) amends section 22(2) of the 2006 Act to require that an application made by a third party must set out the third party applicant's reasons for considering that the repairing standard is not met.

63. Section 23(1)(c) amends section 22(3) of the 2006 Act to provide that an application in respect of the repairing standard cannot be made unless the person making the application has informed the landlord that work needs to be carried out for the purpose of complying with the repairing standard. Section 23(1)(d) amends section 22(4) to provide that applications made under this amended section (both by tenants and by third party applicants) cannot be made if the landlord is a local authority landlord, a registered social landlord, Scottish Water or Scottish Homes.

64. New section 22(4A) as inserted by section 23(1)(e) of the Bill makes provision that the tenant of the house concerned is entitled to be a party to the determination of any application by a third party to the private rented housing panel.

65. Section 23(3) amends section 22A(1) of the 2006 Act to provide that on receipt of an application by a tenant or third party applicant (other than a local authority third party applicant), the private rented housing panel must provide the information specified in section 22A(2) to the local authority for the area in which the house is situated for the purpose of the local authority maintaining the register under section 82(1) of the 2004 Act (landlord register).

66. Section 23(4) of the Bill amends section 23 of the 2006 Act so that the processes whereby the president of the private rented housing panel decides whether to refer an application to a private rented housing committee or to reject it will also apply to applications made by a third party. Notification of rejected third party applications must be given to the third party applicant and the tenant, setting out the reasons for rejection and the procedures for appealing against it (new subsection (4A) as inserted into section 23 of the 2006 Act).

67. Section 23(5) amends section 24 of the 2006 Act so that the private rented housing committee must make a determination of applications made by a tenant or a third party as to whether the landlord has failed to comply with the repairing standard (in other words the landlord's duty under section 14(1)(b)).

68. Section 23(6A) amends section 181 of the 2006 Act to provide a new power of entry for third parties in relation to the repairing standard. This provides for the right of entry by a person authorised by a third party applicant, for the purposes of deciding whether an application is to be made to the PRHP under section 22(1A) of the 2006 Act.

69. Section 23(6B)(a) amends section 182 of the 2006 Act, which outlines circumstances where a sheriff or justice of the peace may issue a warrant to enter a house, by force if necessary, to include that a warrant may be issued for the purposes of deciding whether an application is to be made to the PRHP under section 22(1A) of the 2006 Act. Section 23(6B)(b) provides that the reference to the ‘occupier’ in section 182(3) for the purposes of an application for an warrant under section 181(1A) includes the tenant, the landlord and any known agent of the landlord. Section 23(6C) inserts a new subsection (4A) into section 184 of the 2006 Act so that the requirement under section 184(4) for at least 24 hours’ notice to be given to the occupants of the land or premises concerned before exercising the right of entry under section 181(1A), is read as requiring notice to be given to the tenant, landlord and any known agent of the landlord.

70. Section 23(6D) amends section 187 of the 2006 Act which sets out the means by which a formal communication under the Act is served, submitted, given, made or issued to a person, by substituting for the reference to “the recorded delivery service” a reference to “a service which provides for the delivery of the communication to be recorded”.

71. Section 23(7) amends section 194(1) of the 2006 Act (interpretation) to include ‘third party applicant’, which is to be interpreted as a local authority or a person specified by order made by the Scottish Ministers.

72. Section 23(8) repeals section 35(3) of the 2011 Act, which was to include the word tenant to the title of section 22 of the 2011 Act entitled ‘representations’.

Procedure for third party applications

73. Section 24 amends schedule 2 to the 2006 Act so that the procedures to be adopted by a private rented housing committee in determining an application to the private rented housing panel in relation to a landlord’s failure to comply with the repairing standard (in terms of section 14(1)(b) of the 2006 Act), take account of applications made by a third party. In the case of a third party application, the third party must be notified and given the opportunity to make written or oral representations. Any changes made at the request of a third party applicant to the date by which evidence must be provided must be notified to the third party, the tenant and landlords.

74. The procedures followed by a committee in making other inquiries must include consideration of any written or oral representations, and any report about the state of the property concerned, by third party applicants (in terms of section 24(2) which amends paragraph 2 of schedule 2 to the 2006 Act).

75. The committee may cite any person to give evidence or information, including a third party applicant (in terms of section 24(3) which amends paragraph 3 of schedule 2 to the 2006 Act). No allowances or expenses are payable to the landlords, tenant, tenant or landlord representatives of third party applicants (in terms of section 24(4) which amends paragraph 5 of schedule 2 to the 2006 Act).

76. Section 24(5) also amends the procedures for recording and notification of decisions in paragraph 6 of schedule 2 to the 2006 Act, to include third party applications. Once a private rented housing committee reaches its decision it must send notification to the landlord, tenant, and any person acting for the tenant in relation to the application and the local authority, unless that authority is the third party applicant.

77. Section 24(6) amends paragraph 7(1) of schedule 2 to the 2006 Act to provide that a third party applicant may withdraw the application under new section 22A(1A) of the 2006 Act. Paragraph 7(2), however, provides that, despite the withdrawal the committee may continue to consider the case and make a repairing standard enforcement order if appropriate.

Appeals in relation to third party applications

78. Section 25(1) amends section 64 of the 2006 Act to give a third party applicant aggrieved by a decision by a private rented housing committee mentioned in subsection (4) (a) to (f) of section 64, the right to appeal such a decision to the sheriff within 21 days of notification of the decision (new subsection (4A)).

79. Section 65(2) of the 2006 Act is amended by section 25(2) to provide that the sheriff may determine appeals by third party applicants by confirming the decision, remitting the decision to the president or the private rented housing committee as the case may be for reconsideration or quashing the decision made.

80. New section 66(3A) (as inserted by section 25(3)) makes provision for the third party applicant to be a party to proceedings, and for the tenant to be entitled to be party to the proceedings, where a landlord appeals a decision relating to a third party application to the sheriff under section 64(4) of the 2006 Act.

81. Under new section 66(3B) (also as inserted by section 25(3)), where a tenant appeals a decision of a committee in respect of a third party application to the sheriff under section 64(4) of the 2006 Act, the landlord and third party applicant are to be parties to the proceedings.

82. Under new section 66(3C) (also as inserted by section 25(3)), where a third party applicant appeals to the sheriff under new section 64(4A) against a decision of the committee in relation to that application, the landlord is to be party to the proceedings and the tenant is entitled to be a party.

PART FOUR – LETTING AGENTS

83. Part 4 of the Bill makes provision to further regulate the letting agent industry in Scotland. The purpose of this part of the Bill is to help improve letting agent levels of service and professionalism, by strengthening the regulation of the industry.

84. This involves the creation of a mandatory register of letting agents in Scotland, with an associated ‘fit and proper person test’; and the creation of a statutory code of practice to which all letting agents must adhere. The Bill also enables the First-tier Tribunal (“FTT”) (which is to be established under the Tribunals (Scotland) Bill) to make a range of enforcement orders to

provide redress for tenants and landlords in cases where a letting agent fails to comply with that code of practice.

Inclusion in the register

85. Section 26 requires the Scottish Ministers to create and maintain a national register, containing an entry for each letting agent. This will include the name and address of each person entered in the register, and any other information relating to that person the Scottish Ministers may specify in regulations. The register will be available to the public.

86. Section 27 provides that a letting agent may apply to be entered on the register, sets out the information that must be supplied as part of such an application, and makes provision for an application fee to be charged and gives the Scottish Ministers a power to determine this fee. The section should be read alongside section 39 which makes it an offence to operate as a letting agent without being entered on the register.

87. Subsection (2)(a) to (f) of section 27 sets out the information that an application must contain. These provide for what information is required depending on whether an applicant is a sole trader, a partnership, a company or a body with some other legal status. Where the applicant is not a natural person, subsection (2)(d) and (e) require certain details also to be supplied in relation to individual persons within the organisation who hold a senior or controlling position. When determining (under section 29) whether the applicant is a fit and proper person to be a registered letting agent, the Scottish Ministers may take into account information relating to these named individuals. Subsection (2)(a) to (f) should be read alongside section 28, which makes it an offence to knowingly supply false information or fail to supply the required information.

88. Section 28 makes it an offence to knowingly supply false information or to fail to provide the required information in an application under section 27.

89. Section 29 provides that the Scottish Ministers must determine an application which is made under section 27 and sets out aspects of the process they must follow. If they determine that the applicant, and any other person required to be identified in an application by virtue of section 27, is a fit and proper person to carry out letting agency work, and that the applicant meets any training requirements prescribed by the Scottish Ministers in regulations subject to the negative procedure, subsection (2) provides that they must enter the applicant on the register. Subsection (2A) provides that the regulations about training may prescribe further details of the training requirement - such as who should obtain it and when. If the Scottish Ministers determine that the applicant is not a fit and proper person then subsection (4) provides that they must refuse to enter the applicant in the register. These provisions should be read alongside section 30 which sets out the matters that must be considered in determining if a person is a fit and proper person to carry out letting agency work. Subsection (5) provides that where the Scottish Ministers are considering refusal of an application, they must give notice of this to the applicant, including providing reasons, and allow the applicant to make representations. Subsection (7)(d) requires the Scottish Ministers to provide reasons for a decision to refuse an application or a renewal of an existing provision.

90. Section 29A provides a time limit by which the Scottish Ministers must make a decision on applications of 12 months from receipt of the application for registration or renewal. The Scottish Ministers will have the power to apply to the First-tier Tribunal (FTT), before the expiry of the 12 months, for a decision to extend this period. The length of the extension period will be at the discretion of the FTT. There will be tacit approval to the letting agent register if the Scottish Ministers have not made a decision within 12 months of an application being made (or longer period if the Tribunal has extended the period). The effect of tacit approval is that an applicant is treated for all purposes as a registered letting agent (subject to the modifications in subsection (10)). Letting agents registered in these circumstances will have a registration period of 12 months before being required to reapply.

91. Section 30 sets out the material that the Scottish Ministers must take into account when deciding if a person is fit and proper to be entered on the register, which includes the Scottish Ministers having regard to all of the circumstances of the case. Subsection (2) relates to particular criminal convictions and contraventions of the law that must be considered. Subsection (3) lists matters to be considered that are related to compliance with the letting agent code of practice and any associated enforcement orders. Subsection (4) provides a power for the Scottish Ministers to modify the list of convictions and contraventions at subsections (2) and (3) by order subject to the affirmative procedure.

92. Section 31A provides that the Scottish Ministers may have regard to information on “relevant matters” as defined in section 113A of the Police Act 1997 to include convictions within the meaning of the Rehabilitation of Offenders Act 1974, including a spent conviction, and any notification requirement under Part 2 of the Sexual Offences Act 2003 where they have reasonable grounds to suspect that the information already provided to them under section 30(2) of the Bill is false or has become inaccurate.

Duties of registered letting agents

93. Section 32 requires the Scottish Ministers to allocate a number to each registered letting agent. Registered letting agents must take all reasonable steps to ensure that the number is included in documents sent to landlords or tenants (prospective or current), advertisements and communications, and any other material that the Scottish Ministers may specify by order. Subsection (3) defines “advertisement” and “communication”.

94. Section 33 places a duty on the registered letting agent to notify the Scottish Ministers in writing, as soon as practicable, if any of the information supplied in the application has become inaccurate due to a change in circumstances. Subsection (3) requires that any notification must be accompanied by such fee as the Scottish Ministers may determine by regulations, and subsection (3) provides a power for the Scottish Ministers to set that fee. Subsection (4) makes it an offence to fail to comply with this duty to inform.

Removal from the register

95. Section 34 provides that, unless a new application is made under section 27, the Scottish Ministers must remove a registered letting agent from the register after three years from the date of registration.

96. Section 35 provides that the Scottish Ministers may remove a registered letting agent from the register without waiting for the expiry of the three-year registration period if they no longer consider the agent, or any other person who is required to be identified in an application by virtue of section 27, to be a fit and proper person to carry out letting agency work or if the agent does not meet the training requirements prescribed under section 29(2)(c). Subsections (2) to (4) set out aspects of the process that the Scottish Ministers must follow before removing the person, including giving notice to the agent informing the agent of the right to make representations to the Scottish Ministers. There is also a requirement under subsection (4)(a) for the Scottish Ministers to provide their reasons for deciding to remove an agent from the register.

Appeals

97. Section 36 provides for appeals to the FTT against decisions of the Scottish Ministers in relation to refusal of a registration application or removal from the register. Subsection (2) sets out the time period (21 days) for an appeal to be made following notification of the decision.

Consequences of refusal or removal

98. Section 37 provides that where a person has been refused registration, or had the registration revoked, the Scottish Ministers must publicise this fact by noting it in the register. The note must remain on the register for a period of 12 months, unless the person is subsequently entered on the register within that time, in which case the note must be removed (subsections (4) and (5)).

99. Section 38 relates to situations where a person has been removed from the register or has been refused entry to the register. It provides that such a person cannot recover any costs relating to carrying out letting agency work after having been refused entry to the register or removed from the register, and after the relevant appeal period has expired. However, subsection (2A) provides that costs incurred before the relevant date may be recovered where the agent has been removed from the register by reason of the current registration expiring and no further application having been received. Subsection (3) also requires the Scottish Ministers to publish as soon as practicable after the relevant date, in such manner as they think fit, a notice of the agent's refusal or removal and of the fact that no costs are recoverable from the date of refusal or removal.

Offences where no registration

100. Section 39 makes it an offence to carry out letting agency work unless registered. Subsection (2) provides that a person is not committing an offence during the period of 21 days following the date of notification of refusal or removal from the register and during the period of the appeal process up until the appeal is decided or abandoned. Subsection (4) sets out the relevant sanctions and provides on summary conviction for a prison term not exceeding six months or a fine not exceeding £50,000, or both.

101. Section 40 makes it an offence to use a number purporting to be a letting agent registration number without being a registered letting agent. Subsection (2) again provides that the offence will only be committed following 21 days of notification of refusal or removal from the register or following any appeal having been decided or abandoned.

Code of practice

102. Section 41 provides for the establishment of a letting agent code of practice. It gives a power to the Scottish Ministers, by regulations to create a code which sets out the standards of practice; the handling of tenants' and landlords' money and the professional indemnity arrangements which are required of persons who carry out letting agency work (which is defined at section 51). Before finalising the code, the Scottish Ministers must carry out consultation on a draft of it. The regulations will be subject to the affirmative procedure for the first version of the Code; and any future complete replacement of the Code. Revisions to the Code would be subject to the negative procedure.

103. Section 42 provides that where the terms of an agreement between the letting agent and either a landlord or tenant purport to exclude or limit any duty of the letting agent under the code or impose any penalty, disability or obligation in the event of a person enforcing compliance by the agent, the terms will have no effect.

Letting agent enforcement orders

104. Section 43 provides that the route of redress where alleged breaches of the code of practice will be determined will be the FTT. Subsection (1) provides that a tenant or landlord or the Scottish Ministers may apply to the FTT for such a determination regarding a relevant letting agent. A "relevant" letting agent is defined at subsection (2). The purpose of this section is to make it clear the circumstances in which a tenant or landlord or the Scottish Ministers can raise a case with the FTT.

105. Subsection (3) provides that a landlord, tenant or the Scottish Ministers applying to have a case heard at the FTT under subsection (1) must specify why they believe the code has been breached by the letting agent. Subsection (4) provides that, before applying to the FTT, a tenant or landlord or the Scottish Ministers must tell the letting agent about the alleged breach of the code and subsection (5) provides that the FTT may reject the application if the letting agent has not been allowed a reasonable opportunity to rectify the matter.

106. Subsection (6) provides that the FTT must decide regarding an application made under subsection (1) whether a letting agent has complied with the code of practice. Subsections (7) and (8) relate to a letting agent enforcement order which must be issued if the letting agent has failed to comply with the code, and set out what the order may consist of.

107. Section 44 provides that the FTT may vary or revoke an enforcement order made under section 43.

108. Section 45 provides steps that may be taken by the FTT to establish if a letting agent enforcement order has been complied with. Subsection (2) provides that the FTT must notify the Scottish Ministers if it determines there has been a failure to comply. This allows the Scottish Ministers to take the matter into account for registration considerations under section 30.

109. Section 46 makes it an offence to fail to comply with a letting agent enforcement order.

Monitoring of compliance

110. Section 46A gives the Scottish Ministers the power to require such documents and information as they may reasonably require from any person carrying out letting agency work (which will include from staff) where the letting agency is a company. For example, information could be requested from company directors, the company owner and its staff. The information is to be obtainable for the purposes of enabling the Scottish Ministers to exercise any of their functions under Part 4 of the Bill. This power covers Ministerial requests for information about compliance with the code of practice or the registration requirements. It does not enable the disclosure of information if such disclosure would be contrary to any enactment or rule of law.

111. Section 46B provides powers for the Scottish Ministers to authorise persons to carry out an inspection of premises which appear to be being used for the purpose of carrying out letting agency work. An authorised person has various powers which can be carried out at an inspection.

112. Section 46C outlines the circumstances where a sheriff, justice of the peace or stipendiary magistrate may issue a warrant to enable an authorised person to enter premises, by force if necessary, for the purpose of carrying out an inspection. In granting a warrant, the sheriff, justice of the peace or stipendiary magistrate will have to be satisfied that there are reasonable grounds for entering the premises and that one of the grounds for obtaining a warrant set out in subsection (2)(b) are met.

113. Section 46D provides a right for the person entering any premises to take such other persons and such equipment as the person considers necessary. The power of entry can only be exercised at a reasonable time and the occupier of the premises must be given at least 24 hours' notice, unless giving such notice would defeat the object of the proposed inspection. A person carrying out an inspection must, if required to do so, produce written evidence of the person's authorisation to exercise that right. If the premises are unoccupied or the occupier is temporarily absent, the person authorised to enter must leave the premises as effectively secured against trespassers as the person found them. A statement must be left on the premises giving particulars of what has been taken, and stating that the person has taken possession of it.

114. Section 46E creates offences relating to the powers to obtain information and carry out inspections at sections 46A and 46B. Subsection (1) makes it an offence to fail or refuse to provide information to the Scottish Ministers or an inspector without reasonable excuse or to make a false or misleading statement in a material particular. Subsection (2) provides that it is to be an offence for someone to intentionally obstruct a person in the exercise of a power of entry. It is also an offence to fail to provide information to an inspector or to fail to give an inspector such facilities and assistance as the inspector thinks necessary. Subsection (3) provides that a person committing an offence under subsection (1) or (2) is to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

General

115. Section 47 provides a power for the Scottish Ministers to transfer, by regulations subject to the negative procedure, other, existing types of cases relating to letting agents which are currently within the jurisdiction of the sheriff court to the FTT.

116. Section 48 sets out, where offences are committed by bodies corporate, who within that body is considered to have committed the offence and be liable to be proceeded against.

117. Section 49 allows the Scottish Ministers to delegate their functions under Part 4 to another person or body (other than the powers to make orders or regulations).

118. Section 50 makes some consequential modifications to the 2004 Act relating to landlord registration.

119. Sections 51 and 52 provide definitions of various terms used within this Part. In particular, section 51, subsections (3) and (4), allows the Scottish Ministers by order to exempt specified bodies or certain types of schemes from the regulatory regime for letting agents, as well as allowing a modification of the general definition of “letting agency work”. An order exempting bodies or schemes would be subject to the negative procedure, whereas an order modifying the meaning of “letting agency work” would be subject to the affirmative procedure.

PART FIVE – MOBILE HOME SITES WITH PERMANENT RESIDENTS

120. Part 5 makes provision for the licensing system for mobile home sites with permanent residents.

General application

121. The provisions in this part of the Bill amend the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”). The 1960 Act requires occupiers of land (referred to in these Notes as “site owners”) to hold a licence before they allow their land to be used as a caravan site. Currently the same licensing regime applies to sites used for holiday caravans, and sites with permanent residents. The Bill changes the licensing regime for most sites with permanent residents. These sites are defined as “relevant permanent sites” in new section 32Z5, which is inserted into the 1960 Act by section 70 of the Bill. New section 32Z5 is an interpretation section for new Part 1A.

122. New Part 1A deals with the licensing of relevant permanent sites in Scotland. Sites that have a licence that only allows mobile homes on them to be used for holidays are not affected by new Part 1A of the 1960 Act. Part 1 of the 1960 Act will continue to apply to such holiday sites. The definition of “excepted permission” (also in new section 32Z5) means that holiday sites that have an employee of the site owner living on them year round (for example to manage the site), are not covered by new Part 1A of the 1960 Act.

123. Section 53 of the Bill amends section 32 of the 1960 Act by inserting a new paragraph (m) into section 32(1). Section 32 changes the operation and wording of Part 1 of the 1960 Act as it applies to Scotland. For example it replaces references to English courts and legal terms with references to the relevant equivalents under Scots law. All the provisions in Part 1 of the 1960 Act need to be read alongside section 32 when considering how the Act applies to Scotland. The effect of the new paragraph (m) is that, when applying the 1960 Act to a relevant permanent site in Scotland, it is also necessary to read the provisions of Part 1A.

Part 1A site licence

124. Section 54 of the Bill inserts new sections 32B and 32C into the 1960 Act. New section 32B has the effect of replacing the existing system for licensing mobile home sites with permanent residents in Scotland (in terms of Part 1 of the 1960 Act) with the new system set out in new Part 1A (in terms of new section 32A(1)). New section 32B(1) provides that a relevant permanent site application may be made by the site owner of the relevant permanent site to the local authority in whose area the site is situated, and new section 32B(2) sets out what such a site licence application must include. For example, it must be in such format as is determined by the local authority, and specify the land in respect of which the application is made. Section 32B(3) requires an applicant to provide such information to the local authority as it reasonably requires.

125. New section 32C provides that the relevant local authority may charge a fee for a site licence application. A local authority may also fix different fees for different applications (subsection (2)). Such a fee cannot exceed the amount a local authority considers represents the reasonable costs of deciding on an application (subsection (3)). Subsection (4) provides that the Scottish Ministers may by regulations make provision about the charging of fees for site licence applications. This could include setting out the factors a local authority could take into account when fixing the fee for a site licence, and providing for the fee not to exceed a maximum fee level prescribed by the Scottish Ministers in the regulations.

126. Section 55 inserts new section 32D into the 1960 Act which provides for the issue and renewal of a site licence for a relevant permanent site. New section 32D(1) provides that a local authority may issue a site licence:

- where the applicant has the relevant planning permission (for the use of the land as a caravan site otherwise than by a development order), and
- if the authority is satisfied that the applicant is a fit and proper person or where the applicant is not a natural person, that both the applicant and the individual holding the most senior position within the management structure of the relevant partnership, company or body are fit and proper persons, and
- if the authority is satisfied that any person appointed by the applicant to manage the site is a fit and proper person, and in the case where a person to be appointed by the applicant to manage the site is not a natural person, that both the person to be appointed and any individual who is to be directly concerned with the management of the site are fit and proper persons.

127. Section 32D(2) provides that a local authority must renew a licence if:

- the applicant has the relevant planning permission (for the use of the land as a caravan site otherwise than by a development order), and
- if the authority is satisfied that the applicant is a fit and proper person or where the applicant is not a natural person, the both the applicant (subsection (2)(b)(i)) and the individual holding the most senior position within the management structure of the relevant partnership, company or body (subsection (2)(b)(ii)) are fit and proper persons, and

- if the authority is satisfied that any person appointed by the applicant to manage the site is a fit and proper person, and in the case where a person to be appointed by the applicant to manage the site is not a natural person, that both the person to be appointed (subsection 2(b)(iii)) and any individual who is to be directly concerned with the management of the site (subsection 2(b)(iv)) are fit and proper persons.

128. New section 32D(3) provides that the local authority must not at any time issue a site licence to a person whom the local authority knows had held a site licence which has been revoked under the 1960 Act less than three years before that time.

129. New section 32D(4) provides that before refusing to issue a site licence, the authority must give the applicant a notice stating that it is considering refusal and its reasoning for this, and informing the applicant of the right to make written representations to the authority before the date specified in the notice. New section 32D(5) requires the local authority to consider the application and any representations made in making its decision.

130. Section 55 also inserts new section 32E into the 1960 Act. Section 32E sets out procedures for the transfer of a site licence (other than on the death of a site licence holder) to a person who is to become the site owner of the relevant permanent site. This would occur, for example, where a site was sold to a new owner. Procedures similar to those that apply for a new site licence application apply in this situation, such as the need for the new site licence holder (and any person appointed to manage the site) to be a fit and proper person to hold a site licence (subsection (2)). Subsection (3) also provides that the applicant and transferee must provide the local authority with such information as the authority reasonably requires in order to establish whether the person is a fit and proper person. Subsection (4) requires a local authority, before refusing consent to the transfer of a licence, to give the applicant a notice that states that it is considering refusing its consent, and the reasons why. The applicant then has an opportunity to make written representations to the local authority before the date given on the notice (which must be at least 28 days after the notice is given). A local authority must consider these representations.

131. Section 55 also inserts new section 32F into the 1960 Act. New section 32F makes provision for the setting of time limits in relation to an application for a site licence and consent to transfer a licence mentioned in section 32E. Under the provision, the Scottish Ministers must set in regulations a time limit within which a local authority must decide on applications to issue a site licence for the first time, an application to renew a site licence, and an application to transfer a site licence. Ministers can set different time limits for different types of application. If a local authority does not meet the time limits set in the regulations then the applicant is to be treated as having been granted a site licence by the authority under new section 32F (subsection (7)). The period may be extended by the sheriff by such period as the sheriff thinks fit (subsection (3)), the sheriff may not extend the period unless the authority applies for the extension before the period expires (subsection (4)), the applicant is entitled to be party to any proceedings to extend the period of determination (subsection (5)), and the sheriff's decision on such summary application is final (subsection (6)). If a local authority does not determine an application for consent to transfer a licence within the period, then the applicant is to be treated as having been granted consent on the day the application was made (subsection (8)).

132. Section 55 also inserts new section 32G into the 1960 Act. This provision gives the local authority the power to transfer a site licence to the person it considers to be the site owner of the relevant permanent site (subsection (2)), where a holder of a site licence does not seek consent of the authority for the transfer under section 10(1) of the 1960 Act and where it appears to the authority that the holder of the licence is no longer the site owner. The section introduces an offence of knowingly or recklessly providing false or misleading information to a local authority in relation to a local authority decision to transfer a licence. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (subsection (7)). In 2013 this was a maximum of £1,000.

133. New section 32H as inserted into the 1960 Act by section 55, provides that where a relevant permanent site licence is transferred to a person in accordance with section 10(4) of the 1960 Act, that person must give the authority such information as the authority may reasonably require in order to make a determination under new section 32L, in relation to a decision to revoke a site licence on the basis that someone is not a fit and proper person.

134. New section 32I is inserted into the 1960 Act by section 55. It requires a local authority after:

- determinations of relevant permanent site applications,
- determinations of an application for consent to transfer a licence mentioned in new section 32E,
- a decision to transfer a licence mentioned in new section 32G,

to notify respectively the applicant, the applicant and the transferee, and the previous holder of the site licence and transferee, of the decision, the reasons for it, and the right to appeal under new section 32M. It must do so as soon as practicable after making the decision (subsection (1)).

135. Section 56 inserts new section 32J into the 1960 Act and provides that a site licence issued or renewed for a “relevant permanent site” will be for a duration of five years (unless terminated by its revocation, or unless the holder is no longer entitled to planning permission for use of the land as a caravan site, or any planning permission for the use of the site as a caravan site expires). New section 32J(2) gives the Scottish Ministers the power to alter the duration of site licences, by order subject to the affirmative procedure.

136. Section 57 inserts new section 32K into the 1960 Act. This requires a site licence holder to tell a local authority when the holder has appointed someone new to manage the site. New section 32K also requires a site licence holder to notify a local authority of a change of circumstances that means that information provided by the licence holder has become inaccurate. They must do so within 28 days of the day the information previously provided becomes inaccurate.

137. Section 58 inserts new section 32L into the 1960 Act. This gives a local authority the power to revoke a site licence if the local authority is satisfied that the licence holder is no longer a fit and proper person, or that the person appointed to manage a site is no longer a fit and proper person. Where the licence holder is a non-natural person, the licence can be revoked where the local authority is satisfied that either the licence holder (subsection (1)(a)) or the individual who

holds the most senior position in the body (subsection (1)(b)) is no longer a fit and proper person.

138. Section 32L(2) sets out the procedures a local authority must follow when revoking a licence (such as the requirement to notify the site owner of the proposed revocation and of the right of the site owner to make written representations). Subsection (4) requires a local authority to serve notice of the revocation on the owner of the relevant permanent site, identifying the site licence to which it relates and explaining the right of appeal. The local authority must also provide its reason(s) for revoking the licence.

139. Section 59 inserts new section 32M into the 1960 Act. Under this section the person involved (the applicant, the applicant and transferee, the previous holder of the licence and the transferee, depending on the determination) can appeal to the sheriff against a local authority's decision on a site licence application, on the transfer of a licence (whether on death of a site licence holder or not) or a decision to revoke a site licence.

140. Section 60 inserts new section 32N into the 1960 Act. This section gives the Scottish Ministers the power to make regulations in relation to the procedure to be followed in relation to:

- the issue, renewal, transfer, transmission and revocation of a permanent site licence,
- appeals relating to a site licence under new section 32M.

The Scottish Ministers can also make provision for the determination and consequences of an appeal under section 32M.

Fit and proper persons

141. Section 61 inserts new section 32O into the 1960 Act. The section sets out the factors a local authority must consider when applying the fit and proper person test, for example to potential site licence holders, or existing site licence holders seeking to renew a licence. This section provides that the relevant material that can be taken into account includes:

- whether the person has been convicted of offences involving fraud or other dishonesty, violence, drugs, firearms, and sexual offences within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995,
- evidence an applicant has practised unlawful discrimination,
- whether the person has contravened the law relating to caravans, housing, and landlords and tenants
- whether the person has committed a breach of an agreement to which the Mobile Homes Act 1983 applies,
- whether the person has engaged in antisocial behaviour,
- whether the person has breached the conditions of the site licence,
- other relevant material a local authority is aware of from its licensing duties.

142. Subsection (6) gives the Scottish Ministers the power to adjust the list of relevant material, by order subject to the affirmative procedure.

143. Section 62 inserts new section 32P into the 1960 Act. This gives a local authority the power, if it is carrying out the fit and proper person test, to require the relevant person to provide a criminal conviction certificate. A local authority can only do so if it has reasonable grounds to suspect that the information an applicant has provided in relation to the fit and proper person test is, or has become, inaccurate.

144. Section 62A inserts new section 32PA into the 1960 Act. This enables local authorities to share information relevant to the application of the fit and proper person test.

Offences relating to relevant permanent sites

145. Section 63 inserts new sections 32Q, 32R and 32S into the 1960 Act. New section 32Q makes it an offence for someone to knowingly or recklessly provide information that is materially false or misleading to a local authority, in respect of an application for, or transfer of, a site licence or where information is provided following a change of circumstances. It also makes it an offence for a person, without reasonable excuse, to fail to notify a local authority of a change of circumstances under section 32K (for example, the appointment of a new person to manage a site). Lastly, section 32Q makes it an offence to fail to provide to a local authority such information as it might reasonably require under section 32K(3) and (4). If a person commits these offences, the penalty is a fine not exceeding level 3 on the standard scale (in 2013 this was a maximum of £1,000).

146. Section 32R makes it an offence for someone to cause or permit land to be used as a relevant permanent site without a licence. The maximum fine, if convicted for doing so, is £50,000. New section 32S makes it an offence for the site owner of a relevant permanent site to fail to comply with any licence conditions. The maximum fine, if convicted of breaching a licence condition, is £10,000.

Local authority enforcement at relevant permanent sites

147. Section 64 inserts new sections 32U, 32V and 32W into the 1960 Act. These sections all relate to improvement notices. New section 32U sets out:

- the situation in which a local authority may issue an improvement notice,
- what must be part of such a notice (such as what needs to be improved, and the period within which action needs to be carried out),
- that there is a right of appeal to the sheriff by way of summary application,
- when the period specified in the notice begins, and
- the powers a local authority has to suspend, revoke, or vary an improvement notice.

148. New section 32V makes it an offence for a site owner who has been served with an improvement notice to fail to comply with the terms of the notice. If someone is convicted of doing so the maximum fine is £10,000.

149. New section 32W gives a local authority the power, if the site owner fails to take the steps specified in the improvement notice within the period specified, to take the action required on a site to meet the conditions set out in the improvement notice. Subsection (2) requires the

local authority to give the site owner notice, and specific details, of the work the local authority will be carrying out (or the authority will be requiring someone else to do on its behalf and to give that person's name), and the dates and times on which this intended action will be taken.

150. Section 65 inserts new section 32X into the 1960 Act. This gives a local authority the power to issue a penalty notice on the site owner, and provides for the situations in which the authority can do so (where there is no licence or a breach of licence conditions). A penalty notice has the effect of suspending, for a specific period of time, payments residents may be making for:

- the right to station a mobile home on a site,
- rent for the occupation of a mobile home caravan on the site, and
- the use of the common areas on the site, and their maintenance.

It also suspends the commission a mobile home resident can be required to pay the site owner on sale of a mobile home (under paragraph 1 of Part 1 of Schedule 1 to the 1983 Act). The section sets out what must be included in such a notice (subsection (2)), when the penalty period begins (subsection 3A), and the relevant appeal procedures (subsection (6)).

151. Section 66 inserts new section 32Y into the 1960 Act. This provision relates to the appointment of an interim manager to manage a mobile home site. Section 32Y(1) gives a local authority the power to apply to a sheriff to appoint an interim manager for a site. Subsection (5) gives the Scottish Ministers the power to make regulations relating to the appointment of an interim manager. These regulations may, in particular, cover the powers of an interim manager, the qualifications the manager must hold, and the actions the interim manager must carry out.

152. Section 67 inserts section 32Z into the 1960 Act. This gives a local authority the power to take emergency action where it appears to a local authority that:

- the site licence holder is failing, or has failed, to comply with a site licence condition; and as a result of that there is an imminent risk to the health and safety of anyone who is, or may be, on the land, or
- a person is causing or permitting land to be used as a relevant permanent site without a site licence, and there is an imminent risk to the health and safety of anyone who is, or may be, on the land.

153. In the circumstances above the local authority would be able to carry out work to remove the imminent risk of serious harm. The section requires an authority to provide notice to the site owner in an emergency action notice before carrying out emergency action (subsection (4)), and to provide the site owner with an emergency action report after it has begun undertaking emergency action (subsection (7)). It also provides for appeals against an authority taking emergency action.

154. Under section 26 of the 1960 Act any authorised officer of a local authority has a right of entry to a mobile home site, subject to provisions about the purpose of such entry and the hours in which it takes place. Section 68 inserts new section 32Z1 into the 1960 Act. This extends the applicability of the provisions in section 26, so that they cover situations relating to the use of the

new enforcement powers a local authority has under this Bill in relation to relevant permanent sites. In relation to an emergency action notice it also has the effect that a site owner is not required to have 24 hours' notice that someone will be carrying out such works, and that entry to the site does not have to be at a reasonable hour. This is to cover situations where such entry must be carried out urgently, for example to address something that is immediately dangerous on a site.

155. Section 69 inserts new sections 32Z2, 32Z3 and 32Z4 into the 1960 Act. Section 32Z2 gives a local authority the power to recover expenses from a site owner where the local authority has served an improvement notice, penalty notice, or emergency action notice on, or provided at emergency action report to, a site owner. Section 32Z3 allows a local authority to recover from the site owner the expenses of taking action under an improvement notice or emergency action notice.

156. Section 32Z4 gives a local authority the power to recover costs for inspections and other work to investigate or assess compliance with the provisions of this Act.

Miscellaneous

157. Section 70 inserts sections 32Z5 and 32Z5A into the 1960 Act. Section 32Z5 sets out the definitions of terms that are introduced into the 1960 Act through the Bill. Section 32Z5A gives the Scottish Ministers the power to issue guidance about the operation of the mobile home site licensing system set out in Part 5 of the Bill. The Scottish Ministers can issue such guidance after consulting such persons as they consider appropriate, and a local authority must have regard to any guidance issued under section 32Z5A.

158. Section 71 sets out transitional provisions for existing site licences. Under this section an existing site licence would continue in force for two years from the day the relevant section of the Bill comes into force, unless it is revoked or replaced by a new licence issued by the local authority.

159. Section 71A inserts new paragraphs into Schedule 1 to the Mobile Homes Act 1983. Under the paragraphs inserted by section 71A(a), the expiry, non-renewal, or revocation of a site licence has no effect on a person's right to station a mobile home on a site, if a mobile home resident has an agreement to which the 1983 Act applies. This means that the rights of residents to remain on the site under the 1983 Act will not be affected by a decision to revoke, or to refuse to issue or renew, a site licence, or if a site licence expires.

160. The sub-paragraphs inserted into the 1983 Act by section 71A(b) prevent pitch fees paid to a site owner from being increased to take account of any costs paid, or to be paid, by the site owner as a result of a local authority recovering the costs of enforcement action.

PART SIX – PRIVATE HOUSING CONDITIONS

161. Part 6 amends local authority powers to enforce repairs and maintenance in private homes.

Tenement management scheme

162. Section 72(1)(b) inserts a new section 4A in the Tenements (Scotland) Act 2004 (“the Tenements Act”). This allows local authorities to pay a missing share when the majority of owners in a tenement block have agreed to carry out work to repair or maintain their property, and one or more of the owners has not paid their share of the cost of the work (where the owner is unable or unwilling to do so, or where the owners cannot be identified or found). New section 4A(5) allows the local authority to recover the costs of the missing share and any associated administrative expenses from the owner on whose behalf it was paid. Before exercising this power, the local authority must notify the owner who has not paid a share that it intends to make the payment itself (new section 4A(4)).

163. Section 72(1)(d) amends rule 5 of the Tenement Management Scheme in schedule 1 to the Tenements Act, so that the other owners are not liable for the costs of another owner which are met by a share paid by a local authority.

164. Section 72(2) amends section 172 of the Housing (Scotland) Act 2006 (“the 2006 Act”) so that local authorities can use repayment charges to recover the costs of paying missing shares from the owner on whose behalf the missing share was paid.

Notice of potential liability for costs: notice of discharge

165. Section 72A makes amendments to the Title Conditions (Scotland) Act 2003 (“the 2003 Act”) and the Tenements (Scotland) Act 2004 (“the 2004 Act”). These amendments provide for a discharge procedure in respect of notices of potential liability for costs registered under section 10(2) of the 2003 Act and section 12(3) of the 2004 Act. Currently, section 10A(3) of the 2003 Act and section 13(3) of the 2004 Act provide that a notice of potential liability for costs will expire at the end of three years unless it is renewed. This will continue, but the amendment will allow the notice of potential liability to be discharged during the three-year period or any renewal period.

166. Subsection (1) inserts new subsections 10A(3A) and (3B) into the 2003 Act. Subsection (2)(a) inserts new subsections 13(3A) and (3B) into the 2004 Act.

167. Under the new sections 10A(3A) of the 2003 Act and 13(3A) of the 2004 Act, an owner of a burdened property can apply to register a notice of discharge if the notice of potential liability for costs has not expired, the liability for costs in relation to that property has been fully discharged and consent from the person who registered the notice has been obtained. Evidence of such consent would need to be included with the application to register the discharge notice.

168. The new sections 10A(3B)(a) of the 2003 Act and 13(3B)(a) of the 2004 Act provide that the notice of discharge must be submitted in a form prescribed by the Scottish Ministers by order.

169. It is possible to register a notice of potential liability for costs against more than one flat or property. The new sections 10A(3B)(b) of the 2003 Act and 13(3B)(b) of the 2004 Act provide that registration of a notice of discharge in relation to a property discharges the notice of potential liability for costs only to the extent that it applies to that property.

170. Paragraph (2)(b) amends the definition of “register” in section 29 of the 2004 Act to include a notice of discharge.

Work notices

171. Section 73 amends section 30(1) of the 2006 Act, which provides powers for local authorities to issue work notices to require owners to carry out work on substandard houses. The amendment inserts an additional ground on which the local authority may issue a work notice, which is where the work is needed to improve the safety or security of any house (whether or not situated in a housing renewal area).

Maintenance orders and plans

172. Section 74 amends section 42(2) of the 2006 Act, which provides powers for local authorities to issue maintenance orders to require owners to prepare a maintenance plan for securing the maintenance of the house to a reasonable standard. The amendment inserts an additional ground on which the local authority may issue a maintenance order, which is where a work notice has been served and no certificate has been issued to confirm that the work required to be carried out by the work notice has been completed.

173. Section 75(3) repeals the provisions in section 61 of 2006 Act which require local authorities to register in the appropriate land register maintenance plans approved or devised under section 46 of the 2006 Act, or varied under section 47, and notices of revocation of a maintenance plan under section 47. Section 75(1) amends section 24(1) of the Building (Scotland) Act 2003 to require local authorities to include a record of decisions to approve, devise, vary or revoke maintenance plans in the building standards register.

174. Section 75(2) amends section 47 of the 2006 Act, which allows local authorities to vary or revoke maintenance plans. The amendment allows local authorities to revoke a maintenance plan where the local authority is satisfied that a property factor has been appointed to manage or maintain the premises to which the plan relates. “Property factor” is defined in section 2 of the Property Factors (Scotland) Act 2011.

Non-residential premises: repayment charges

175. Section 76 amends sections 172 and 173 of the 2006 which allow local authorities to recover costs in connection with enforcement of repairs and maintenance to living accommodation by creating a repayment charge which is recoverable in thirty equal annual instalments. A repayment charge is a charge against property and has priority over all future burdens and most existing burdens on the property. The amendment widens the scope of sections 172 and 173 to include any non-residential parts of buildings that contain living accommodation.

Charging orders

176. Section 76A amends paragraphs 4 and 6 of Schedule 9 to the Housing (Scotland) Act 1987 by removing references to feu duties.

177. Schedule 9 to the 1987 Act relates to recovery of expenses by charging orders in favour of local authorities after the authority has carried out certain work on a building.

178. The Abolition of Feudal Tenure etc. (Scotland) Act 2000 (“the 2000 Act”) abolished feu duties and related payments. Paragraph 4(b)(i) of Schedule 9 to the 1987 Act made provision on the priority between, on the one hand, a charging order under Schedule 9 and, on the other hand, feu duties and related payments. Given that feu duties and related payments have been abolished, there is no longer any need for this provision. Therefore, it is repealed by section 76A(1)(a).

179. Section 76A(2) and (3) makes consequential amendments to section 108(2) of the Civic Government (Scotland) Act 1982 and section 19(3) of the Crofters (Scotland) Act 1993 to remove references to paragraph 4(b)(i) of Schedule 9 to the 1987 Act.

180. Section 76A(1)(b) amends paragraph 6 of Schedule 9 to the 1987 Act to remove a reference to feu duties and provide that charging order annuities are recoverable as debts under overarching debt recovery legislation

PART SEVEN – MISCELLANEOUS

Right to redeem heritable security after 20 years: power to exempt

181. Part 7 of the Bill contains a provision, section 77(1) which amends the “20-year security rule” – section 11 of the Land Tenure Reform (Scotland) Act 1974 (“the 1974 Act”).

182. Section 11 of the 1974 Act permits debtors to redeem a standard security over property used as, or as part of, a private dwelling house once 20 years from the date of creation of the security has elapsed, regardless of the fact that the security is for a longer contractual term. Social landlords, their connected bodies and rural housing bodies are able to renounce their right to redeem a standard security after 20 years.

183. The amendment in section 77(1) which inserts subsection (3D) into section 11 of the 1974 Act provides that the right to redeem a standard security, as permitted by section 11, will not be allowed in certain circumstances to be prescribed by the Scottish Ministers by order subject to the negative procedure.

184. Section 77(1) also inserts subsection (3E) into section 11, which provides that an order under subsection (3D) may disapply the right to redeem a standard security subject to certain conditions or restrictions. Such an order may restrict the disapplication of the right to redeem to specified descriptions of debt, to specified creditors or creditors of specified descriptions, to specified heritable securities or heritable securities of specified descriptions. It may prescribe circumstances in which the disapplication of the right to redeem is to apply or cease to apply. For example, an order under new section 11(3D) could exclude debtors who grant a standard security in favour of the Scottish Ministers as part of a Scottish Government shared equity scheme or equity release scheme from being able to exercise the right to redeem their security after 20 years.

First-tier Tribunal: disqualification of members from exercise of certain functions

185. Section 77A(1) provides that the holders of certain offices are disqualified from exercising functions of the First-tier Tribunal (FTT) in relation to the jurisdiction over private rented sector housing matters transferred from the jurisdiction of the sheriff by Part 3 and disputes involving letting agents conferred by Part 4 of the Bill. This has the effect of disqualifying the holders of the offices listed at subsection (2) from being appointed to exercise those functions. It also has the effect of disqualifying any existing members of the FTT who hold the listed offices from exercising those functions.

186. Section 77A(3) provides that the Scottish Ministers may amend the list of disqualified offices by order. This power could be used to add or remove offices.

Private rented housing panel: disqualification from membership

187. Section 77B inserts new paragraph 1A into Schedule 4 to the Rent (Scotland) Act 1984. Paragraph 1A(1) inserted into Schedule 4 to the 1984 Act provides that the holders of certain offices are disqualified from being a member of the private rented housing panel (PRHP) and lists the offices. The PRHP also has functions conferred by the Property Factors (Scotland) Act 2011 and when carrying out these functions is known as the homeowner housing panel (HOHP). Members of the PRHP are also members of the HOHP. Therefore these disqualifications also affect the composition of the HOHP...

188. Paragraph 1A(2) inserted into Schedule 4 to the 1984 Act provides that the Scottish Ministers may amend the list of disqualified offices by order. This power could be used to add or remove offices.

Delegation of certain functions

189. Section 78(1) amends section 21 of the 2006 Act by introducing a new power for the president of the private rented housing panel to delegate functions under section 23 of the 2006 Act (to refer applications to the private rented housing panel or reject applications), to the vice-president of the panel or to another member of the panel as the president sees fit (new section 21(8A) of the 2006 Act). This is in addition to the existing powers enabling the transfer of the president's functions during times of absence or incapacity as provided for in section 21(8) of the 2006 Act. The provision is intended to increase flexibility to manage the multiple work strands undertaken by the panel. New section 21(8B) provides that such a delegation does not affect the president's responsibility for the carrying out of delegated functions or ability to carry out the delegated functions.

190. Section 78(2) inserts new subsections (8) and (9) into section 16 of the Property Factors (Scotland) Act 2011 to provide that the functions of the president of the homeowner housing panel under section 18 (to refer applications to the homeowner housing panel for a determination as to whether a property factor has failed to carry out the factor's duties or to comply with the property factor code of conduct or to reject applications) may be delegated to the vice-president of the panel or to such other member of the panel as the president sees fit. New subsection (9) provides that such a delegation does not affect the president's responsibility for the carrying out of delegated functions, or ability to carry out delegated functions.

Scottish Housing Regulator: transfer of assets following inquiries

191. Section 79 makes amendments to section 67 of the Housing (Scotland) Act 2010 (“the 2010 Act”).

192. Paragraph (a) introduces new subsections (4A), (4B) and (4C) to section 67 of the 2010 Act.

193. Subsection (4A) has the effect of creating a narrow exception to the duty on the Scottish Housing Regulator (the Regulator), at section 67(4), always to consult and have regard to the views of tenants and secured creditors that hold securities over houses of a registered social landlord (RSL) before it directs a transfer of the RSL’s assets. The exception would apply in circumstances where the Regulator considered that all of the conditions specified at (a) to (d) of the new subsection were satisfied. These relate to the RSL being in financial jeopardy and vulnerable to steps being taken towards its insolvency, winding up etc. Where the direction to transfer assets would reduce the risk of such steps being taken, if made without the delay that consultation with either the RSL’s tenants or its secured creditors would cause, the Regulator could direct the transfer of a RSL’s assets without such consultations. When the Regulator is considering whether to direct a transfer without such consultations, it must consider separately whether there is time for it to consult the tenants and time for it to consult the secured creditors. If it concludes that there would be time to consult one group but not the other, it must consult that group. In all other circumstances, the duty to consult tenants and secured creditors that section 67(4) imposes on the Regulator would remain.

194. Subsection (4B) requires the Regulator to consult and issue guidance on the circumstances in which it would expect subsection (4A) to apply, the actions it would expect to take in circumstances where subsection (4A) applied, and how it would communicate with any tenants and their representatives, RSLs and their representatives, and secured creditors and their representatives affected by subsection (4A) being applied.

195. Subsection (4C) inserts a replacement provision for section 67(6)(a) of the 2010 Act, which paragraph (b) of section 79 of the Bill repeals. Section 67(b)(a) requires the Regulator, when it is directing the transfer of some of the assets of a RSL, always to obtain an independent valuation of the assets to be transferred and to direct the transfer at a price that it considers the assets would fetch on the open market. Subsection (4C) reinstates the duty on the Regulator to obtain an independent valuation, but instead of requiring the Regulator to direct any transfer at an open market price, requires it to have regard to the valuation in directing the transfer.

Registered social landlord becoming a subsidiary of another body

196. Section 79A adds new sections after sections 104 and 124 of the 2010 Act.

197. Subsection (1) introduces new section 104A. The new section provides that arrangements under which a RSL would become the subsidiary of another body are subject to the consent of the Regulator in the same way as arrangements by which a RSL would transfer its assets to another RSL.

198. Subsection (2) introduces new sections 124A and 124B.

199. Subsection (1) of new section 124A provides that arrangements by which a RSL would become a subsidiary of another body are subject to the special procedures set out in sections 114 to 121 of the 2010 Act. This has the effect of making the Regulator's consent conditional on the tenants of the RSL having been consulted beforehand. Subsection (2) of the new section describes exceptional circumstances in which the special procedures at sections 114 to 121 of the 2010 Act are not to apply. They are the same circumstances in relation to financial jeopardy that section 79 introduces through new sections 67(4A)(a)-(c) of the 2010 Act. Subsection (3) provides that in these circumstances the Regulator can give or refuse its consent to a RSL becoming a subsidiary of another RSL without the tenants of the RSL having been consulted.

200. New section 124B makes purchaser protection provision (identical to that made by sections 122 and 124 for disposal and restructuring consents) in relation to the provision made by section 124A.

201. Subsections (3) and (4) make the definition of "subsidiary" currently provided for the purposes of section 164 of the 2010 Act apply more generally, to interpret its use in the new provisions. No change is made to the meaning; "subsidiary" continues to have the same meaning as in the Companies Act 2006 or, as the case may be, the Co-operative and Community Benefit Societies and Credit Unions Act 1968.

Repeal of defective designation provisions

202. Section 80 of the Bill provides for the repeal of Part 14 of the Housing (Scotland) Act 1987 ("the 1987 Act") together with Schedules 20 and 21 of that Act. This removes the provisions of the 1987 Act which deal with the designation as defective of prescribed types of dwelling, the power to provide assistance to owners of such dwellings and the giving of notice to persons seeking to acquire a dwelling that is defective. These provisions are dependent on the Scottish Ministers or local authorities designating classes of buildings as defective, which was last done by the Scottish Ministers in 1984 and appears never to have been done by any local authority. The power to designate is, therefore, being repealed.

203. These provisions were originally set out in the Housing Defects Act 1984 and the provisions affecting Scotland were replaced by Part 14 of the 1987 Act. The designation of dwelling types was made by the Housing Defects (Prefabricated Reinforced Concrete Dwellings) (Scotland) Designations 1984. The period during which applications for assistance could be submitted in respect of these dwelling types has expired, making Part 14 obsolete.

PART EIGHT – SUPPLEMENTARY AND FINAL PROVISIONS

Interpretation

204. Section 81 provides the definition of various terms used in the Bill.

Subordinate legislation

205. Section 82 provides that any power of the Scottish Ministers to make an order or regulations includes a power to make different provision for different purposes or different areas, and incidental, supplemental, consequential, transitional, transitory or saving provision.

Subsection (2) lists orders where the affirmative procedure is required. Subsection (3) provides that all other orders and regulations are subject to the negative procedure. Subsection (4) provides that any commencement order is not subject to either procedure.

Ancillary provision

206. Section 83 gives the Scottish Ministers a free-standing power by order to make such supplementary, incidental, consequential, transitional or transitory provision or savings as they consider necessary or expedient for the purposes or in connection with any provision made by or under the Bill.

Minor and consequential amendments

207. Section 84 introduces schedule 2, which amends and repeals enactments as required in consequence of this Bill.

Commencement

208. Section 85 allows the Scottish Ministers by order to set different dates to commence different provisions of the Bill (such an order may include transitional, transitory or saving provision as they consider necessary or expedient). It also specifies that section 1(1) (abolition of right to buy) may not come into force until a period of at least two years has passed, starting from the day of Royal Assent and that section 77 comes into force at the end of the period of two months beginning with the day of Royal Assent.

Short title

209. Section 86 gives the short title of the Bill.

SCHEDULE 1 – TRANSFER OF JURISDICTION TO FIRST-TIER TRIBUNAL

Part 1 – Regulated tenancies, Part VII contracts and assured tenancies

210. Part 1 of schedule 1 makes consequential amendments to the Rent (Scotland) Act 1984 (“the 1984 Act”) and the Housing (Scotland) Act 1988 (“the 1988 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

Rent (Scotland) Act 1984

211. Paragraph 2 amends section 7(2) of the 1984 Act. Section 7(1) of the 1984 Act makes provision for how the rateable value of dwelling houses should be ascertained and section 7(2) provides the sheriff with powers to determine the proper apportionment of value of a dwelling house, where any question in relation to this arises.

212. Paragraphs 3 and 31 amend section 11 and Schedule 2 of the 1984 Act. Section 11 provides for the grounds for possession of certain dwelling houses repossession cases and

schedule 2 specifies the circumstances in which orders for possession can be made. These include non-payment of rent or antisocial behaviour.

213. Paragraph 4 amends section 12 of the 1984 Act. Section 12 provides extended discretion to sist or suspend proceedings to allow the sheriff to manage proceedings for repossession. For example, this could be to allow a party to fulfil or complete an action or to pay arrears.

214. Consequential to the transfer of repossession cases to the FTT in paragraph 3, paragraph 5 amends section 19 of the 1984 Act. Section 19 regards the rights of subtenants in circumstances where an order for possession of a dwelling house has been made.

215. Paragraph 6 amends section 21 of the 1984 Act. Section 21 regards circumstances where it appears to a sheriff court, after having given a landlord an order for possession of a dwelling house let on a protected tenancy or subject to a statutory tenancy, that the order was maintained by misrepresentation or concealment of material facts, and provides that the court has the power to order compensation be paid to the former tenants for loss or damage sustained.

216. Paragraph 7 amends section 23(1) of the 1984 Act. Section 23 regards tenancies which are not regulated tenancies or Part VII contracts and provides that the enforcement of repossession eviction for these tenancies is unlawful other than through proceedings before the sheriff.

217. Paragraph 8 amends section 24 of the 1984 Act. Section 24 makes special provision with regard to proceedings for repossession where the tenant is a person employed in agriculture (as defined in section 17 of the Agricultural Wages (Scotland) Act 1949).

218. Paragraph 9 repeals the definition of court from section 25 of the 1984 Act as this is no longer required as relevant proceedings are transferred to the FTT.

219. Consequentially to the transfer of jurisdiction for repossession in paragraphs 7 and 8, paragraph 10 amends section 26 of the 1984 Act. Section 26 provides that proceedings for repossession under Part III of that Act are binding on the Crown.

220. Paragraph 11 repeals section 27 of the 1984 Act which set out the procedure for applications to the sheriff under Part III.

221. Paragraph 12 amends section 31(2) of the 1984 Act. Section 31(2) regards rents under regulated tenancies and provides powers to adjust recoverable rent to cover services and furniture.

222. Paragraph 13 amends section 32(4) and (5) of the 1984 Act. Section 32(4) and (5) regard notices of increase to rent under regulated tenancies and provides powers to amend errors.

223. Paragraph 14 amends section 35(12) of the 1984 Act. Section 35(12) provides for the sufficiency of evidence in relation to rent agreements. The effect of the amendment is to ensure that this applies to proceedings before the Scottish Tribunals.

224. Paragraph 15 amends section 39 of the 1984 Act. Section 39 provides powers to order rectification of rent books after determination of recoverable rent. The effect of the amendment is to provide that the FTT can order the rectification of rent books in applicable cases.

225. Paragraph 16 amends section 43B(4) of the 1984 Act. Section 43B(4) regards changes of rent registration service providers and provides for the continuation of proceedings. The effect of the amendment is to provide that tribunal proceedings can continue following changes of responsibility.

226. Paragraph 17 amends section 45(3) of the 1984 Act. Section 45(3) provides for the sufficiency of evidence in relation to rent registers similar to section 35(12) of the 1984 Act. The effect of the amendment is to ensure that this applies to proceedings before the Scottish Tribunals.

227. Paragraph 18 amends section 60(3) of the 1984 Act. Section 60(3) provides powers to determine questions about rent limits for housing association and housing corporation tenancies.

228. Paragraph 19 amends section 64(6)(b) of the 1984 Act. Section 64(6)(b) regards the rateable value of dwelling houses for the purpose of determining whether Part VII of the 1984 Act applies. It provides powers to determine apportionment of rateable value where parties fail to agree.

229. Paragraphs 20 and 21 amend sections 75 and 76 of the 1984 Act. Sections 75 and 76 provide power to reduce the period of notice to quit or postpone the date of possession in relation to contracts described in Part VII of the 1984 Act.

230. Paragraph 22 amends section 77 of the 1984 Act. Section 77 regards cases under Part VII of the 1984 Act and the jurisdiction of the sheriff and private rented housing panel.

231. Paragraph 23 amends section 97(8) and (9) of the 1984 Act. Section 97(8) and (9) provides powers to terminate or modify rights for tenants who share accommodation.

232. Paragraph 24 inserts new subsection (A1) into section 102 of the 1984 Act, and repeals subsection (2) and amends subsection (3) of that section. Section 102 provides power to determine any question with regard to the application of the 1984 Act. The effect of the amendment is to make clear that the FTT shall have jurisdiction over civil matters arising from this act with the exception of matters arising under Part IX which will remain within the jurisdiction of the sheriff.

233. Paragraph 25 amends section 103 of the 1984 Act. Section 103 regards the procedure by which certain actions are to be raised in the sheriff court.

234. Paragraph 26 amends section 104 of the 1984 Act. Section 104 regards the Court of Session's power to make certain rules of procedure. The effect of the amendment is to retain this power for criminal proceedings under Part IX of the 1984 Act and not to apply it for tribunal procedures.

235. Paragraph 27 amends section 115(1) of the 1984 Act to include a definition of the FTT.

236. Paragraph 28 amends paragraphs 3 and 7 of Schedule 1 to the 1984 Act. Schedule 1 regards succession rights of protected tenants following the death of protected tenants and provides powers to determine matters where parties fail to agree.

237. Paragraphs 29 and 30 amend paragraphs 3 and 6 of Schedule 1A and paragraph 3 of Schedule 1B to the 1984 Act. Schedules 1A and 1B regard succession rights for tenants and should be read in conjunction with Section 3A of the 1984 Act.

Housing (Scotland) Act 1988

238. Paragraph 33 amends section 16(2) of the 1988 Act. Section 16(2) regards the power to end assured tenancies.

239. Paragraph 34 amends section 17(8) of the 1988 Act. Section 17(8) regards proceedings to fix terms for statutory assured tenancies.

240. Paragraphs 35 and 48 amend section 18 and Schedule 5 of the 1988 Act. Section 18 and Schedule 5 regard repossession cases for assured and short assured tenancies and specifies the circumstances in which orders for possession can be made.

241. Paragraph 36 amends section 19 of the 1988 Act. Section 19 requires that proceedings must not be entertained unless a notice of proceedings has been served in the prescribed format.

242. Paragraph 37 amends section 20 of the 1988 Act. Section 20 regards discretion to sist or adjourn proceedings for possession to allow the sheriff to manage proceedings for repossession. This could be to allow parties to complete a specific action or to repay arrears.

243. Paragraph 38 amends section 21(3) of the 1988 Act. Section 21(3) regards special powers in relation to shared accommodation.

244. Paragraph 39 amends section 22(1) and (2) of the 1988 Act. Section 22(1) and (2) regards powers to order payment of removal expenses.

245. Paragraph 40 amends section 25(7) of the 1988 Act. Section 25(7) regards determinations of rent.

246. Paragraph 41 amends section 28(1) of the 1988 Act. Section 28(1) regards the effect of the termination of assured tenancies on sub-tenancies.

247. Paragraph 42 amends section 29 of the 1988 Act. Section 29 regards the power to permit diligence in respect of houses let on assured tenancies.

248. Paragraph 43 amends section 30(2) of the 1988 Act. Section 30(2) regards failure to provide a tenancy agreement for an assured tenancy and provides power to draw up an agreement if one does not already exist.

249. Paragraph 44 amends section 33(1) and (4) of the 1988 Act. Section 33(1) and (4) regards the recovery of possession of short assured tenancies under certain circumstances.

250. Paragraph 45 inserts new subsection (4A) into section 36 of the 1988 Act, and amends section 36(6)(b) and (6B). Section 36(6)(b) and (6B) provides power to award damages for unlawful eviction.

251. Paragraph 46 amends section 42(1)(c) of the 1988 Act. Section 42 regards restrictions on assured tenancies.

252. Paragraph 47 amends section 55(1) of the 1988 Act to include a definition of the FTT.

SCHEDULE 1 - PART 2 - REPAIRING STANDARD

253. Part 2 of schedule 1 makes consequential amendments to the Housing (Scotland) Act 2006 (“the 2006 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

Housing (Scotland) Act 2006

254. Paragraph 50 amends section 24(7) of the 2006 Act. Section 24(7) regards repairing standard orders when an order has been made regarding contracting out of the repairing standard.

255. Paragraph 51 amends section 194 of the 2006 Act to include a definition of the FTT.

SCHEDULE 1 – PART 3 – RIGHT TO ADAPT RENTED HOUSES

256. Part 3 of schedule 1 makes consequential amendments to the Housing (Scotland) Act 2006 (“the 2006 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

257. Paragraph 53 amends section 64 of the 2006 Act. Section 64 relates to appeals from decisions by local authorities and the private rented housing panel in relation to the repairing standard.

258. Paragraph 54 repeals section 65(3) and (4) of the 2006 Act. Section 65 relates to the determination of an appeal under section 64.

259. Paragraph 55 repeals section 67 of the 2006 Act. Section 67 provides the Scottish Ministers with the power to transfer jurisdiction for appeals under section 52 of that Act (regarding the right to adapt rented houses) from the sheriff to the private rented housing panel.

SCHEDULE 1 - PART 4 – LANDLORD REGISTRATION

260. Part 4 of schedule 1 makes consequential amendments to the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

Antisocial Behaviour etc. (Scotland) Act 2004

261. Paragraph 57 repeals section 92(4) and amends section 92(5) and (6) of the 2004 Act which regard the procedure for making appeals to the sheriff against decisions of local authorities about landlord registration.

262. Paragraph 58 amends section 92ZA of the 2004 Act. Section 92ZA regards the duty on local authorities to note refusals and removals for the register of landlords.

263. Paragraph 59 amends section 97(6) and (7) of the 2004 Act. Section 97(6) and (7) regards appeals against local authority decisions regarding landlord registration

264. Paragraph 60 amends section 101(1) of the 2004 Act to include a definition of the FTT.

SCHEDULE 2 – MINOR AND CONSEQUENTIAL AMENDMENTS

265. Schedule 2 provides for minor and consequential amendments and is introduced by section 84.

266. The amendments in paragraphs 4 and 10 include the new short Scottish secure tenancy at paragraph 2A of schedule 6 to the Housing (Scotland) Act 2001 in the list of accommodation considered to be permanent accommodation for the purposes of a discharge of a social landlord’s homelessness duties.

267. The amendments in paragraphs 12 and 13 reflect a change in the status of the Scottish Housing Regulator, which is now a non-ministerial office holder in the Scottish Administration. These changes do not alter the position of the Regulator being subject to the Scottish Public Services Ombudsman Act 2002 and the Freedom of Information (Scotland) Act 2002.

268. The amendment in paragraph 17(4) removes the requirement for a registered social landlord to consult its tenants before it grants a standard security over existing houses in order to raise finance. The effect of the amendment is to recreate the position that had previously applied under section 68 of the Housing (Scotland) Act 2001 by requiring registered social landlords to consult their tenants only where they are proposing a disposal of land that requires the consent of the Scottish Housing Regulator (other than disposals to which the special procedure in Part 10 of

This document relate to the Housing (Scotland) Bill as amended at Stage 2 (SP Bill 41A)

the 2010 Act applies - disposals and restructuring which result in a change of landlord, or disposals by way of security of loan).

This document relate to the Housing (Scotland) Bill as amended at Stage 2 (SP Bill 41A)

HOUSING (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

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