SOCIAL JUSTICE COMMITTEE

AGENDA

4TH Meeting, 2002 (Session 1)

Wednesday 13 March 2002

The Committee will meet at 9.30am in Committee Room 4

1. Item in private: The Committee will consider whether to take item 8 in private.

2. Subordinate Legislation: Ms Margaret Curran, MSP (Deputy Minister for Social Justice) to move a motion on the following affirmative instrument—

   The Housing Support Grant (Scotland) Order 2002 (draft).

3. Subordinate Legislation: Ms Margaret Curran, MSP (Deputy Minister for Social Justice) to move a motion on the following affirmative instrument—

   The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Amendment Order 2002 (draft)

4. Subordinate Legislation: The Committee will consider the following negative instrument—

   The Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2002 (SSI 2002/45).

5. Subordinate Legislation: The Committee will consider the following negative instrument—


7. Work Programme: The Committee will consider its future work programme.

8. Monitoring the impact of the Housing (Scotland) Act 2001: The Committee will consider a draft report.

Jim Johnston
Clerk to the Committee
The following papers relate to the meeting:

**Agenda Item 2**

Briefing note on The Housing Support Grant (Scotland) Order 2002 (draft) SJ/02/4/2


**Agenda Item 3**

Briefing note on The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Amendment Order 2002 (draft) SJ/02/4/3

**Agenda Item 4**

Briefing note on The Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2002 (SSI 2002/45) SJ/02/4/4


**Agenda Item 5**

Briefing note on The Building Standards (Scotland) Amendment Regulations 2001, Amendment Regulations 2002 (SSI 2002/40) SJ/02/4/5

**Agenda Item 6**

Covering note - Housing (Scotland) Act 2001: Draft guidance and orders for the implementation of the Scottish Secure Tenancy and Right to Buy SJ/02/4/6

Briefing note on the Draft guidance and orders for the implementation of the Right to Buy SJ/02/4/6 – Annex A

Briefing note on the Draft guidance and orders for the implementation of the Scottish Secure Tenancy SJ/02/4/6 – Annex B
Agenda Item 7

Social Justice Committee Work Programme

Agenda Item 8

Monitoring the impact of the Housing (Scotland) Act 2001 – draft report [PRIVATE]
1. The draft Housing Support Grant (Scotland) Order 2002, was laid on 7 February 2002, and is subject to affirmative procedure. That is, approval of the Order, within 40 days, requires to be moved by a Minister and, in due course, approved by the Parliament.

2. The Subordinate Legislation Committee, in the attached report, draws the attention of the lead committee and the Parliament to the instrument on the ground of failure to comply with proper drafting practice, although not affecting the substance of the instrument.

3. The draft instrument fixes for the year 2002 – 2003 the aggregate amounts of the housing support grants payable to some local authorities under section 191 of the Housing (Scotland) Act 1987.

Jim Johnston
Clerk to the Committee
The Committee reports to the Parliament as follows—

1. The Committee met on 26th February 2002 and determined that the attention of the Parliament need not be drawn to the instruments listed at Annexe A. The Committee draws the attention of the Parliament to the instruments listed at Annexe B.

2. The report is also addressed to the following committees as the lead committees for the instruments specified:

   - **Health and Community Care**
     - SSI 2002/36
     - SSI 2002/49
     - SSI 2002/50
     - SSI 2002/61
     - SSI 2002/64

   - **Rural Development**
     - SSI 2002/43
     - SSI 2002/44
     - SSI 2002/51
     - SSI 2002/58

   - **Social Justice**
     - The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Amendment Order 2002, (draft)
     - The Housing Support Grant (Scotland) Order 2002, (Draft)
     - SSI 2002/45

   - **Transport and the Environment**
     - SSI 2002/47
     - SI 2002/261
14. The Committee asked the Executive two questions on the instrument.

**Question 1**
15. As it is customary in the Preamble to an Instrument to refer to the provision of the parent Act that requires consultation, the Committee asked why no such reference was included in the instrument.

**Answer 1**
16. In its reply, reproduced at Appendix A, the Executive states that it is not universal practice to refer in the Preamble to the statutory provision that requires consultation and considers that it is sufficient to narrate in the preamble that the required consultation has taken place.

17. An Order under sections 191 and 192 of the Housing (Scotland) Act 1987 is made annually. This Order follows the style adopted in previous orders. In any event, the consultation provisions are contained in sections 191(3) and 192(1) of the Housing (Scotland) Act 1987 and are, therefore, part of the statutory provisions referred to in the Preamble in setting out the enabling power.

**Comment 1**
18. The Committee observes that whilst it may not be universal practice to refer in the preamble to the statutory provision that requires consultation, it is best practice and, indeed, usual to do so to inform the reader as well as emphasising the statutory nature of the consultation. In the present circumstances, however, the Committee accepts that the fact that the need for consultation was referred to in the preamble is probably sufficient.

**Question 2**
19. The Committee notes that it is the recommended practice to include details of all prerequisites to the making of an Instrument within the Preamble. The Committee sought the Executive’s views on referring in the Preamble to the statutory requirement to lay a report along with the draft.
Answer 2
20. Again, the Order follows the style of earlier Orders made under these provisions. However, the Executive will include reference to the requirement to lay a report in future Orders under these provisions.

Comment 2
21. The guidance on drafting statutory instruments states that fulfilment of all the statutory requirements should be narrated in the preamble. The instrument therefore fails to comply with proper drafting practice. However, the Committee welcomes the Executive’s undertaking.

22. The Committee draws the attention of the lead committee and the Parliament to the instrument on the ground of failure to comply with proper drafting practice, although not affecting the substance of the instrument.
APPENDIX A

THE HOUSING SUPPORT GRANT (SCOTLAND) ORDER 2002 (DRAFT)

On 12 February the Committee asked the Executive for an explanation of the following matters –

1. “As it is customary in the Preamble to an Instrument to refer to the provision of the parent Act that requires consultation, the Committee seeks clarification on the reasons for failing to include such a citation.

2. It is the recommended practice to include details of all pre-requisites to the making of an Instrument within the Preamble. Thus, the Committee seeks the Executive’s views of referring in the Preamble to the requirement to lay a report along with the draft.”

The Scottish Executive responds as follows:

First Question
1. The committee’s letter states that it is customary to refer in the Preamble to the statutory provision that requires consultation. This is not universal practice and the Executive considers that it is sufficient to narrate in the preamble that the required consultation has taken place. An Order under sections 191 and 192 of the Housing (Scotland) Act 1987 is made annually. This Order follows the style adopted in previous orders. In any event, the consultation provisions are contained in sections 191(3) and 192(1) of the Housing (Scotland) Act 1987 and are therefore part of the statutory provisions referred to in the Preamble in setting out the enabling power.

Second Question
2. Once again, the Order follows the style of earlier Orders made under these provisions. However, the Executive will include reference to the requirement to lay a report in future Orders under these provisions.

Scottish Executive Development Department

19 February 2002
SOCIAL JUSTICE COMMITTEE

13 March 2002
Scottish Statutory Instruments
The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Amendment Order 2002

1. The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Amendment Order 2002 is a draft instrument and was laid on 8 February 2002, and subject to affirmative procedure. That is, approval of the Order, within 40 days, requires to be moved by a Minister and, in due course, approved by the Parliament.

2. The Subordinate Legislation Committee determined that the attention of the Parliament need not be drawn to the instrument.

3. The Order makes amendments to the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000, relating to foster and other children.

Jim Johnston
Clerk to the Committee
SOCIAL JUSTICE COMMITTEE

13 March 2002
Scottish Statutory Instruments
Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2002 (SSI 2002/45)

1. The Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2002, was laid on 7 February 2002, and is subject to negative procedure. That is, it comes into force on 11 March 2002 and will remain in force, unless it is annulled by the Parliament within 40 days of being laid before the Parliament, i.e. by 23 March 2002.

2. The Subordinate Legislation Committee, in the attached report, draws the instrument to the attention of the lead committee and the Parliament on the grounds of defective drafting of the Explanatory Note, acknowledged by the Executive. The Committee welcomes the Executive’s understanding to make the necessary connection.

3. This Order provides that local authorities may not include in their estimates for the year 2002-2003 any contribution from their general fund to their housing revenue account.

4. The Committee is invited to confirm that it is content with the Order.

Jim Johnston
Clerk to the Committee
Subordinate Legislation Committee

13th Report, 2002 [EXTRACT]

Subordinate Legislation

The Committee reports to the Parliament as follows—

1. The Committee met on 26th February 2002 and determined that the attention of the Parliament need not be drawn to the instruments listed at Annexe A. The Committee draws the attention of the Parliament to the instruments listed at Annexe B.

2. The report is also addressed to the following committees as the lead committees for the instruments specified:

   Health and Community Care
   - SSI 2002/36
   - SSI 2002/49
   - SSI 2002/50
   - SSI 2002/61
   - SSI 2002/64

   Rural Development
   - SSI 2002/43
   - SSI 2002/44
   - SSI 2002/51
   - SSI 2002/58

   Social Justice
   - The Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Amendment Order 2002, (draft)
   - The Housing Support Grant (Scotland) Order 2002, (Draft)
   - SSI 2002/45

   Transport and the Environment
   - SSI 2002/47
   - SI 2002/261

   Local Government
   - The Water Undertakings (Rateable Values) (Scotland) Variation Order 2002, (draft)
   - The Electricity Lands and Generators (Rateable Values) (Scotland) Variation Order 2002, (draft)
   - Special Grant Report No.1, Special Grant for Scotland Asylum Seeker Assistance: Report by the Scottish Ministers, (SE 2002/52)
Question
31. The Committee asked the Executive why, although likely to be an error, the Explanatory Note refers to the year 2001-2002 whereas the Order itself refers to the year 2002-2003.

Answer
32. The Executive's reply, reproduced at Appendix D, confirms that the reference in the Explanatory Note should be to the year 2002-2003 and is grateful to the Committee for pointing this out. The error will be corrected before the Instrument goes for printing.

33. The Committee therefore draws the instrument to the attention of the lead committee and the Parliament on the grounds of defective drafting of the Explanatory Note, acknowledged by the Executive. The Committee welcomes the Executive's undertaking to make the necessary correction.
On 12 February the Committee asked the Executive for an explanation of the following matter –

“Although likely to be an error, the Committee seeks an explanation from the Executive as to why the Explanatory Note refers to the year 2001-2002 whereas the Order itself refers to the year 2002-2003.”

The Scottish Executive responds as follows:

The Executive confirms that the reference in the Explanatory Note should be to the year 2002-2003 and is grateful to the Committee for pointing this out. The error will be corrected before the Instrument goes for printing.

Scottish Executive Development Department

19 February 2002
1. The Building Standards (Scotland) Amendment Regulations 2002 were laid on 6 February 2002 and are subject to negative procedure. That is, they come into force on 3 March 2002 and will remain in force, unless they are annulled by the Parliament within 40 days of being laid before the Parliament, i.e. by 22 March 2002.

2. The Subordinate Legislation Committee determined that the attention of the Parliament need not be drawn to the instrument.

3. The Regulations make amendments regarding the transitional provisions of the Building Standards (Scotland) Amendment Regulations 2001 relating to the construction of conservatories.

4. The Committee is invited to confirm that it is content with the Regulations.

Jim Johnston
Clerk to the Committee
1. At its meeting on 9 January 2002, the Committee considered the Scottish Executive’s consultations on draft guidance and orders in relation to the implementation of the Scottish Secure Tenancy and the Right to Buy.

2. The Committee also agreed to conduct a limited consultation with communities of interest:

- Scottish Federation of Housing Associations
- Shelter Scotland
- COSLA
- Chartered Institute of Housing in Scotland

3. The Committee has received a briefing from Shelter Scotland on Right to Buy and this has been circulated. The Committee has also received a response from COSLA on both Right to Buy and the Scottish Secure Tenancy and this is attached.

4. The Committee also indicated that it would be useful to highlight the recommendations that it made in relation to the Scottish Secure Tenancy and the Right to Buy in its Stage 1 and Stage 2 reports on the Housing (Scotland) Act 2001 and to examine how these match the draft guidance.

5. In relation to the Secure Tenancy the Committee recommended the following at Stage 1:

   - that the Executive should consider whether a further ground such as failure to carry out a notified requirement of the lease might be included as a basis for repossession;

   - that the Executive considers the recommendations of the Equal Opportunities Committee in relation to the harassment of specific communities in Scotland;

   - that the Bill be revised to take account of the social objective of preventing unnecessary homelessness and that, the grounds of, and procedures for, repossession should therefore be considered in the light of homelessness strategies;

   - that the subordinate legislation which will be needed to bring about the Scottish Secure Tenancy should set one date for its introduction;

   - that short tenancies should also be available to other organisations that provide short term and supported accommodation in addition to local authorities, housing associations and some utilities.
6. In relation to the Right to Buy the Committee recommended the following at Stage 1:

that the Executive examines the proposal to extend the right to buy in terms of clear and measurable housing objectives, which represent best value for the allocation of public and housing association resources, irrespective of tenure;

that further consideration should be given to the maximum discount level;

that further consideration should be given to the mechanisms by which capping levels will be reviewed;

that the quid pro quo for the right to buy discount should be adequate arrangements for the buyer to carry out the responsibilities of ownership, and that mechanisms such as a compulsory and transferable Repair Investment Fund should be established on sales under the right to buy.

7. At Stage 2, the Minister indicated that the following areas would be addressed in guidance:

- guidance on abandoned tenancies and inquiries which may be made by landlords
- guidance on probationary tenancies.
- guidance on pressured areas - procedures to be followed on application.

8. Ministers have confirmed that they intend to introduce the Scottish Secure Tenancy and Right to Buy provisions of the 2001 Act from 30 September 2002 except where special arrangements have been agreed to introduce the new tenancy at an earlier date linked to a whole stock transfer.

9. Briefing papers, the content of which is based largely on the material provided in the research commissioned from the University of Glasgow, are attached as Annex A and B. These highlight some of the key issues which members may wish to consider in formulating their responses.

10. Additionally, the paper on Right to Buy identifies some of the main recommendations made by Shelter Scotland.

11. Members’ views are sought on specific aspects of the draft guidance and orders which they wish included in the response to the Scottish Executive. Members will be aware that the deadline for responses to the Executive’s consultation is 15 March. Members are, therefore, invited to submit their views to the Clerk prior to 6 March to enable them to be circulated to the Committee.

Jim Johnston
Clerk to the Committee
SOCIAL JUSTICE COMMITTEE

Housing (Scotland) Act 2001: Draft Guidance and Orders for the Implementation of the Right to Buy

1. Tenants under secure tenancies, whether public sector or housing association tenants, currently have the right to buy the house they live in on certain conditions. The only assured tenants who have the right to buy are those who became tenants of housing associations on stock transfers from public sector landlords. As the right to buy is being treated as one of the core rights of the Scottish secure tenancy, the effect of introducing the new tenancy will be to extend the right to buy to many housing association tenants who do not currently possess it. However, the conditions on which such tenants will be able to exercise the right to buy will be more restrictive than the current conditions.

2. The legal basis for achievement of the policy objectives of the Housing (Scotland) Act have to a substantial extent been affected through the terms of the Act itself. In particular, there is in place a structure for the ‘modernised’ right to buy which reflects an accommodation between the competing objectives of satisfying aspirations of tenants to buy the homes they live in, maintaining a supply of social rented housing sufficient to meet demand, and maintaining the financial viability of RSLs.

3. However, some of the powers to make subordinate legislation or issue guidance (extensions of the limitation period, designation of pressured areas, variation of discount levels) could be used in such a manner, and to such an extent as to alter substantially the balance between the competing objectives. On the other hand, the approach to cash incentive schemes might counteract to some degree the effects of exercising the other powers at least as regards pressure on the supply of social rented housing. The power to make an order in relation to refusal of applications to purchase houses intended to be demolished raises no substantial policy issues. More information is required in order to assess the impact of the extended right to buy on the equal opportunity groups.

4. The main features of the right to buy under Part III of the Housing (Scotland) Act 1987 as it currently exists are:

- the tenant must be a secure tenant
- the tenant qualifies for the right to buy after two years as a tenant in relevant housing
- the price is the market value subject to a discount based on the length of occupation
- the initial discount is 32 per cent of the value (44% for flat) rising by one per cent for each year beyond the initial two year (2% for flat) to a maximum of 60 per cent after 30 years (70% for a flat after 15 years)
- however, the amount of the discount is limited by the operation of a ‘cost floor’ rule
- some or all of the discount is repayable on an early resale
• sheltered housing and amenity housing is excluded from the right to buy
• houses owned by housing associations which have had charitable status since 14 November 1995 are exempt from the right to buy
• houses owned by housing associations which have not received grants from public funds are also exempt
• landlords may apply for a right of pre-emption on the resale of right to buy houses, but only in rural areas.

5. Those who now have the right to buy will continue to be entitled to exercise it on the same conditions after their tenancies become Scottish secure tenancies. The new and more restrictive version of the right to buy will apply only to:

• those tenants in the social rented sector who do not now have it after their tenancies become Scottish secure tenancies, and
• new tenants whose tenancies begin after the date that the Scottish secure tenancy is introduced.

6. It is intended that the modernised right to buy take effect from 30 September 2002 as part of the introduction of the Scottish secure tenancy with earlier implementation where local authorities complete whole stock transfers before that date.

7. The differences under the 'modernised' right to buy are contained in Part 2 of the Housing (Scotland) Act 2001 (sections 42-52) and are:

• a tenant becomes entitled to exercise the right only after five years occupation of relevant housing
• the discount has been reduced and longer differs as between flats and houses so that:
  • the initial discount is 20 per cent
  • the discount increases by one per cent for each year of occupation beyond the first five
  • it rises to a maximum of 35 per cent after 15 years or £15,000 whichever is less
• the right to buy may be suspended where the tenant:
  • has arrears of rent, council tax, or water or sewerage charges
  • the landlord has served a Notice of Proceedings on the tenant specifying any of the conduct grounds for recovery of possession
  • the exemption for certain registered social landlords with charitable status is extended to include those who have obtained charitable status between 14th November 1995 (the original cut-off date) and the date of royal assent to the Housing (Scotland) Act 2001 (18th July 2001)
• the existing exemptions from sale for sheltered housing schemes and special needs housing are replaced by a general exemption for group housing schemes designed for persons with special needs where the houses have or are near special facilities and the tenants are provided with housing support services
- the extension of the right to purchase to those tenants in the housing association sector who do not currently have the right to buy is postponed for 10 years, and this period may be extended
- the Scottish Ministers may on request designate any part of a local authority area as a pressured area within which the right to buy will be suspended for new tenants for up to five years if they consider that the need for social housing substantially exceeds supply and that the exercise of the right to buy would make the shortfall worse.

8. The inclusion of the right to buy amongst the core rights of the Scottish secure tenancy follows from the objective of harmonising rights across the social rented sector on the model of the secure tenancy. However, the objective of harmonising rights is qualified by the objective of creating a 'modernised' right to buy which achieves a better balance between the interests of individual tenants and the wider communities. In contrast to the other rights which go with the new tenancy status, the right to buy is available on more restricted conditions; after the extension of the right to buy takes effect some tenants in the social rented sector will have different rights from others. Indeed, for a ten year period there will be a large number of tenants without the right to buy.

Significance of Secondary Legislation and Guidance

Transitional Provisions and Preservation of Rights (Sections 11(1),(2), 109(2))

9. The timing of the introduction of the right to buy does not appear to raise substantial policy issues, nor do the transitional arrangements which are planned. The draft commencement order (Annex B) and the draft order on introduction of the secure tenancy (Annex C) issued with the draft guidance give effect to policy commitments already made. They make it clear that tenants who already have the right to buy will keep it on the same terms and conditions as now rather than be subject to the less favourable arrangements under the modernised right to buy.

Limitation on Right to Buy (section 61A(2)(c), 1987 Act)

10. The effect of exercising this power would be to narrow the scope of the 10 year limitation on the right to buy expressed in section 61A of the 1987 Act. However, the Executive has stated that this power is intended only to cater for any difficulties thrown up by experience, and is not intended to be used to substantially alter the scope of the limitation of the right to buy. **Provided its exercise is confined in that way, orders made under this provision would not seem to have much impact on the policy objectives of the Act or otherwise raise substantial policy issues.** The draft order on the introduction of the secure tenancy preserves the right to buy (without limitation) of housing association tenants who already had it.

Guidance on Applications to Extend the 10 Year Period
11. The power to issue guidance on the form and content of applications to extend the 10 year period is potentially of more significance. The Scottish Ministers can be expected to develop criteria for approving applications to extend the 10 year period. These criteria are themselves of considerable significance. Extensions of the 10 year period will prevent tenants exercising the right to buy, and go back to the question of the appropriate balance between the interests of tenants wishing to buy, landlords, and the wider community, and the concerns raised about the financial viability of housing associations and the availability of social rented housing. If such applications were to granted to large numbers of social landlords that would be a significant policy development. *It is likely that guidance given to landlords will reflect the criteria developed by the Scottish Ministers for approving applications, and scrutiny of the guidance would in effect give the Committee an opportunity to scrutinise the policy on extensions of the 10 year period.*

12. Evaluation of draft guidance would require a detailed factual basis including historical data on trends in supply and demand for social rented housing, and the financial consequences of the exercise of the right to buy on RSLs together with predictions of the effects of extending or not extending the limitation period for RSLs. However, evaluation would ultimately depend on views about the appropriate balance between the Act’s competing objectives in this area. *Evaluation of guidance should also take into account, not just the obvious policy implications, but the extent of the demand placed on landlords by the information requirements.* Here, the reports on the right to buy published by the Scottish Executive under section 52 would be highly relevant.

13. *The draft implementation guidance published in January 2002 contains little detailed guidance on this point but does say that further guidance will be issued.*

**Guidance on Pressured Area Proposals (section 61C(2). 1987 Act)**

14. Like the 10 year postponement of the right to buy, the possibility of designated pressured areas exempt from the right to buy is important in relation to the objective of maintaining the supply of social rented housing. However, the short and medium term significance of pressured area designations is lessened by the 10 year postponement. Within the 10 years, a pressured area designation would only affect new tenants whose tenancies began after introduction of the Scottish secure tenancy, and those who were assured tenants of housing association before conversion (except those who had a preserved right to buy following an earlier stock transfer). These persons will be prevented from exercising the right to buy by the 10 year limitation. Even these tenants would not be adversely affected by a designation until they had occupied social housing for the qualifying period of five years for the modernised right to buy.

15. However, the possibility of pressured area designations is clearly significant, and will increase in the longer term. How significant depends
on how many designations are made, the size of the areas they affect, and the characteristics of the housing market in those areas. As with extension of the 10 year limitation, the Scottish Ministers can be expected to develop criteria for approving proposals for designation in order to amplify the two statutory criteria, and the guidance ought rationally to be related to those criteria. **Scrutiny of the guidance would give the Committee an opportunity to scrutinise the policy on extensions of the 10 year period.**

**16.** The comments about the factual basis for evaluation made in relation to extension of the limitation period apply equally here. Evaluation of the guidance should take into account, not just the obvious policy implications, but the extent of the demand placed on landlords by the information requirements. The Right to Buy Working Group had earlier made proposals to the Executive with regard to pressured area designations and these are reflected in the draft implementation guidance. It states that proposals should take into account and be consistent with local housing strategies (draft strategies where not yet finalised). It also requires detailed information including a map, and states the evidence that might be required and key indicators for satisfaction of the statutory criteria. **Initial assessment suggests that this guidance is rationally related to the policy of the Act and, although the demands for information imposed on local authorities are substantial, they do not seem excessive.**

*Houses Liable to Demolition (section 70A(3), 1987 Act)*

**17.** Section 70A seems not to raise substantial policy issues and the exercise of the power to make an order prescribing the information which must accompany the landlord’s application is unlikely to have a significant impact on the Act’s policy objectives. A draft order accompanies the implementation guidance. Once again, **the question of the extent of the demand placed on landlords by the information requirements should be considered.**

*Power to Make Order Varying Discount (section 62(5), 1987 Act)*

**18.** The power to vary the discount levels potentially has major policy significance as its exercise makes the right to buy more less feasible for and/or attractive to tenants. This is turn affects the level of right to buy sales, and once again raises the question of the appropriate balance between the interests of tenants wishing to buy, landlords, and the wider community, and the concerns about the financial viability of housing associations and the availability of social rented housing. There are no current plans to vary discount levels from those stated in the Act.

**19.** **Evaluation of draft legislation to alter the level of discounts would require a detailed factual basis including historical data on the exercise of the right, and its effect on the supply of social housing, and changes in the level and precise nature of demand for social housing, together with predictions of the effects of varying the**
discount on these factors. However, the judgement as to whether a particular variation of discount levels is desirable would ultimately depend on views about the appropriate balance between the Act’s competing objectives in this area.

Assistance to Tenants to Obtain Other Accommodation (section 66, Housing (Scotland) Act 1988)

20. Better Homes suggested that cash incentive schemes for local authority and RSL tenants to buy homes in the open market could be used to free houses for rent in pressured areas.

21. The crucial question is one of resources. How much funding will be available for such schemes and this will depend to a large extent on the Executive’s funding proposals. If substantial funds are to be devoted to cash incentive schemes then the power in section 66(5A) to issue guidance on the form and content of schemes acquires substantial policy significance as this could be a means of relieving pressure on the supply of rented social housing and offsetting the negative effects of the exercise of right to buy and other factors affecting supply or demand for social rented housing. Conversely, if funds are not deployed for such schemes, then the guidance is likely to have limited practical impact. According to the draft implementation guidance arrangements for funding such schemes will vary according to whether the authority has responsibility for development funding in their area. Those who do will have to fund such schemes out of their strategic budget. If instead Communities Scotland is responsible for development, the authority should make a bid to Communities Scotland for resources as part of the normal discussions about future expenditure priorities.

22. Issues other than resources include how to determine the eligibility of tenants, the amount to be paid, whether there should be restrictions on the type or location of property purchased, and how to achieve an appropriate distribution of funds as between tenants of different landlords. On the calculation on the amount to be paid, one important issue is whether that should be determined by the Scottish Executive or left to local discretion. Once again, it will be necessary to have an adequate factual basis for evaluation, and to consider the information burden on local authorities. The draft implementation guidance does not develop detailed criteria for approval of schemes, indeed it states that the Executive does not wish to be too prescriptive about the nature of such schemes. It does recommend issues for consideration, and specify the information required with an application.

23. The draft guidance issued in January 2002 relates only to establishing schemes in pressured areas. As regards other areas the existing guidance continues to apply.

Equal Opportunities
24. The equal opportunities implications of this part of the Act concern not just the treatment of equality groups by the provisions of the Act, but also the likely effect of the implementation of the Act’s provisions on the housing opportunities of the various equality groups. As regards the former, the provisions of the Act appear to apply equally to all the equality groups with no express distinctions being made according to sex, race, disability and so forth. There are provisions which will have a disproportionate impact, notably the group exemptions for the right to buy, but there are equal opportunity arguments to support these provisions.

25. Regarding the latter, the main difficulty is the lack of comprehensive information on the housing opportunities of the different equality groups. The commitments made on data collection and analysis in the Executive’s equality strategy are important. However, there is a concern, noted by the Parliament’s Equal Opportunities Committee, that extension of the right to buy would reduce the amount of housing stock available for disabled people, and for black and ethnic minority people who are unable to rent or buy privately stock (Stage 1 report, Annex C, para. 42).

26. The Executive’s response illustrates the complexities of equal opportunity analysis. The Policy Memorandum stresses the importance of making the right to buy available to disabled and able-bodied persons alike (para. 94), and indicates the inclusion of a revised exemption for groups of special needs housing represents an acceptable balance between the needs of individuals seeking the right to buy and the needs of future generations of disabled people. However, this does not directly address the question of the actual effects of the extended right to buy on the disabled. The crucial question is whether the amount of housing available for the disabled and other equality groups will shrink, and how it will relate to demand from those groups.

27. The Equal Opportunities Committee sought to clarification of the Executive’s plans for funding of replacement stock (Stage 1 report, Annex C, para. 44). What would be helpful for the Social Justice Committee would be the relevant facts about housing opportunities and details of proposals for renewal of housing stock.

28. To assist in the compilation of its response, the Committee agreed to invite the views of a number of external organisations. Shelter Scotland has provided a briefing and comments include:

- In relation to the draft orders, these are relatively technical documents to which respondents’ solicitors’ attention might be drawn.

- In relation to the draft guidance, Shelter believes that this could more accurately be described as explanation of the statute, rather than any attempt to expand on good practice points. The main exceptions to this are the sections on pressured area status. The guidance also covers aspects of right to buy which were not changed by the 2001 Act (such as
the “cost floor rules”) as well as all the main changes. It is very helpful to have all of the provisions brought together in one document. However, although the provisions are mostly clearly explained, the difficulty which most practitioners will have is sifting all of the information to determine what provisions apply in any one situation. Shelter recommends that there should be a feasibility study into the development of software which would map out the right to buy provisions.

- Before September 2002 a template for a tenants’ leaflet should be developed. This would set out right to buy provisions in an accessible form. There are now new information requirements on landlords for right to buy. It will be essential for the credibility of future suspensions (eg for pressured area status or where there are rent arrears) that good information is given at the start of a tenancy.

- Some aspects of modernised right to buy will impact earlier than September 2007.

- There should be an investigation of software to apply right to buy eligibility to be traced and a template for a tenants leaflet should be prepared.

- Particular attention should be paid to guidance on suspensions through pressured area status as this is the one substantial area where there is discretion in the legislation. There should be a research project into how well pressured area applications are working with any changes made within two to three years.

Recommendation

29. Members' views are sought on specific aspects of the draft guidance and orders which they wish included in the response to the Scottish Executive.

Jim Johnston
Clerk to the Committee
SOzial Justice Committee

Housing (Scotland) Act 2001: Draft Guidance and Orders for the implementation of the Scottish Secure Tenancy

1. The policy objectives of harmonising and enhancing the rights of tenants in the social rented sector have largely been achieved by the Housing (Scotland) Act Act itself. The rights of tenants under the Scottish secure tenancy are reasonably clearly stated in the Act itself.

2. There are a number of provisions in part of the Act conferring powers to make subordinate legislation or issue guidance, but they are not of crucial significance for the furtherance of the Act’s policy of enhancing and harmonising tenants’ rights. Some of these powers deal with the mechanics of implementation (orders specifying conversion of secure tenancies to the new status). Those of a more substantive nature are in most cases designed to replicate existing provision (right to repair regulations, compensation for improvements).

3. From a specified date, currently intended to be 30 September 2002, all existing secure and assured tenants within the social rented sector will convert to the Scottish secure tenancy, and from that date all new tenancies created by social landlords (with limited exceptions) will be Scottish secure tenancies.

4. The Scottish secure tenancy is modelled on the secure tenancy under the Housing (Scotland) Act 1987 (‘the 1987 Act’) but provides enhanced rights for tenants in a number of respects. The enhancement of statutory rights compared to the assured tenancy is even greater. One of the rights included in the Scottish secure tenancy is the tenants’ right to buy the house s/he lives in. The main changes (other than the right to buy) as compared to the secure tenancy are:

- the right of succession on the death of the tenant has been extended to include same sex partners and carers, and to permit a second succession
- the landlord is obliged to provide the tenant with information about:
  - the right to buy the house the tenant lives in and the obligations the tenant is likely to incur by exercising it
  - the extent to which the tenants’ right to buy has been affected by the changes made by the Act or the exercise of powers conferred by the Act
  - its complaints procedure
- if the tenant asks the landlord must also provide information on a range of topics including the terms of the tenancy, rent-setting and charges, allocation of housing, repairs, the effect of exercising the right to buy, and the landlord’s tenant participation strategy
- the tenant has the right to exchange houses with the tenant under another Scottish secure tenancy with the written consent of the landlord which may be refused only on reasonable grounds
• the possibility of creating a short Scottish secure tenancy which lacks security of tenure there being no equivalent under the 1987 Act.

5. The Scottish secure tenancy offers a more advantageous package of rights for both secure and assured tenants. However, there are rights enjoyed under the current legislation on secure and assured tenancies which are not being carried forward into the new tenancy regime, or where the corresponding provisions under the 2001 Act are not as favourable as either the 1987 Act or the Housing (Scotland) Act 1988. The Act makes provision for preserving these rights for existing tenants.

6. Members have already received copies of the draft guidance and order issued by the Scottish Executive in January.

Introduction of Scottish Secure Tenancy

7. Existing tenancies will be converted to the new status only from a date specified in an order made by the Scottish Ministers. Section 11(1) would allow different groups of tenancies to be converted at different times. However, the Executive has already decided (and this is in line with the Committee’s views expressed in its Stage 1 Report) that a ‘big bang’ approach, whereby all existing secure and assured tenants in the social rented sector convert to the new status at the same time, is preferable. The draft order, therefore, specifies 30 September 2002 as the date for conversion of the tenancies of all secure and assured tenants in the social rented sector. The exception is Scottish Homes tenants who will continue as secure or assured tenants until the tenancy is ended or the home transferred to another landlord. Exceptions have been made for tenants of three local authorities (Borders Council, Dumfries and Galloway Council, and Shetland Islands Council) who plan to implement a whole stock transfer before that date. Such tenants will convert on the dates of transfer.

8. An order under section 11(1) may also make provision for ensuring that the rights of the landlord, the tenant, or any other person in relation to a tenancy which becomes a Scottish secure tenancy, are not adversely affected by the conversion of status. The effect of including in the order any statutory right previously enjoyed because of the status of a person as a secure or assured tenant would be that the person(s) affected would still have those statutory rights under the Scottish secure tenancy even though they do not form part of the Scottish secure tenancy regime.

Draft Guidance and Orders – issues for consideration

9. The achievement of the objectives of harmonising and enhancing the rights of tenants in the social rented sector is not heavily dependent upon subordinate legislation and guidance. In general, the rights of tenants are laid down by the provisions of Part 2 of the Act and do not require substantial further measures by way of definition or amplification. The provisions described above which allow for subordinate legislation or guidance to be made or issued are not for the most part of great
significance in relation to the policy objectives underlying the Act, although clearly the content of any regulations or guidance issued may be of concern to individuals affected.

*Introduction of Scottish Secure Tenancy* (section 11(1))

10. The timing of the introduction does not appear to raise substantial policy issues. The major policy issue that does arise, whether to adopt a ‘big bang’ or a 'staged approach' has already been agreed by the Parliament.

11. The use of a section 11(1) order to preserve existing rights enjoyed by secure and assured tenants and other persons flows from the well established principle that vested rights should not be taken away, but strict compliance with that principle is not required in this context. There are a number of rights associated with secure and assured tenancies, the loss of which would not cause great inconvenience to the persons concerned. The draft regulations issued with the guidance preserve only the rights of certain housing association secure and assured tenants to apply to rent officer and/or rent assessment committee for determination of rent.

*Proceedings for Possession* (section 14(4))

12. This provision replicates current practice in secure and assured tenancies. The form prescribed is likely to be similar to that currently in use for secure tenancies. Thus, no substantial policy issues are raised but, as the existing notices contain more information than the statutory minimum, the exercise of the power would be an opportunity to review the information that it would be useful to give tenants in such a notice.

*Terms of Tenancy* (section 23(3))

13. The power in section 23(3) to issue guidance on the form and content of a tenancy agreement does not appear to be of major significance in relation to the Act’s policy objectives. The model short secure tenancy agreement has already been published.

*Repairs* (section 27(2))

14. The power in section 27(2) to make regulations under which tenants who hold the Scottish secure tenancy are entitled to have qualifying repairs carried out replicates the existing provision under which the secure tenants’ ‘right to repair’ scheme operates. Thus, whilst on its face this is a significant policy-making power, the fact that there is an existing right to repair scheme, which can be carried forward suggesting that this legislative power is not of major significance in relation to the Act’s policy objective’s, although it is undoubtedly intended to contribute to the objective of improving the quality of social rented housing. It does, however, deserve the scrutiny of Parliament. The draft regulations are
broadly to the same effect as the existing regulations but changes have been made in relation to the list of qualifying repairs, the timescale for carrying out repairs, the maximum value of repairs and of compensation for delays. On the whole the changes appear favourable to tenants.

Landlord’s Consent to Work (section 28(4))

15. There was no corresponding reference in the 1987 Act to the power of the Scottish Ministers under section 28(4) to issue guidance to landlords on standards of work etc. Again, although this power may be seen as capable of contributing to the objective of improving the quality of social rented housing, it seems not to be of major significance in relation to the Act’s policy objectives.

Compensation for Improvements (section 30(4), (5), (7))

16. The objectives relevant to the power to make regulations regarding compensation are the enhancement of the physical quality of housing (insofar as there are incentives for carrying out improvements) and enhancement of the service provided to tenants. However, the exercise of this power does not appear to be of major significance in relation to the Acts policy objectives. However, as with the ‘right to repair’ it will be relevant to inquire into how the new arrangements conform to existing arrangements. The draft regulations appear broadly similar to the existing regulations, although both the minimum and maximum amounts of compensation have been increased.

Right to Exchange (section 33(5))

17. The power of the Scottish Ministers to modify the grounds in section 33(3) sets out grounds on which refusal will be considered reasonable. The Scottish Ministers may by order modify that subsection. This is a narrowly drawn power affecting a highly specific issue and, once again, not of major significance in relation to the Act’s policy objectives.

Short Scottish Secure Tenancy (sections 34-37 and schedule 6)

18. The power of the Scottish Ministers to add to, remove, or vary the circumstances in which the short Scottish secure tenancy may be used is potentially of some importance as it would allow extension of the range of situations in which tenants in the social rented sector did not have security of tenure. Moreover, there are no limitations on the circumstances in which the power may be exercised. However, it would be surprising if there were to be any major extension of the scope of the short Scottish secure tenancy as any such proposal would run contrary to the aim of enhancing tenants’ rights. No proposals have been put forward for the exercise of this power.
19. Section 34(1) requires notice to be served in the prescribed form before the creation of a short Scottish secure tenancy. The notice attached to the draft order which has been published deserves careful scrutiny to ensure its technical adequacy and intelligibility to tenants, but the exercise of this power does not raise major policy issues.

20. Before recovering possession under a short Scottish secure tenancy the landlord must serve a notice in the form prescribed by the Scottish Ministers in terms of section 36(3). This has a similar purpose to the notice served under section 14 (see above) – warning of impending litigation and giving the tenant information – but would be in different terms to that notice. Since there is no existing equivalent, there is perhaps more reason to scrutinise closely the draft order which has been published with the draft guidance, but again the exercise of this power does not raise major policy issues.

Equal Opportunities

21. The equal opportunities implications of this part of the Act concern not just the treatment of equality groups by the provisions of the Act, but also the likely effect of the implementation of the Act's provisions on the housing opportunities of the various equality groups. As regards the former, the provisions of the Scottish secure tenancy, appear not to discriminate directly or indirectly against any of the equality groups, and there are positive improvements in some areas, notably the extension of succession rights to carers and same-sex partners, and the rights given to qualifying occupiers to be sisted as a party to proceedings for possession.

22. Regarding the broader effects of the new tenancy, there is a possible concern over the extension of succession rights for former assured tenants which when exercised by relatives of a deceased tenant in a specially adapted house would reduce the availability of such stock for disabled persons. However, as the Equal Opportunities Committee noted (Stage 1 Report, Annex C, para. 43), failure to extend the right of succession to their relatives on the same terms as other tenants could be regarded as discrimination against the disabled. As to the practical effects, these are not clear. The SFHA model assured tenancy seeks to give assured tenants the same rights as secure tenants have by statute. However, some housing associations exclude this right in the case of specially adapted properties.

23. The draft implementation guidance stresses local authorities' statutory duty to encourage equal opportunities and suggests that in providing information on tenancy rights they build in a needs assessment for tenants so that information can be produced in minority languages, Braille, large type etc, as appropriate.

Recommendation
24. Members' views are sought on specific aspects of the draft guidance and orders which they wish included in the response to the Scottish Executive.

Jim Johnston
Clerk to the Committee
SOCIAL JUSTICE COMMITTEE
DRAFT WORK PROGRAMME

1. At its meeting on 12 December 2001, the Committee considered its strategic work plan for the remainder of the first session of the Scottish Parliament. The Committee agreed that the Clerk should publish an overview of the work plan to inform interested parties of the Committee’s work. At that meeting it was also agreed that the strategic direction of the Committee’s work programme be further considered at an away day on 11 February 2002. This paper details the outcome of the away day and updates the work programme.

Post Enactment Scrutiny of the Housing (Scotland) Act 2001

2. Following a request by the Committee, the then Minister for Social Justice agreed to keep the Committee closely informed of developments in the making of Orders and the drafting of guidance which is to implement the detail of the Housing (Scotland) Act 2001.

3. The Committee will consider its approach to scrutiny of forthcoming pieces of guidance and secondary legislation at its meeting on 13 March, when the Committee will consider its methodology for dealing with each consultation.

The Social Justice Agenda

4. Following the Committee’s successful open space event and extensive consultation exercise, research was commissioned by the Committee on effective community engagement in the social inclusion process. Reid Howie Associates carried out the research, a draft of which was considered at the away day on 11 February 2002.

5. The researchers will provide further briefing to the Committee on 17 April. Thereafter, the Committee will consider the need for any further work in this area with a view to finalising its recommendations to the Executive. In doing so, the Committee will consider how the recommendations made by representatives of Communities Against Poverty (CAP) at their meeting with members of the Committee on 7 December 2001 in relation to community representation and Social Inclusion Partnerships can be taken forward.

Inquiry into the Voluntary Sector

6. At its meeting on the Committee agreed to include in its work programme an Inquiry into the Voluntary Sector, which would essentially be a mapping exercise to allow the Committee to review the current state of the voluntary sector in Scotland. The aim of the Inquiry was:

   To establish the key issues facing the Voluntary Sector in Scotland in 2001; examine the responses of the Scottish Executive and others to these issues; and to report and make recommendations, as appropriate, to the Parliament.
7. The programme for the Inquiry was based on Committee evidence sessions involving key national players. To allow members to experience more directly the issues facing the voluntary sector and to supplement and extend the nature of the evidence collected, it was agreed that members undertake reconnaissance visits throughout Scotland.

8. The Committee’s report was published on 8 March and the Scottish Executive’s response to its series of recommendations is awaited.

Houses in Multiple Occupation

9. At its meeting on 28 November 2001, the Committee agreed to publish an interim report on its concerns about a number of issues arising from the licensing of houses in multiple occupation. The interim report was published in December 2001. The Scottish Executive’s response to the issues raised by the Committee has now been received by members and this will be discussed at the meeting on 20 March 2002.

2003/4 Budget Process

10. The Committee will consider its response to Stage 1 of the budget process in March and April. Evidence will be taken from panels of witnesses on the subject headings of housing, social inclusion and the voluntary sector, and also from the Minister for Social Justice following publication of the Annual Expenditure Report.

Housing Improvement Task Force

11. The Committee has received two petitions (PE 356 and PE391 from Troqueer Homeowners Committee and Mr Willie Scobie respectively) in relation to a range of issues arising between home owners of former local authority housing stock and local authorities, in particular in relation to common repairs. The Committee will consider the general issues raised by these petitions once it has received a briefing from the Housing Improvement Task Force.

Homelessness legislation

12. The Committee notes the recommendations of the Homelessness Task Force’s Final Report, and welcomes the Minister’s announcement that legislation to take forward the recommendations will be introduced this autumn.

Review of Committee’s work during Parliamentary session

13. The Committee agreed at the awayday that a review paper of the its work during the first Parliamentary session should be prepared early in 2003.

Jim Johnston
Clerk to the Committee