

Maintaining Houses – Preserving Homes

Response to the Scottish Executive consultation on the proposals
for housing legislation

November 2004

About the Scottish Consumer Council

The Scottish Consumer Council (SCC) was set up by government in 1975. Our purpose is to promote the interests of consumers in Scotland, with particular regard to those people who experience disadvantage in society. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors' clients, public transport users, or simply shoppers in a supermarket.

Consumers benefit from efficient and effective services in the public and private sectors. Service-providers benefit from discriminating consumers. A balanced partnership between the two is essential and the SCC seeks to develop this partnership by:

- carrying out research into consumer issues and concerns;
- informing key policy and decision-makers about consumer concerns and issues;
- influencing key policy and decision-making processes;
- informing and raising awareness among consumers.

The SCC is part of the National Consumer Council (NCC) and is sponsored by the Department of Trade and Industry. The SCC's Chairman and Council members are appointed by the Secretary of State for Trade and Industry in consultation with the Secretary of State for Scotland. Future appointments will be in consultation with the First Minister. Martyn Evans, the SCC's Director, leads the staff team.

Please check our web site at www.scotconsumer.org.uk for news about our publications.

Scottish Consumer Council
Royal Exchange House
100 Queen Street
Glasgow G1 3DN

Telephone 0141 226 5261
Facsimile 0141 221 0731
www.scotconsumer.org.uk

The SCC assesses the consumer perspective in any situation by analysing the position of consumers against a set of consumer principles.

These are:

ACCESS

Can consumers actually get the goods or services they need or want?

CHOICE

Can consumers affect the way the goods and services are provided through their own choice?

INFORMATION

Do consumers have the information they need, presented in the way they want, to make informed choices?

REDRESS

If something goes wrong, can it be put right?

SAFETY

Are standards as high as they can reasonably be?

FAIRNESS

Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?

REPRESENTATION

If consumers cannot affect what is provided through their own choices, are there other effective means for their views to be represented?

Published by the Scottish Consumer Council
November 2004

We can often make our publications available in braille or large print, on audio tape or computer disk. Please contact us for details.

1. Introduction

The Scottish Consumer Council (SCC) aims to make all consumers matter, and our main objectives are to make markets and public services better focused on delivering for all consumers, and to enable consumers to be effective and demanding in their selection and use of goods and services.

The SCC has a particular focus on promoting the consumer interest for disadvantaged groups in society and therefore we feel that a key issue in private housing is the financing of repairs and maintenance for low income owners and we welcome the priority given to this area in the consultation document.

The issues and problems arising from home ownership have been longstanding areas of work for SCC. Back in 1984, in an attempt to counteract the confusion and misunderstanding faced by flat owners, SCC published an information guide for flat owners in Scotland. The guide dealt with a range of topics covering: owners' rights and responsibilities; organising repairs; dealing with problems of payment for common repairs; factoring; insurance and financial help.¹ Despite this publication being written twenty years ago the issues and problems faced by flat owners remain very much the same today. More recently, the SCC was responsible for drafting the recent Communities Scotland publication 'Common Property, Common Sense' which updated information for owners in light of the Tenements (Scotland) Act 2004². The SCC welcomes the opportunity to respond to the proposed legislation relating to improving quality in the private sector.

We also welcome the opportunity to comment on the proposals relating to a single survey and purchasers' information packs. Research we carried out in 2000³ found that overall, the majority of buyers in Scotland were satisfied with the house buying process. We did find, however, that multiple valuations were perceived as a problem, and that some buyers felt they would like to have more information about the property they bought. The single survey pilot and the proposed purchasers' information pack seek to address these problems, and we have been working with the Executive on these initiatives through our membership of the Housing Improvement Task Force and subsequently of the steering groups for both of these initiatives.

As many of the proposals in this consultation paper come directly from the Housing Improvement Task Force, on which SCC was represented, we have only commented where the task force proposals have not been adopted or where the issues were not considered by the task force. Where we have not responded

¹ Under One Roof A Guide for Flat Owners in Scotland, SCC, 1984

² Common Property, Common Sense, Home Point, 2004

³ Home Truths: A Report on Research into the Experiences of Recent House Buyers in Scotland, 2000

to a question, we are broadly supportive of the proposals and have no further comment to add.

Prior to responding to specific questions, we would like to make a number of general points in relation to the consultation paper.

The need for an information strategy

The proposals in this consultation paper will impact on owners, potential owners and tenants in the private rented sector. While many of the proposals build on existing legislation, others will make significant changes to the legal situation. The proposals also follow quickly on from the commencement of the Abolition of Feudal Tenure (Scotland) Act 2000, the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004 and a range of initiatives such as the pilot Landlord Accreditation Scheme and the pilot Single Survey. As such, a co-ordinated strategy is required to inform consumers on how the changes will affect and impact on them. We first called for this in our response to the Tenements (Scotland) Bill and while welcoming the developments of the Better Renting website and the re-issuing of the Home Point publication *Common Property, Common Sense*⁴ we remain concerned that these are not sufficiently co-ordinated at a national level. SCC recommends that the Scottish Executive should conduct an audit of the information needs of owners and tenants following such fundamental changes to the law. The information strategy must take into account the likelihood that homeowners' and tenants may currently have very low levels of awareness of their rights and responsibilities.

In relation to tenants, our response to the Stage 3 amendment on the Anti-Social Behaviour Bill we highlighted the need for tenants to be informed of the need for registration and to have access to a fair complaints system. We would like to reiterate this concern as any further strengthening of regulation on private landlords will rely on tenants to inform the local authority if problems arise. Without a private tenants information strategy this is unlikely to be effective.

The need for an evidence base

We recently published a report on home-owners motivations for repair and maintenance⁵ which concluded that there is a limited evidence base on what public policy interventions will impact on home owners repair and maintenance activities. The report concluded that we need better information on a number of matters to ensure effective policies are put in place:

- How repair activity affect property value in different circumstances?
- How the relationship between repair work and changes in property value affect owners behaviour?

⁴ Formerly known as 'We Are All Responsible'

⁵ Will the real owner occupiers please stand up? SCC, 2004

- How owners views of their property as a means to an end (for example, as an investment to be sold for financial gain) rather than an end in itself (for example, as a home) affects their motivation to undertake repair work?

We call on the Scottish Executive to consider developing a strategy for improving our understanding of owners' repair motivations as the basis of future policy.

Property Managers

In its response to the 'Better Homes' consultation in 2000, SCC argued that there should be legislation or guidance on the registering and standards for private property managers (factors) and the property management functions of local authorities. Research conducted by SCC in the late 1990s highlighted in particular the issue of owners who have bought under the 'Right to Buy' scheme but are compelled to keep the local authority on as the property manager.

We have been involved in discussions with Communities Scotland on the development of a Property Managers Accreditation Scheme, which at present we would support on a voluntary basis similar to that of the pilot Landlords Accreditation Scheme. As many of the issues of repair and maintenance in properties with shared or common parts may be dealt with on a day-to-day basis by Property Managers we would welcome a clear statement from the Scottish Executive on how they plan to develop the previous discussions held by Communities Scotland on Property Managers Accreditation.

2. Dealing with defect and disrepair

Q1. The proposed single statutory notice gives local authorities enhanced powers to deal with a wide range of condition problems. Is this the correct way forward?

The 2002 Scottish Housing Conditions Survey found that less than 1% of Scottish properties fell below tolerable standard (BTS). While approximately 28,000 BTS properties were demolished or closed between 1996 and 2002, these did not result in a decrease in the overall number below tolerable standard, suggesting that some properties which had previously been above tolerable standard had since fallen below. There is a need for more preventative work if the number of BTS properties is to be decreased over time. The SCC therefore agrees with the proposal of a single statutory notice for below tolerable standard, serious disrepair and disrepair which may result in either serious disrepair of disrepair which may cause damage to adjoining properties. By bringing these together in a single notice procedure, local authorities will be able to prevent borderline properties from falling to below tolerable standard.

Q2. Do you agree that local authorities should have the power to take out a maintenance order against a property or group of properties?

The proposal to introduce 'maintenance orders' was suggested by the Housing Improvement Task Force as a means of ensuring proper maintenance where properties had fallen into disrepair through a lack of maintenance in the past. Specifically, it referred to cases where the local authority identifies future maintenance will be inadequate, where enforcement orders had already been made or where owners with common or shared responsibilities had not been able to co-operate in carrying out works.

The consultation document includes all three situations, however, SCC is concerned about the vague nature of the situation where a local authority 'took the view that future maintenance would otherwise be inadequate'. Given that the serving of a maintenance order is a significant intervention, SCC would welcome clarification of the evidence required for local authorities to argue that future maintenance would be inadequate.

Q3. Should this maintenance order be limited to 5 years?

SCC agrees with the consultation document that a limit on the maintenance order should be set, however clarity is required on whether this is a maximum length or whether flexibility in length up to five years should be encouraged. The maintenance order requires a maintenance plan, the length of which will depend on the types of property and likely problems.

We therefore argue that the maintenance order should end:

- On completion of the work detailed in the maintenance plan; or
- 5 years

whichever is the sooner.

At present, the consultation paper places the onus is on the owner to apply to have the maintenance order lifted, we would argue that the responsibility of removing an order once the maintenance plan has been carried out should lie with the local authority. Owners should retain the right to apply to the local authority to have it lifted at any point.

The consultation document does not explore the situation where a property subject to a maintenance order is sold. If the order is taken out due to the actions of the owner, should it be removed when a new owner purchases the property? On the other hand, it may be beneficial to retain the maintenance order until the maintenance plan is completed to ensure the preservation of the property. The Scottish Executive should further detail their opinion on this situation.

Q4. Do you agree that it is reasonable to require a sinking fund to be set up as part of the maintenance order requirements?

The consultation paper argues that where a maintenance order has been served existing financial arrangements are not working and therefore local authorities should have the power to insist on a sinking or reserve fund. Our response to the consultation on the Tenements (Scotland) Bill outlined our position that while we agree in principle with owners setting up common reserve funds, they should not be compelled to establish and contribute to common reserve funds. Owners are primarily responsible for the repair and maintenance of their property and while local authorities may compel individuals to pay for their share of repairs, they should not be in a position to determine how each individual arranges to pay for their part of the repairs. The SCC recommends that the Scottish Executive and UK governments together should consider how owners can be encouraged to enter into voluntary reserve funds through financial incentives and providing owners with information on how to set up a fund.

However, should the Scottish Executive wish to develop policy on mandatory sinking funds for those subject to maintenance orders, further examination of two areas is required:

- Where owners are served with maintenance orders they are eligible to apply for mandatory assistance, including means-tested grants. It is unclear how this would work in practice when the consultation paper states that the local authority would not contribute to the fund itself.
- The SCC welcomes the inclusion of a notice system to ensure that prospective owners are aware of the maintenance order, however no mention is made of the situation of reserve funds where there is a change in the ownership of the property. Further examination of this situation is required.

Q5. Do you agree that there should be powers to control occupation of properties subject to statutory notices and, if so, how exactly should these powers be enforced?

The SCC agrees with the Housing Improvement Task Force that local authorities should control the occupation of properties subject to statutory notices, both buying and letting them. The consultation paper provides four options for this:

- Making the offence of occupation apply equally to the owner at the time the notice was served and the new owners;
- Making it an offence to sell or re-let the house prior to work being carried out;
- Once the house is sold or the tenancy changes, make it an offence to occupy the house until the work is carried out;
- Do not extend the control of occupation order power to apply to individual dwellings outside of Housing Renewal Areas.

On balance, SCC does not agree that local authorities should have the power to stop individuals buying property to renovate, even where it falls below tolerable standard at the time of sale. However, given the potential within tenement properties for deterioration of not only one property but a number within the block, the situation should be rectified as near point of sale as possible and therefore once the house is sold it should be an offence to occupy the house until the work is carried out. We view the situation of tenancies as different, while purchasers may wish to buy properties to renovate, tenancies are normally only entered into for the purpose of living within the property. Therefore in this case, it should be an offence to re-let a property that is subject to a statutory notice until work is carried out.

Q6. Do you agree local authorities should be able to suspend a notice, and if so, that this suspension should be limited so it only applies until the property is sold or let?

The SCC agrees with the consultation document and the Housing Improvement Task Force that in certain cases the disruption outweighs the advantage and that in these cases the notice should be suspended. The Scottish Executive should provide clear guidance on what situations would warrant a suspension. Similarly, provisions should be written into guidance to ensure that suspensions are reviewed regularly to ensure that the disruption continues to outweigh the advantage. We also agree that the suspension, as it relates to individuals vulnerability, it should not be transferred onto the next owner or tenant.

Q7. Should local authorities be given powers to control occupation where owners cannot be identified?

While in principle SCC agrees that local authorities should be able to control of an individual property subject to a notice of works to be carried out, we feel that there should be further consideration of the problems of locating absent owners in tenement properties that could be usefully addressed by the Scottish Executive.

In evidence to the consultation on the Tenements (Scotland) Bill, SCC suggested that the Tenement Management Scheme should require all owners to provide contact details to either the property manager, if applicable, or a nominated person. We argued that this information should be collected in line with data protection and where access is required a time limit on attempted contact should be set. While these suggestions were not taken up in the Tenement (Scotland) Act, we believe there is merit in further considering the issues within the scope of this consultation for all tenement properties.

Q8. Should local authorities have power to meet the costs of the share of communal repairs due from owners who will not contribute their share (to allow the works to go ahead), linked to a charging order to recover the costs of the works and administration costs?

The SCC agrees that the proposals for providing local authorities with the power to place charging orders on properties for works carried out and administration costs are fair and based on common sense, allowing local authorities to re-coup their costs at point of sale. It should however be noted that this may be a considerable amount of time and therefore the Scottish Executive should consider the impact of inflation and whether or not interest should be payable on the amount involved.

Q9. Should local authorities have the power to inspect insurance policies of persons subject to the new notice?

The Tenement (Scotland) Act 2004 provides individuals with common property rights to inspect their neighbours insurance policies due to shared responsibilities. It is logical to extent this right to local authorities who, through serving a notice, are enabling owners to make use of the mandatory assistance available and therefore are involved in practical support to owners.

3. The tolerable standard

Q10. Are our proposed extensions to the Tolerable Standard the right ones?

SCC agrees with the proposed extension of the Tolerable Standard to cover:

- basic provision of thermal insulation and;
- installations for the supply, distribution and use of electrical power being adequate and safe in use.

However, we are concerned that the consultation paper does not adopt the recommendation of the Housing Improvement Task Force to include a detailed standard for lead in water. The consultation paper argues that lead in water is met through the requirement to have adequate, wholesome water supplied within the house. The Housing Improvement Task Force reported that interpretations of this standard have been 'inconsistent' and that it has not generally been used to address the presence of lead in drinking water.

We believe that regulation should be proportionate, however, if there is a large problem with lead in drinking water, caused by lead piping within individual properties, the Scottish Executive should consider a specific standard on this to raise awareness of the issue and to make available mandatory assistance for correcting the problem.

We would therefore like to see further consideration of this issue, for example, how many properties have high lead levels in the water supply? We believe that this problem is most commonly experienced in tenement properties which are often older and have difficulty in modernising the buildings water supply due to complications over common ownership. There may also be low awareness within the population that lead piping within properties is the main cause of excess lead in drinking water and that this is primarily the responsibility of owners, not the local authority or Scottish Water.

Q11. Should there be national guidance produced by the Scottish Executive on the interpretation of the Standard?

SCC agrees that there should be detailed guidance on the interpretation of the Standard, particularly on the issue of lead in drinking water if it is to remain within the Standard for 'wholesome water' rather than in a separate, more defined, Standard.

Similarly, the proposed extensions for basic thermal insulation and electrical power will require detailed guidance: what are the definitions of 'basic provision', 'adequate' and 'safe in use'. Given the Housing Improvement Task Force concerns over 'inconsistency' in interpreting the standard, guidance should encourage a uniform interpretation of the standards across Scotland.

Q12. Do you think that an action plan on Below Tolerable Standard housing should be required in local housing strategies and that promoting the improvement of housing condition and quality should be a specified purpose?

We agree with the proposal of the Housing Improvement Task Force and the consultation paper that local authorities should be required to prepare and publish an action plan on Below Tolerable Standard.

4. Area renewal

Q13. Do you agree with the repeal of powers to declare Housing Action Areas and their replacement with powers to declare Housing Renewal Areas?

The Housing Renewal Areas extend the parameters of Housing Action Areas to include not only areas where there is over 50% of Below Tolerable Standard but also those where there are concentrations of houses in serious disrepair and concentrations of properties which are likely to deteriorate rapidly or cause material damage to other properties. As with our response to Q1, SCC agrees that this is a reasonable step to ensure a preventative approach.

Q14 - Q16

No further comment.

5. Financing and supporting repair works

Q17. Do you agree with the introduction of a range of types of assistance?

The SCC has advocated the development of a range of types of assistance, both during its membership on the Housing Improvement Task Force and more recently in the publication of 'Will the real owner occupiers please stand up?' (SCC, 2004). This report argued that the current model of grants is based on limited evidence on its effectiveness and may provide a disincentive to homeowners to undertake repair and maintenance in the first place. We therefore welcome the inclusion of a range of tools which local authorities can use to assist home owners in repairs and maintenance, in particular we welcome the focus on assistance to those with common property rights and responsibilities.

Q18. Are the types of assistance proposed the right ones?

At present the scheme focuses heavily on financial assistance, we would like to see further development of the proposals on practical assistance. 'Will the real owner occupiers please stand up?' highlights the role local authorities could play through providing DIY classes, home surveys, tool loan schemes, approved builder lists and collective organisation of building works.

Q19 – Q23.

The proposals are in line with the Housing Improvement Task Force and therefore SCC agrees.

6. Better information for home buyers

Q24. Should the Executive: take reserve powers to compel sellers to make a single survey available when marketing their properties; or commence such powers along with the rest of the Bill; or should this be left entirely to the market?

Based on evidence to date, we support the concept of a single survey in principle as we believe that it may be in the interests of buyers and potential buyers. We

support the three main policy objectives behind the single survey pilot, as identified by the Housing Improvement Task Force⁶:

1. **To reduce the incidence of multiple surveys.** At present, there is a risk, particularly in property hot spots, of having to pay for several surveys before finally being successful in buying a house. Research we carried out in 2000⁷ found that the change buyers said they would most like to see to the house-buying system would be an end to the problem of multiple surveys. The single survey system being piloted is intended to avoid the need for every prospective buyer to commission and pay for their own survey.
2. **To improve the quality and extent of the information available to purchasers.** The majority of buyers currently opt for a valuation survey, the cheapest option, which does not provide them with full information about the condition of the property. Our research⁸ suggests that many people opt for a valuation because they are worried about the risk of having to pay for multiple surveys. We found that one quarter of those who had opted for a valuation survey felt they would have liked more information about the property. Even though many people did not actually experience multiple surveys, it was clear that the fear of experiencing this influenced their choice of survey. Most obtained a valuation, but two-thirds of buyers said they would be willing to pay more for a more detailed survey if they knew their offer would definitely be accepted. The single survey pilot is intended to provide potential buyers with better information about the property before bidding, which we support.
3. **To address the problems caused by the setting of artificially low 'upset' prices in order to stimulate interest in a property.** Some buyers have told us that this has led them into paying for valuations or surveys for properties they would never realistically be able to afford.

For these reasons, we support the single survey pilot, as we think it should help to address the problems identified in our research. Clearly the effect on sellers as well as buyers must be considered - however, in the majority of cases a seller will also be buying at the same time, and so will also benefit from the system.

⁶ *Stewardship and Responsibility: A Policy Framework for Private Housing in Scotland*; Final Report and recommendations of the Housing Improvement Task Force, 2003 at paragraph 129

⁷ Home Truths: ibid

⁸ Home Truths: ibid

Throughout the life of the Housing Improvement Task Force, we consistently called for the single survey to be introduced as a market-led initiative, rather than a compulsory one. That said, we are disappointed that to date take-up of the pilot single survey has been very slow, although we are encouraged that the situation now appears to be changing. Given that our evidence suggests that the single survey is what buyers want, we hope that as time goes on, interest in the pilot will pick up and its use will become more widespread. We hope that the various exchange professionals involved in the house buying process will take the opportunity to participate fully in the pilot, and will suggest it to their clients as a way forward. If it becomes clear from the pilot that buyers and sellers welcome the single survey, and take-up increases, a market-led approach may prove to be sufficient.

At this stage, however, we agree that the Scottish Executive should take reserve powers in the bill. Any future exercise of those powers should be very carefully considered, in the light of the experience of the pilot. If the pilot were to fail, the reasons for this would require to be carefully considered in deciding whether to go ahead with a compulsory scheme. If, for example, it becomes apparent that the market has found other ways of dealing with the multiple valuation problem - such as an 'offers subject to survey' approach, which seems to have become more prevalent in some areas - there may be a less compelling argument for introducing a compulsory single survey to address that problem. The remaining objectives behind the single survey concept remain, however - those of increasing the information available to purchasers, and addressing the problems associated with low upset prices.

It is essential that no decision should be taken on this issue, until the pilot has been fully evaluated. While we see the single survey as the way forward, however, we would have concerns about a compulsory system. We would be concerned as to how it will be enforced, for example, and as to the potential difficulties it may bring for disadvantaged buyers and sellers, who may be on low incomes and/or be buying or selling low-value properties in areas of low demand.

Q25. Should there be exemption from the requirement to provide a single survey and, if so, what classes of property should be exempted?

Were the single survey to be made compulsory, we can see no particular difficulty with exempting new build properties. We can also see attractions in exempting other types of property, where multiple valuations are unlikely to be an issue. However, bearing in mind the second policy aim of the single survey - to improve the quality of owner-occupied housing - it is more difficult to argue this in these other cases. Such situations might include sales between family members, right to buy properties, and low value, hard to sell properties.

One potential difficulty with a compulsory single survey would be the possibility that sellers living in low value properties in areas of low demand would be forced

to pay a substantial fee upfront for a survey. The lower the property value, the greater the proportionate cost of the survey fee. Moreover, if the property remained unsold, they would be unable to recoup the money from the buyer. In the pilot, the Scottish Executive is providing a subsidy in such situations, but it seems unlikely that this arrangement would continue beyond the life of the pilot. One possible solution might be to exempt all properties below a certain value. The difficulty with this is, of course, that any problems relating to the state of repair of the house, which may be greater than average in low value properties, are likely to remain unresolved.

Similar considerations apply to right to buy properties, which are likely to comprise a sizeable percentage of lower value properties. In such cases, the buyer will be very familiar with the property, as they will have lived there for a number of years. They may not, however, appreciate the extent of any hidden structural problems. Moreover, it might be argued that right to buy owners are even more in need of good quality information about their property than other buyers. They are a vulnerable group- they tend to be older, to have lower incomes and fewer incomes than other owners, and may not fully appreciate their responsibilities for maintenance and repair.⁹ Moreover, while most right to buy owners will be required by their mortgage lender to obtain at least a valuation, in some may buy their property outright without being required to obtain any kind of survey.

One possible solution might be to require the landlord to pay for the survey. This would presumably be very expensive, although we would point out that at present the district valuer is required to carry out a valuation of the property for the landlord in any case.

Q26. Should there be a time limit on the survey and what should these limits be?

We would not expect the 'shelf-life' of the survey to be an issue in the majority of cases, particularly in a buoyant market. We understand the argument, however, that where a property does not sell quickly, the condition of the property may deteriorate over time, affecting the valuation.

The buyer must be able to rely on the survey as providing an accurate picture of the condition of the property at that particular time. Where the property does not sell quickly, the survey may become out of date. This could also cause problems for the seller who may have to pay up for a second time to update the survey. However, a re-survey could potentially benefit the seller, if the valuation has increased over time. Any time limit must be reasonable, balancing these

⁹ In a Fix: the views and experiences of owner occupiers in Scotland sharing common repairs responsibilities with the Council; Scottish Consumer Council, 1999

considerations, to ensure that the interests of both buyers and sellers are met. We would also presume that the cost of any re-survey would be considerably lower than that of the original survey.

Q27. What is an appropriate enforcement mechanism if the survey is not made available as required?

As already stated, we would have a strong preference for a market led approach if possible. If however, the decision was taken that the single survey should be made compulsory, we find it difficult to see how this could be effectively enforced.

First of all, a decision would need to be taken as to whether the seller him/herself, or the seller's agent, would be placed under an obligation to provide the survey. If it were the former, this would catch private sales as well as those carried out through a solicitor or estate agent. However, we certainly would not wish to see people being criminalized for failing to provide a single survey, particularly where they fail to do so because they are unable to afford it. The paper suggests that civil penalties enforced by trading standards officers might be one way forward. We are of the view that this would be difficult to enforce, especially if this duty was added to the already considerable burden on trading standards officers.

It may be easier to police a scheme if it were the seller's solicitor or estate agent who was under a duty to provide the survey. This would tie in with the forthcoming duty to provide an energy performance certificate. Again, however, we would not wish to see criminal penalties for such a matter. One way to enforce it might be to require solicitors and estate agents under their professional practice rules to ensure that their selling clients provide a single survey. One clear difficulty with this, however, is that at present estate agents are not a regulated profession in the way solicitors are, as they are not required to belong to any professional or regulatory body. Moreover, such a scheme would not catch private sales, where no selling agent is involved.

28. Should any powers be wide enough to require sellers to provide other information, such as proposed for the Purchaser's Information Pack, or should it be restricted to a single survey?

SCC very much supports the introduction of a purchaser's information pack, which will increase the information available to potential purchasers about a property at an earlier stage than at present. We have to date, however, been of the view that this too should be introduced on a market-led basis. We are aware that some professionals believe that the pack will not catch on unless there is a duty to provide it. Again, however, we would prefer not to see the pack being made compulsory.

We would rather see it become the norm through practice, and the relevant professional bodies have a very important role here in promote the pack and its benefits. We see the pack as being in the interests of both buyers and sellers, as well as their agents. All of the information which is likely to be obtained in the pack is already made available at present. The difference here would be that the pack would ensure that potential buyers receive this information at an earlier stage, helping them to make an informed purchase.

At this stage, we agree that the Scottish Executive should take reserve powers in the bill in relation to purchasers' information packs. Any future exercise of those powers should be very carefully considered, in the light of the experience of any future pilot scheme.

Q29. There is the potential for sanctions to be applied where the EU Directive requirement on energy performance certificates is not complied with. What do you think would be appropriate sanctions?

We support the introduction of energy performance certificates, which is in the interests both of sustainable development, and improved information for consumers as to the energy efficiency of their homes, whether owned or rented. This additional information will help prospective buyers and tenants to make an informed decision as to whether to buy or rent a property.

In the case of house sales between individuals, we consider that the best way to provide the information required would be as part of a single survey, along the lines of the energy report contained in the current pilot single survey. In any case, regardless of whether it is contained within the single survey report itself, the energy report should be included as part of any future purchasers' information pack.

In relation to house sales, we see from the paper that selling agents are to be made responsible for compliance. We are unclear, however, as to the position of individual sellers, where there is no selling agent.

While we support the requirement to provide certificates, we do not have a view on what appropriate sanctions should be.

Q30. Should the energy performance certificate incorporate an A to G coloured banding energy rating, similar to the energy labels displayed when household appliances are retailed?

We would welcome such labelling, provided that it is supported by sufficiently clear explanatory information for the buyer/tenant, in order that the rating is meaningful to them. Again, we are aware that the current version of the pilot single survey includes a home energy report, which features such a rating.

7. Improving standards in the privately rented sector

In general, the SCC welcomes proposals to improve standards in the private rented sector. We are aware that this is a time of change for private landlords with the introduction of compulsory registration and the development of a voluntary accreditation scheme. As the SCC sits on both the advisory group to the pilot Landlord Accreditation Scheme and the Housing Working Group on the implementation of the Anti-Social Behaviour Act 2004, we are concerned about the difficulties of implementing the existing policies on the private rented sector. Proposals should give due regard to these changes and the likely impacts on the sector, in particular we are concerned that there is a possibility of over-regulation in this area which may adversely affect supply of privately rented accommodation and the likelihood of landlords transferring any costs directly onto tenants, thus pushing rents higher.

Q31. Are there any other elements that you would include in the modernised Repairing Standard for private landlords?

The proposals reflect the view of the Housing Improvement Task Force and as such SCC agrees with them. However, the current proposals do not include the situation of emergency repairs. In line with the National Core Standards for Private Landlords (SCC was represented on the working group to develop these standards), we propose including a section on access where emergency repair is required and the tenant cannot be contacted. Landlords should also provide tenants with information on how to respond to emergency repairs, including what constitutes an emergency, contact telephone numbers and the possibility of landlords entering properties in cases of emergency repairs being required. We would also welcome further consideration of the possibility of legislating for rent restrictions when major repairs or improvements caused disruption to the tenants' ability to occupy rooms with the property.

The proposals on improving standards require tenants to be aware of their rights and responsibilities, however, the consultation paper does not address the need for an information strategy for tenants. Given the developments outlined above, a specific information strategy should be developed by the Scottish Executive to provide tenants with information on their legal rights, including the proposals within this consultation papers and those enacted in the Anti-Social Behaviour Act 2004.

Q32. Do you agree with the proposed range of tenancies to which the new standard would apply?

Agree.

Q33. Should there be a statutory requirement that all written leases should include an explicit statement of the private landlords' repairing obligation?

The proposals on improving standards require tenants to be aware of their rights and responsibilities, we would therefore welcome the inclusion of an explicit statement of landlords' repairing obligations in all written leases.

Q34 - 38

No further comment.

Q39. Do you have any comments on the possible introduction of a right for tenants with disabilities to carry out adaptations to their homes and how it would operate?

As a member of the Housing Improvement Task Force, SCC agrees with the proposals to give private sector tenants the right to carry out adaptation to their homes to meet particular needs arising from disability. The proposals ensure that disabled people can make best use of the property they lease and therefore widen access to private rented sector for people with disabilities. This proposal was also recommended by the Disability Rights Taskforce which stated that landlords should not be allowed to withhold consent unreasonably for a disabled person making changes to the physical features of the premises.

The Department of Work and Pensions is currently consulting on a Draft Disability Discrimination Bill which, as an equal opportunities issue, is a reserved matter. The draft bill includes proposals for specific legislation on disability discrimination and let properties which clearly states that it applies to all UK properties. The proposals include:

- The extension of the DDA 1995 to include provisions to make it unlawful for landlords and management agents to discriminate against a disabled tenant or prospective tenant by failing without justification to comply with the duty to provide reasonable adjustment(s).
- That landlords and management agents must take reasonable steps to change policies practices and procedures that make it unreasonably difficult for a disabled person to take a letting or to enjoy residing at the premises.

These proposals retain the principles of 'reasonableness' which is enshrined in the DDA 1995, though guidance on what is a reasonable adjustment will be required for landlords and management agencies.

Maintaining Houses, Preserving Homes suggests that any adaptations would be at the expense of the tenant, however the Draft Disability Discrimination Bill 2004

suggests that the duty to make reasonable adjustments lies with the person leasing the property – not the tenant. We would therefore ask the Scottish Executive to liaise with colleagues at Westminster and provide further clarity over the legal position if the Disability Discrimination Bill is passed.

Q40. Is it sensible to consider extending the national registration scheme for private landlords or will this place too great a regulatory burden on landlords?

The SCC raised concerns when the national registration scheme for private landlords was introduced at Stage 3 of the Anti-Social Behaviour Bill. In line with the findings of the Housing Improvement Task Force, we argued that the scheme should be rejected on the grounds of resource implications and the ability of local authorities to cope with the potential scale of the enforcement task, particularly in large urban authorities or those with high student populations. It is the opinion of the SCC that compulsory registration is detrimental to consumers as it:

- reduces the supply of rented accommodation as small landlords may be discouraged from entering the rental property market and;
- increase the costs of rented properties, as any cost to landlords is likely to be passed on directly to their tenants.

Any extension of the scheme would exacerbate this situation and be of further consumer detriment.

From our experience as a member of the advisory group to Communities Scotland's Private Landlord Accreditation Scheme, we feel that it would be premature to legislate further on this area without first providing an opportunity for the private rented sector to raise standards on a voluntary basis.

Further, we are aware that there is already confusion amongst pilot Landlord Accreditation Scheme areas as to how the scheme will operate when registration comes into force, a further regulatory burden would complicate this situation even more.

Q41. If the registration scheme is to be strengthened should this be on the basis of the 'certification' approach set out?

As discussed in our response to Q40, we are not in favour of any increased regulatory burden on private landlords. If such a proposal was implemented we would be keen to ensure that the regulatory impact be as low as possible and a self-certification approach would be a means to reduce the impact. However, the outline of the system in the consultation paper suggests that inspections and investigations would take place following tenants complaints. This relies on:

- the tenant firstly being aware of the scheme, which would require a proactive information strategy not discussed in this consultation paper and;
- the tenant being able to access this complaints mechanism without fear of reprisal. Many private tenancies run for 6-month periods with options to

renew, while landlords may not be in a position to evict tenants within that period, they would be able to remove tenants by refusing to re-negotiate the lease.

Q42. – 43

No further comment.

8. Mobile Homes

Q44. - Q46.

SCC is broadly supportive of the proposals on mobile homes and has no further comment.