

Housing Improvement Task Force

Second Stage

Sub group A

Improvement and maintenance of owner-occupied houses and flats

Final report

Section one - Introduction

Our remit

1. We were asked to look at policy options and make policy recommendations to address the issues raised in the first report of the Housing Improvement Task Force relating to the improvement and maintenance of owner-occupied houses and flats including common repairs and maintenance. Specifically we were asked to consider policy options designed to:

- Provide better incentives and reduce barriers and to encourage owners to maintain their homes
- Improve the advice and support services available to owners in respect of repair and maintenance, including their rights and obligations
- Improve the effectiveness of local authority strategic planning and intervention to promote housing quality including the introduction of the Index of Housing Quality
- Modernise the Tolerable Standard and the range of statutory powers (including grant giving powers) available to local authorities to intervene to address disrepair and housing quality failures, including problems associated with empty properties
- Improve the effectiveness of the law of the tenement and the management of common and shared obligations in housing

2. In undertaking this work, we were also asked to bear in mind the equalities issues that had been identified in the First Report of Task Force and also rural/urban variations within Scotland.

Our approach

3. The sub-group has met on seven occasions and considered a range of papers touching on each of these issues. It was also able to draw on the results of the consultation that was carried out on the first stage report and to take account of the discussion of two workshops organised by Communities Scotland which involved a much wider group of interested parties. The Scottish Executive has also commissioned some further research and consultancy on behalf of the sub-group including work on the options for developing a “Scottish Housing Quality Standard”, Modern Title Deeds and Taxation and Benefit incentives for owners.

4. Consistent with the decisions of the Task Force at its meeting in September, the details of this report will be discussed with equalities groups during December.

Key themes

5. In exploring our remit and, in particular, the linkages between the different specific topics, we have identified a number of key themes that underpin the broad approach of the sub group.

6. The first of these themes is the need for a greater awareness on the part of owners of their responsibility for repair and maintenance of their property and for them to see this as integral and essential to ownership. The Task Force took the view early on that the primary responsibility for the maintenance of houses in the private sector lies with the owner. Whilst few would argue with this as a general proposition, in reality many owners see repair and maintenance as a relatively low priority.

7. The Task Force's first report confirmed that owners take an essentially re-active approach to maintenance. They fix what needs fixed when it becomes obvious that something has gone wrong. By that time the problem may be relatively serious especially if it has been hidden for some time. They are more likely to spend money at particular points in the ownership and family life cycle and in particular at the point at which a property is purchased. And they are more likely to spend money on internal improvements and decorations rather than on the external fabric. Few owners make any regular savings towards the cost of future repairs or undertake regular inspections of their homes to identify repair problems that may be developing.

8. Part of the explanation for this lies in the problems owners have in accessing good information on the repair needs of their home or how to respond to particular problems. Perceived problems with identifying reliable contractors and ensuring that work is carried out to a satisfactory standard may also be a factor. The main problem, however, is that many owners do not consider regular maintenance as a priority.

9. A culture change to a more engaged and pro-active approach to maintenance will not be achieved over night and it will not happen in isolation. A second key theme arising from this is that the process of culture change on the part of owners needs to be reinforced by changes in the market and, in particular, in the buying and selling process. At present, both owners and potential house buyers see house prices increasing in real terms year after year and the pre-occupation is with moving up the property ladder. Owners need to see an advantage to regular maintenance. The best place to deliver this advantage in a market driven system is at the point at which houses are bought and sold. In short, they need to know what they are buying and what condition the property is in. There needs to be encouragement to sellers to make sure houses are in good condition before they go on the market or adjust their prices accordingly. These issues are addressed more fully by sub group B but are also reflected in the work of our sub group and in particular in our thinking on local authority powers.

10. One of the key parts of the culture change is a realisation that, in many situations, owners need to co-operate to ensure the necessary work is undertaken. This is particularly true in Scotland given that many owners live in flats. Legislation and policy needs to facilitate, encourage and, in some cases require this. We have looked in detail at common repairs and maintenance and what can be done to support owners in making the existing arrangements more effective.

11. In our consideration of issues around financial assistance to private sector owners we have recognised that the desired culture change, the breadth of other calls on public resources and the underlying principal that responsibility lies with the owners requires that financial support is limited to cases where there is genuine need. It is both impractical and undesirable to look for a return to the approach of the early 1980s with grants of up to 90% for some works and a widespread expectation on the part of many tenement owners in particular that public money and direct intervention would solve their problems even if they did not. Public funding is inevitably limited and there can be no justification for indiscriminate assistance to owners who are often increasing their wealth through ownership of an appreciating asset. Nor does it make sense for the public purse to help with repairs and improvements if there is a subsequent failure to maintain the properties in good condition.

12. Linked to this is recognition that assistance to private owners needs to be provided in new and different ways. Too often in the past assistance has been seen in terms of grants but advice, practical support and various forms of loans also have a role to play whilst recognising that targeted grant aid can be appropriate when this is the best and most effective solution.

13. In such an environment the role of local authorities to facilitate, encourage and, where necessary, require owners to carry out the necessary works becomes an essential part of the equation.

14. In looking at the role of local councils we have come to a number of clear understandings of the weaknesses and problems that need to be addressed. These are:

- Much of the existing statutory powers are out of date and do not address the range of housing quality failures that now exist. They were, for the most part developed over 30 years ago and have changed little whilst private sector housing has undergone a dramatic transformation, in terms of the numbers of households it serves, the types of houses they live in and the patterns of disrepair they suffer from. Public attitudes and expectations have also changed significantly.
- The number of homes failing the tolerable standard as it was formulated in 1969 has fallen dramatically. As was made clear in the Task Force first report, this represents a major success of public policy and is a demonstration of what can be achieved with good targeting and the appropriate tools. But a significant number of homes still fail the standard, on top of this, public attitudes and expectations have changed. Thirty years on the standard no longer targets adequately all housing in the worst condition.
- Many local authorities face problems developing effective strategies for engaging with the private housing market. With the decline of slum clearance activity they face problems quantifying and analysing the more complicated patterns of housing quality failures. They have no benchmarks against which to measure progress and only limited guidance as to how to go about developing a policy approach.
- And local authorities need better and more relevant tools for tackling today's problems. The current area-based powers are cumbersome, inflexible procedurally and too limited in the scope of problems they address. The powers in respect of enforcement and re-charging owners are inconsistent and too narrow, limiting the ability of local authorities to

support owners seeking to carry out works against those who, for what ever reason, seek to prevent it.

- Finally, too often the role of local authorities is seen as a stand-alone, last resort, intervention. The philosophy that underpins it derives from the nineteenth century focus on “insanitary” housing and a conception of the role of local authorities as doing things to, rather than with or in support of owners. The links between the statutory powers and the civil law obligations on owners and civil processes are poorly developed.

15. Local authorities need to engage more in the private sector, deliver services in a way that supports owners and influences the operation of the market rather than acts for owners or substitutes for market signals. In doing so problems of inequality and exclusion that are reinforced by the market and established practices need to be challenged and effective mechanisms found to support the large number of low-income households now living in owner occupation.

16. To achieve this local authorities need wider and more flexible powers than at present, but must avoid becoming the “policemen” of the private sector. This will require a different approach within local authorities than in the past when the priority was very much to eliminate the slum housing inherited from the nineteenth century. A more strategic and more enabling approach is now required. To underpin this the whole public sector policy framework needs to be clear about the targets and standards it is setting and how these are to be achieved.

17. In summary our objective has been to create a policy framework that will promote the improvement of the condition of private sector housing by providing:

- support and encourage owners to take responsibility for the maintenance of their homes;
- assistance for those for whom this is difficult;
- direct intervention such that individual owners can reasonably expect that failure on their part will give rise to effective enforcement; and,
- ensuring that where the market fails, taking action to address the problem.

The structure of the report

18. In setting out the results of our discussions we have split our policy analysis and associated recommendations into seven main sections as follows:

- **Section 2 Setting standards-** sets out our views and recommendations on how the tolerable standard should be modernised and on the development of a Scottish Housing Quality Standard.
- **Section 3 Developing the strategic planning system-** details our view on how the local housing strategy system should be developed to support the process of reducing the number of homes that fail the tolerable standard and of improving housing quality including the setting of national and local targets.
- **Section 4 Local authority powers-** sets out our recommendation on improving the powers available to local authorities for tackling individual houses that fail the tolerable standard or suffering from disrepair. We also make recommendations for a new and comprehensive area based power for tackling poor quality housing.

- **Section 5 Local authority assistance to private owners-** sets out our recommendations for developing a wider and better targeted scheme of assistance to support and encourage owners in maintaining their houses.
- **Section 6 Common repairs and maintenance-** details the results of our consideration of the draft Tenement (Scotland) Bill and how this should be developed to address the weaknesses in the current legal framework for common and shared obligations in housing. We also make recommendations in respect of the role of local authorities in supporting owners with in meeting their obligations.
- **Section 7 The building industry-** sets out our view on what approach should be taken to recent developments in the regulation and accreditation of the building industry
- **Section 8 Tax and benefit incentives-** sets out the results of our consideration of the options for using the tax and benefits system to encourage owners to maintain, repair and improve their homes.

Section two - Setting standards

Key objectives and principles

19. Appropriate and measurable standards form a critical part of the policy framework for improving the quality of private sector housing. Properly defined they will provide both the basis of targeting action and for measuring progress in improving housing quality. To achieve this they must:

- set appropriate bench marks

The benchmarks should be challenging and achievable as well as being consistent with the policy objectives the standard is aimed at achieving.

- be measurable

Standards should be measurable in a way that is both meaningful as a measure of quality as it is experienced by occupants and consistent, that is the same measure can be assessed consistently across house types and locations

- be effective in identifying and setting priorities for intervention

Whilst a standard will not in itself determine all appropriate investment options they should be structured in such a way as to provide a clear indication of the types of responses that are required to address any particular failure.

20. Critically they should be subject to clear targets against which progress can be measured and linked to effective tools for promoting change. Section 3 of this report considers the issues of targets in the context of the strategic planning process. Our views on the tools needed to achieve the standards set out in this section are discussed in section 4.

Background

21. For the past 33 years the principal measure of housing quality in Scotland has been the Tolerable Standard. Introduced in the Housing (Scotland) Act 1969, it is based on the recommendations made in the 1967 Cullingworth Committee report “Scotland’s Older Houses”. Other than the incorporation of the “standard amenities” by the Housing (Scotland) Act 2001 (the 2001 Act), it has remained largely unchanged since 1969.

22. The Tolerable Standard was a replacement for the previous concept of houses which were classified as “unfit for human habitation” and was intended to be more objective. It is effectively a “condemnatory” standard, i.e. it sets a base line below which houses should not be allowed to continue in occupation. Owners of houses which are assessed as falling below the tolerable standard can, under the existing arrangements, be subject to various compulsory powers.

23. The Cullingworth Committee also referred to the need for a “satisfactory standard” i.e. an aspirational standard which sets a quality target for all houses towards which policy should be directed over the longer term. In recent years, there has been growing interest in standards of this type, particularly in relation to the social rented sector. For example, the “Decency Standard” has been launched in England with the objective that all public rented houses should meet this standard within 10 years. The National Assembly for Wales has also launched a Welsh Housing Standard. In Scotland, the Scottish Executive went out to consultation on proposals for a cross tenure “Index of Housing Quality” in December 2000.

The tolerable standard

24. The first report of the Task Force argued that “Whilst the concept of a base-line standard as a trigger for the use of statutory powers remains useful, there is a need to re-assess the tolerable standard in order to address existing patterns of housing quality failure and, therefore, reflect 21st Century thinking on what should be a base line, condemnatory, standard which can be used in a consistent way throughout Scotland.”

25. The standard, its contents and operation also has to be effective in the very different housing market that has developed since the late 1960’s. The private sector as a whole is now much larger in both absolute and relative terms (70% as compared with 50% of the stock) and within the private sector, the private rented sector has declined in size whereas the owner-occupied sector has increased. The right to buy has also resulted in a wide range of “non-traditional” housing types built in the public sector, moving into owner occupation. The result of these changes is that whereas in the late 1960s houses assessed as “unfit” in the private sector were likely to be occupied by tenants; today, below tolerable standard houses are more likely to be in owner-occupation.

26. The range and types of households in owner occupation has also changed. Evidence considered by the Task Force in preparing its first report demonstrated that over a third of all the poorest households in Scotland are now owners with many more older people and single person households now living in the sector. Revisions to the tolerable standard and possible action to be upgrade below standard houses need to be seen in this context.

27. In re-examining the tolerable standard we started by considering its key operational features. The tolerable standard is intended to identify those elements of a building's construction, including the provision of amenities that are fundamental to its functioning as a home. Against each of these the standard describes a desired level of performance below which a building would, on that single element, be in a condition unsuitable for continued occupation. In operation it is:

- condemnatory in nature;
- operates on a simple pass/fail basis; and,
- provides a trigger for statutory action on the part of local authorities.

28. In the context of the housing conditions of the time this approach allowed tight targeting of action against the very worst housing conditions in an environment where many homes were in extremely poor condition. In the changed conditions of the early 21st century it is important to ask if this approach is still valid. Could such a standard address modern housing condition problems?

29. In looking again at these issues we acknowledge that housing conditions have improved dramatically since the standard was introduced. Many of the key failings that it was designed to tackle, such as the lack of basic amenities and the provision of hot and cold water for example have been largely (though not wholly) eradicated. But the standard also addresses a range of failures that could arise in any property even those built to modern standards. Rising and penetrating dampness, structural instability, the failure of foul and surface drainage for example, or inadequacies in respect of heating, lighting and ventilation are all problems that could conceivably occur in any house including where maintenance has been neglected or external factors like subsidence have had an impact.

30. In addition, we are of the view that the concept of a condemnatory standard remains useful. If the public sector is to intervene in a largely private market the basis for doing so has to be rooted firmly in the public interest. As housing conditions have improved so have expectations of the levels of comfort that a house should provide. In this context it is important to ensure that public policy and direct intervention in particular remains sharply focused. A condemnatory Tolerable Standard, properly targeting the highest priority and highest risk housing quality failures remains an effective and transparent way of achieving this.

31. The pass/fail nature of the standard is also an important feature. To operate effectively on this basis every element of the standard has to deal with some fundamental aspect of the fitness of a house for occupation. Such an approach supports the targeted condemnatory nature of the standard and assists in ensuring that it addresses the worst housing conditions. However, whereas in the past, a house that failed the tolerable standard usually required comprehensive rehabilitation or demolition, the effect of the changes proposed below may point to more targeted action directed at rectifying specific failures.

32. Finally we took the view that any standard that defines the worst conditions and identifies them as the highest priorities for action should also carry with it effective mechanisms for ensuring that those conditions are addressed. Failure of the standard as a trigger for statutory intervention remains necessary though the nature of the interventions, the powers available to local authorities, and the types of interventions that are appropriate in respect of any particular failure, need to be reviewed to ensure that they fit with the broader objectives for policy in this area. These matters are addressed in section 4 of this report.

Options for developing the Tolerable Standard

33. Currently, a house meets the tolerable standard if it:

- is structurally stable;
- is substantially free from rising or penetrating damp;
- has satisfactory provision for natural and artificial lighting, for ventilation and for heating;
- has an adequate piped supply of wholesome water available within the house;
- has a sink provided with a satisfactory supply of both hot and cold water within the house;
- has a water closet available for the exclusive use of the occupants of the house and suitably located within the house;
- has a fixed bath or shower and a wash hand basin, each provided with a satisfactory supply of both hot and cold water suitably located within the house;
- has an effective system for the drainage and disposal of foul and surface water;
- has satisfactory facilities for the cooking of food within the house;
- has satisfactory access to all external doors and outbuildings.

34. There have been a number of suggestions made for changes that should be made to this standard, for example, in responses to the consultation that preceded the introduction of the Housing (Scotland) Bill 2001 and in the debates on the Bill itself in Parliament. We have

taken account of these views and considered how the various suggestions fit with the purpose and approach of the standard described in paragraphs 24 to 32. Our views are set out below.

Interpreting the standard

35. The Task Force's first report recognised that the scope for variation in the interpretation of the tolerable standard has created problems in producing accurate estimates of the number of homes that fall below it. Variations in interpretation across and sometimes with local authorities will also weaken the effectiveness of the standard in setting a minimum level of acceptability that is consistent across Scotland. We, therefore, recommend that the Scottish Executive should ensure that detailed and authoritative guidance is prepared in consultation with representatives of local authorities and other relevant housing and professional interests. The guidance should cover all aspects of the interpretation and operation of the standard. It should be closely linked to the Scottish House Condition Survey and advice on local house condition surveys so that these tools can be used to produce agreed estimates of houses failing the standard.

Thermal efficiency

36. One of the major changes in expectations in respect of the performance of a house over the past thirty years has been in the respect of thermal efficiency. It is now generally agreed that some basic thermal insulation is essential to the functioning of a building as a home. Given this it is clearly appropriate that the Tolerable Standard should require a minimum level of performance.

37. There are, however, considerable practical problems in how the standard should be specified and how performance is measured. Three broad approaches are available as follows:

- establish, within the standard, a specific level of overall energy efficiency performance for the house as a whole by reference to one of the established technical measures such as the National Home Energy Rating (NHER) or Standard Assessment Package (SAP);
- specify a minimum level of thermal efficiency for specified elements based on its "U value". That is the rate at which heat is transmitted through the fabric. The specific elements would include roofs, ceilings (in flats), floor, external walls, windows and doors; or,
- use a qualified or descriptive performance indicator within the standard and provide detailed guidance on interpretation. For example that a property should be "reasonably" energy efficient or "insulated to a basic standard" or be "capable of being heated to an acceptable temperature at a reasonable cost".

38. The technical issues in respect of each of these measures are discussed in annex one to this report. Having considered the practical implications of each of the options our conclusion, is that in the interests of flexibility, robust and practical approach will be best achieved through the inclusion of a qualified statement to the effect that a house should

provide “a basic level of thermal insulation”. The interpretation of such a statement should be addressed in detailed guidance and further thought needs to be given to this since the precise measure used can have a significant impact on the numbers failing the standard and as a result, the capacity of the standard to target the very worst properties. The guidance will need to identify the precise steps that local authorities should take to identify houses that fall below the standard. Such guidance should also assist in indicating the types of remedial measures that could be used and in developing technical solutions for those building types that are most difficult to improve.

Rising and penetrating dampness

39. The test contained in the present standard, that a property should be “substantially free from rising and penetrating dampness” has been interpreted fairly flexibly in different contexts.

40. In our view the well demonstrated health impacts of dampness warrant a more stringent approach than has been applied in the past. Options proposed for developing the standard in this respect have included requiring that a house should be “free” from dampness or “free from dampness that is prejudicial to health”. Whilst on the face of it these options could be attractive, however, they have a number of disadvantages. Linking the standard to the health of the occupants introduces a new need for definition and variation around health impacts and may mean that dampness at levels that may not impact on health but do impact on comfort and utility in an unacceptable way would not result in failure. The option of requiring that a house with any dampness at all should fail would be problematic given the practical difficulty in achieving such a standard and the fact that it could lead to inappropriate statutory action in relation to very low levels of dampness.

41. Our view is that the existing wording in the standard is adequate but that the interpretation applied to it should be formalised through guidance and should reflect modern expectations in respect of the presence of dampness. So far as rising damp is concerned we believe that a house should be, so far as is practicable, free from rising dampness. In respect of penetrating dampness the guidance should ensure that any occurrence likely to materially impact on the comfort or health of occupants or that could result in further physical damage to the property should be grounds for failure.

Condensation and mould growth

42. The occurrence of both mould and condensation is a problem in many Scottish homes. The causes of the problem in any particular house or at any specific location within a house will vary from case to case. We are clear that significant mould and condensation is normally associated with physical deficiencies in the property rather than the result of lifestyle or use.

43. Condensation and mould growth will occur as a symptom of deficiencies in the heating, ventilation or insulation of the property. We have made recommendations in relation to thermal efficiency and the tolerable standard already includes a requirement for satisfactory provision for heating and ventilation. On this basis we have taken the view that including condensation and mould growth would not add to the effectiveness of the standard and would be inappropriate. However, the presence of moderate or severe condensation should be taken as an indicator of a potential failure in relation to insulation, heating and ventilation and guidance should reflect this.

Electrical Wiring

44. There is no reference to electrical wiring or insulation in the existing tolerable standard. But it is clear that any substantial deficiency in the wiring and sockets could both impact adversely in the safety of occupants and the habitability of the house. We, therefore, recommend the standard should be extended so that the installations for the supply, distribution and use of electrical power should be adequate and safe in use. The definition of “adequate” and “safe in use” should be dealt with in guidance.

Water quality

45. The existing tolerable standard already includes a requirement that a house should have an “adequate piped supply of wholesome water”. In practice the interpretation of this element has focused on the quality of private water supplies in rural areas. The standard has not generally been used to address the presence of lead in drinking water for example and in this context approaches to the definition of “wholesome” have been inconsistent.

46. The Water Supply (Water Quality) (Scotland) Regulations 1990 (and the revised 2001 regulations due to come into force at the end of 2003) provide a clear and authoritative definition of “wholesome”. These regulations set detailed standards for water quality and in particular make specific provision in respect of lead content. They are, however, regulations that apply to the quality of water as it leaves the public supply system, that is at the point at which the supply enters the curtilage of a house rather than as it arrives for use by the occupants at the tap.

47. The well-documented health risk arising from lead in the water supply are sufficient to justify the view that a house should fail the standard where the water supply contains lead in excess of the limits set for the public water supply system. Guidance should be developed to support this, linking the definition of “wholesome” to the water quality regulations in force for the public supply system.

Radon gas

48. The presence of high radon gas emissions represents a significant risk to the long-term health of occupants. Whilst it is only likely to occur in certain areas of the country (the gas is associated with particular geological features) where it does occur it represents a real threat to the health of the occupants.

49. The technical solution, to protect against the build up of the gas, is to install sub floor ventilation systems to prevent the gas building up and entering the house. Given this there is no need to include radon in the standard specifically, the matter should be addressed through guidance in the way adequate ventilation is interpreted.

Serious disrepair

50. It has sometimes been suggested that “serious disrepair” should in itself be a reason for classifying a house as below tolerable standard. There is no current statutory definition of serious disrepair and although serious repair defects need to be tackled they arise primarily from a lack of maintenance rather than basic flaws in the property itself.

51. Properties in serious disrepair may be unfit for occupation but this will be as a result of more specific failures, like water ingress, structural instability or inadequate services that are addressed specifically within the standard as it stands. On this basis we are of the view that including the term within the standard would introduce further significant definitional problems without adding to the range of problems the standard is intended to address.

Estimated impact of our proposed changes

52. Communities Scotland have re-analysed the results of the 1996 Scottish House Condition Survey at our request to provide an estimate of the likely impact of the proposed changes on the number of houses falling below the tolerable standard. Some 21,000 houses were estimated to fall below the tolerable standard as it was defined in 1996. Communities Scotland estimates for each of the proposed new elements in the revised standard are set out in the table below.

Table 1 - Total numbers (000s) of dwellings failing the proposed new elements for the Tolerable Standard

Condition	Private	Public	Total
Rising Damp	37	15	52
Penetrating Damp	2	0	2
Poor Thermal Insulation (NHER 0,1 or 2)	208	140	348
Obsolete or Dangerous Electrics	21	8	29
Lead in water supply	116	19	134

Source: 1996 Scottish House Condition Survey

53. On the basis of these figures it is likely that the number of houses failing the tolerable standard will rise significantly as a result of the changes we propose. However, it is not possible, at this stage, to be precise about what the actual number may be for the following reasons:

- There is a degree of overlap so that some houses will fail on more than items and some will already be classified as below standard for other reasons;
- The biggest increase results from the inclusion of houses with poor thermal insulation but this is only measurable from the 1996 Scottish House Condition Survey using NHER scores and as we have already noted NHER can only be regarded as a proxy for poor thermal insulation. Whilst many of the homes with low NHER ratings will have very poor thermal insulation by no means all of them will necessarily fall below the tolerable standard;
- The Warm Deal and Central Heating programmes and other measures to tackle fuel poverty may have had a significant impact on these figures over the past 6 years together with improvements to remove lead pipes and other remedial works. The full impact of our proposed changes will not be known until the results of the 2002 Scottish House Condition Survey are available.

54. This uncertainty notwithstanding we believe the changes we have recommended will ensure that the Tolerable Standard continues to be an effective tool in ensuring that the homes in the worst condition are improved or, where absolutely necessary, removed from the stock.

The Scottish Housing Quality Standard

55. The first stage report of the Task Force suggested that a cross tenure “aspirational standard” should be developed to provide benchmarks against which action to promote and improve housing quality can be measured. It pointed out that the Scottish Executive consultation on a proposed Index of Housing Quality had demonstrated strong support for developing a standard which could be used for this purpose.

56. We have sought to develop this idea further taking account of the debate on the need for a housing standard for social housing in Scotland and research commissioned by Communities Scotland, at our request, to help clarify the issues surrounding the content and operation of the proposed standard¹.

57. When announcing the intention to develop a new Scottish Standard for Social Housing, the Minister for Social Justice made it clear that this should be linked to our work on housing standards. We welcome this and we recommend that the term Index of Housing Quality should be dropped and replaced by Scottish Housing Quality Standard.

58. To ensure that this framework of standards is properly linked and operates in a consistent way we also recommend that the proposed Scottish Standard for Social Housing should be that part of the Scottish Housing Quality Standard which is applied to the social housing sector.

59. We envisage that the Scottish Housing Quality Standard should have a number of functions:

- First and foremost it should provide quality measures which could be used to assess and compare the condition of the housing stock in different parts of Scotland and occupied by different types of households and by households in different tenures, i.e. it would be a strategic measure of housing quality;
- Secondly, in the social rented sector the measure should be capable of being used to specify a Social Housing Standard linked to a target date or dates for the achievement of this Standard;
- Thirdly, in the private sector we consider that the measure should be used by the Scottish Executive and local authorities to help define objectives for intervention. These objectives will not necessarily be hard and fast targets to be achieved by the specified date since, as we have indicated on a number of occasions, the primary responsibility for the condition of private sector housing must lie with the owners concerned. But the Scottish Housing Quality Standard should be capable of being used to provide

1. PROPOSED HOUSING QUALITY STANDARD-Development of Options for Assessing Housing against Defined Quality Criteria, Scottish Executive March 2003

benchmarks against which progress can be measured and in some cases the Standard will provide clear targets which might be linked to specific programmes or initiatives, for example the Fuel Poverty Strategy.

60. It follows from this and our conclusions on the tolerable standard that we do not think that the Scottish Housing Quality Standard should be linked to the use of compulsory powers for closure, demolition or improvement or as the basis for a standard which houses in receipt of grant or loan assistance (see Section 5) would be expected to achieve. We would, however, expect local authorities to have the powers to provide grant or loan assistance to help rectify defects identified through the Standard where this is consistent with their wider housing strategies and objectives.

61. We do not envisage, therefore, in the private sector, that the Scottish Housing Quality Standard would be used to develop a summary pass/fail test which could be applied to any particular property. For each relevant part of the Quality Standard it should be possible to assess the percentage of houses which fall above or below the specified thresholds and the extent to which any particular part of the stock (by area or household type for example) meets the overall standard. The consultants have also suggested that it would be possible to develop a points system to give overall scores as a measure of relative quality across the stock.

The contents of the Quality Standard

62. In developing our views on the contents of the standard we have taken account of the results of the research commissioned by Communities Scotland. Whilst that research has provided a clear steer on how such a standard could be structured and operated we do not believe that it is appropriate, at this stage to attempt to define the standard in detail. Rather, this should be done in consultation with local authorities, the CIH, the RICS and others with an interest and expertise in this area and this applies, in particular, to the proposed Scottish Social Housing Standard. However, to provide an initial indication of the scope of the standard we are of the view that it should measure the extent to which the stock as a whole is:

- free from serious disrepair;
- energy efficient based on a whole house assessment of energy efficiency;
- has adequate kitchens and bathrooms facilities in terms of condition, space and layout;
- provides a reasonable level of security;
- provides a reasonable level of fire safety including smoke and CO detectors;
- does not contain any other risk to the health and safety of occupants either within the dwelling or any common parts;
- provides effective sound insulation within and between dwellings; and,
- be adapted, or capable of being adapted to meet the needs of the residents.

63. Taking these elements as a starting point the consultants have proposed that the standard should be structured around five criteria as follows:

Compliant with tolerable standard. Current performance against the Tolerable Standard is a simple and nominal pass/fail measure and this approach is recommended for retention within the Housing Quality Standard.

Free from serious disrepair. The consultants' suggested that disrepair should be considered in relation to specified building elements e.g. those that threaten the immediate structural

integrity of the building, the wind and the weatherproofing of the building and the health and safety of the occupants. Disrepair is defined as requirement to repair elements influencing the structure of the building or 2 or more of a further list of key building elements.

Energy efficient. Energy efficiency, as opposed to thermal efficiency proposed in the Tolerable Standard, is recognised as a necessary target in any Housing Quality Standard. Two basic elements comprise energy efficiency, namely: heating and insulation. Combining these two elements two options exist for Housing Quality measurement:

- Single Index or Rating Score for example SAP or NHER scores;
- Individual Attribute assessment, for example the insulation of cavities and loft insulation to 200mm where these are appropriate.

The consultants' are also of the view that the provision of a working whole house heating system should form part of the standard. As a presentation detail this has been included under the heading "Healthy, safe and secure" detailed below.

Modern facilities and services. It is suggested that these should be defined as:

- Kitchen fittings in a good and usable condition
- Bathroom amenities in a good and usable condition
- Kitchens should provide adequate space and safe working layout
- Three bedroom houses or larger should be equipped with a second adequately located WC

Definitions of condition, space standards and storage provision have been developed through the Scottish House Condition Survey and should be used to form the basis of further consultation on this element.

Healthy, safe and secure. As an initial specification of this element the consultants suggest the following:

- Suitably located mains powered, linked smoke alarm (with sealed battery backup) on each floor
- Secure window locks on all lower floors and accessible upper floors
- Secure front and rear access doors
- Emergency lighting provided in common areas
- Door entry system security provided on all enclosed common areas
- Secure rear access door to enclosed common areas
- Full house central heating system

Disability adaptation

64. The consultants are of the view that it would not be appropriate to include the extent to which houses are adapted to meet particular or special needs on the grounds that they relate to changing usage of the stock.

65. We think that this will, however, require further consideration. We recognise that it would not necessarily be appropriate to make judgements on the quality of the stock based on the extent to which it meets any particular standard for accessibility. Many houses, upper floor flats for example, will never be capable of meeting these standard yet will provide perfectly acceptable accommodation for most households.

66. It is important, nevertheless, that the standard should be capable of being used as a strategic planning tool to assess the potential of the stock to meet the requirements of those with particular needs. To achieve this we believe that the best approach will be for the standard to assess the extent to which any individual house meets barrier free standards (and on an area basis the number of such houses overall) and should measure the presence of features that could render it suitable to be adapted to particular needs.

67. Such features could include the presence of a ground floor WC or bathroom, the extent to which the access to the main door is level, or in the case of upper floor flats the presence of a suitable lift, or the capacity of the bathroom, WC and kitchen to provide space for a wheelchair for example. How this approach could be developed should be subject to further consideration. The objective should be to ensure that the Scottish Housing Quality Standard is capable of providing meaningful information on individual houses and the stock as a whole on the extent to which it is capable of meeting the needs of those with disabilities.

68. Considerable further work will be needed to develop the proposed contents of the standard and the necessary definitions and benchmarks. The research commissioned by Communities Scotland and published as a supporting document with this provides an outline of the proposed standard together with a Housing Quality Checklist. We believe that these should form the basis for further consultation by the Scottish Executive. In particular we would want to see further detailed attention given to the practical issues associated with defining the specific elements; the approach that should be taken to measuring and addressing problems of noise transference between dwellings; the extent to which the immediate physical environment should form part of the standard and how the standard should be used to address issues of adaptation and accessibility across the stock.

Summary of conclusions and recommendations

69. The tolerable standard should be retained as a condemnatory, pass/fail standard and as a trigger for statutory action. To ensure that it works consistently as a national standard The Scottish Executive should provide authoritative and detailed operational guidance. The standard itself should be extended to include thermal insulation and electrical wiring whilst the guidance should ensure that a higher standard is applied in respect of dampness and water quality.

70. The Scottish Executive should also introduce a Scottish Housing Quality Standard to act as a benchmark against which all housing can be measured. The standard should cover repair condition, energy efficiency, security, accessibility and adaptability, and the quality of kitchens and bathrooms.

In particular we recommend that:

- *The Scottish Executive should provide authoritative and detailed guidance on the operation and interpretation of the revised tolerable standard. In preparing this guidance Ministers should establish an advisory group to examine the key technical and operational issues involved.*
- *The existing wording in the standard in respect of rising and penetrating dampness should be retained. However, new guidance should be prepared to the effect that in respect of rising dampness the expectation is that a house should be as nearly free of rising dampness as is reasonably possible. In respect of penetrating dampness a house should fail the standard where the occurrence is of such an extent and severity that it would clearly and materially impact on the occupants health, enjoyment of the house or is likely to result in the deterioration of fabric of the building.*
- *The standard should be extended to include a qualified statement on thermal insulation to the effect that a house must have basic provision of thermal insulation. The interpretation of this should be addressed in detailed guidance.*
- *The standard should not be extended to include condensation or mould growth but their presence should be dealt with specifically within guidance to the effect that the moderate or severe occurrence of either within the dwelling should normally be regarded as an indicator of failure in respect of thermal insulation, heating or ventilation as appropriate.*
- *The standard should be extended to the effect that the installations for the supply, distribution and use of electrical power must be adequate and safe in use. The definition of “adequate” and “safe in use” should be dealt with in guidance.*
- *In respect of water quality guidance should be developed such that the interpretation of “wholesome” should be that the supply complies with the public water supply quality requirements in force. In addition, in respect of lead, any lead in the water supply pipe should be grounds for failure.*
- *The Scottish Executive should introduce a cross tenure Scottish Housing Quality Standard as a benchmark of quality against which the condition of the whole stock can be measured.*
- *The standard should include the elements and operate broadly in the way set out in paragraphs 55 to 70 of this report. The detailed contents of the standard should be agreed in consultation with key housing interests.*

Section three - Developing the strategic planning system

Key objectives and principles

71. Improving housing quality should be one of the key objectives of housing policy at both national and local level. To achieve this the modernised framework of standards already set out in section 2 of this report needs to be supported by a housing planning framework that addresses housing quality issues directly and effectively. In this context we believe that strategic planning should:

- be comprehensive in scope;
- be clear as to its purpose and objectives;
- set and monitor appropriate targets both locally and nationally;
- be responsive to local needs, conditions and priorities; and,
- be linked to effective delivery mechanisms.

72. In respect of public sector housing achieving such an approach is relatively straightforward. Improvements in quality can be achieved directly through operational decisions relating to housing management and investment. In the private sector a more sophisticated approach is needed to ensure that owners are supported and encouraged to invest in their homes. Clear national priorities and good local housing strategies will be critical in delivering the improvements that are needed.

Background

73. The 2001 Act introduced wide ranging changes to the system of housing planning that has been in place since the mid 1970s. In particular the act creates a duty on local authorities to prepare “Local Housing Strategies” for submission to Scottish Ministers.

74. In addition Section 85 of the Housing (Scotland) Act 1987 (the 1987 Act) places a duty on local authorities to secure that:

“.....all houses in their district that do not meet the tolerable standard are closed, demolished or brought up to the standard within such a period as is reasonable in all the circumstances”

and goes on to require that local authorities should survey their area from time to time to identify those houses that do not meet the standard in order that appropriate action can be taken.

75. There is, however, no requirement on local authorities to plan or act strategically in respect of disrepair or to develop services to support owners in maintaining their houses. There is no specific provision or encouragement of authorities to go beyond a simply reactive approach and the system contains no targets for improvements in housing quality.

76. The requirement for councils to prepare Local Housing Strategies is, however, intended to ensure the development of a more comprehensive approach to local housing planning than that allowed for by the 1987 Acts provisions. To achieve this the act specifies a wide range of factors that must be assessed in the preparation of such a strategy including “the nature and condition of the housing stock”².

77. Section 89 (5) of the Housing (Scotland) Act 2001 sets out the “purpose” to which Local Housing Strategies should be addressed. In particular it defines the purpose as

“ ...the provision ..of housing and related services in a manner which-
is economic, efficient and effective, and

² Housing Scotland) Act 2001 S. 89 (2)a

ensures, so far as reasonably practicable, that persons do not live in fuel poverty.”

78. The Scottish Executive has also published detailed guidance for local authorities on how they should go about assessing the needs of their area, carry out option appraisals on identified strategies for meeting those needs and engage with interest groups and stakeholders in preparing the strategy.

79. Experience from the recently completed pilot of the new local housing strategy arrangements has suggested that even where the condition of the private sector could have a significant impact on their own investment programmes, in particular in respect of the condition of former right to buy properties in mixed tenure blocks and areas, the information available to many councils is limited.

80. The problems caused by this lack of information are often compounded by a lack of experience in direct involvement in addressing problems in the private sector as levels of activity to tackle below tolerable standard housing and those in disrepair has declined.

Developing the local housing strategy system

81. The revised tolerable standard and the proposed Scottish Housing Quality Standard needs to be set in the context of a strategic planning framework that gives explicit recognition to the importance of promoting improvements in housing quality in the private sector and provides appropriate guidance to local authorities. This should include targets for improvements in housing quality both at a national and local level.

82. We considered the various duties imposed by the 1987 Act and came to the view that the existing duty in respect of BTS properties set out in Section 85 should be retained. However, the requirement to act in relation to BTS properties only extends to ensuring that action is taken “within such period that is reasonable in all the circumstances”. In the light of the conclusion from the Task Force’s first report that current rates of activity could mean it takes 20 years to eradicate the number of homes that fail the standard as it is currently defined we are also of the view that it would be appropriate that time-scales and targets should be set for the implementation of measures to remove and improve BTS houses.

83. We are of view that the relevant section of the 1987 Act should be amended to require that local authorities publish targets for the reduction in the number of BTS houses in their area. In addition Scottish Ministers should set national targets for the reduction in the number of homes failing the tolerable standard. These targets should be reflected and supported by implementation plans set out in local housing strategies. The guidance on the preparation of local housing strategies should be amended to reflect and support this requirement.

84. Local Housing Strategies will be key documents in identifying the extent of housing quality problems in a local authorities areas and in the process of developing effective strategies to address such problems. In the light of this we also considered the wording of Section 89 (5) of the 2001 Act in setting out the “purpose” to which Local Housing Strategies should be addressed. We are of the view that promoting improvements in housing quality should be a specified objective of local housing strategies and that this section of the act should be amended to reflect this.

85. To support these measures it will also be necessary to ensure that early changes are made to the guidance in respect of Local Housing Strategies to provide Local Authorities with a clear steer as to how these new duties should be approached. In particular Local Authorities will need new guidance on:

- developing setting targets and developing strategies for the eradication of BTS housing;
- the application and interpretation of the Scottish Housing Quality Standard;
- approaches to engaging with owner occupiers, private landlords and other professionals (including surveyors, architects and solicitors involved in house buying and selling);
- developing information strategies and other interventions to encourage owners to improve and maintain their homes;
- planning for the use of the revised statutory powers set out in Section four of this report; and,
- developing and implementing the scheme of assistance detailed in section five.

86. In addition the design of both the national house condition survey and local house condition survey package provided and supported by Communities Scotland should also be developed to allow the stock to be assessed against the revised tolerable standard and the Scottish Housing Quality Standard.

Summary of conclusions and recommendations

87. Based on the analysis set out above we recommend that the statutory framework for local housing strategies should be amended to include the promotion of improvements in housing quality as a specific purpose and to require local authorities to set targets for the reduction in the number of BTS houses in their area. The guidance on local housing strategies should be strengthened to reflect these changes and Scottish Executive should set and monitor national targets for reducing the number of BTS houses and improving housing quality.

In particular we recommend that:

- *Section 85 of the Housing (Scotland) Act 1987 should be amended to the effect that each Local Authority should be required to prepare and publish as part of their local housing strategy a strategy and action plan for action in respect of BTS properties within their area including time-scales for achieving specified reductions in the number properties failing the standard;*
- *Section 89 (5) of the Housing (Scotland) Act 2001 should be amended to include promoting the improvement in housing condition and quality as a specified purpose;*
- *The Scottish Executive should set and monitor national targets for the reduction in the number of below tolerable standard houses and other relevant targets, for example, those linked to the Fuel Poverty Strategy, which might be measured by the Scottish Housing Quality Standard;*
- *The Scottish Executive should ensure that Local Housing Strategy guidance is strengthened to provide clearer direction to local authorities in developing private sector strategies and action plans;*

- *The local housing strategy guidance should also be developed to assist and support local authorities in setting local targets and putting in place strategies for the eradication of BTS housing locally;*
- *The Scottish Executive should ensure that the national house condition survey and the local house condition survey model promoted by Communities Scotland are amended to allow the condition of the stock to be measured against the Scottish Housing Quality Standard.*

Section four - Local authority powers

Key issues and principles

88. The potential impact of poor housing on individuals and households and the consequences of neglect of maintenance and repair for neighbouring owners and communities in general can be substantial. We are clear that where poor housing conditions impacts on other owners or the wider community there is a case for direct intervention.

89. For such intervention to be justified however it is important that it is proportional to the seriousness of the problem being addressed and provides a proper balance between the objectives of public policy and the rights of individual owners.

90. The Task Force's first report argued that the existing framework of statutory powers is inadequate to deal with the range, type and distribution of condition failures evident in Scotland's private housing stock. In modernising these powers we believe it is necessary to ensure that they:

- are properly targeted at the existing pattern of housing defects in both rural and urban areas;
- are flexible enough so that they can continue to be usable as that pattern changes;
- are effective in addressing housing quality failures in individual homes and on an area basis;
- are comprehensive in addressing the full range of factors impacting on housing quality;
- are complementary to, and supportive of, market mechanisms rather than seeking to replace them;
- are capable of addressing market failure or decline effectively where it occurs.
- ensure that the degree of intervention is proportionate to the problem being addressed;
- provide owners with adequate opportunities to carry out works at their own hand; and,
- ensure effective and prudent use of public resources.

91. The framework of powers must also be subject to effective appeals mechanisms and other appropriate checks and balances, including, where appropriate, clear duties on the part of local authorities to inform and involve owners. It should also be supported by an effective system of support and assistance for owners. This last point is addressed in section 5 of this report.

92. Local authorities have to have the information, the resources and the confidence to use the powers available to them. The recommendations we have made in respect of standards and strategic planning including the setting of targets will ensure that local authorities work in a coherent local and national policy framework that is focused on clear and achievable objectives. The remainder of this section sets out our views on how local authority statutory powers should be developed to ensure that those objectives can be achieved.

Background

93. At present the use of statutory notices or enforcement action is only likely to occur on a reactive basis where a problem has become so serious that a clear risk exists to the public or it

is unlikely that the owners will be in a position to deal with the problem themselves. Some authorities (notably Edinburgh) have adopted a more pro-active approach to the use of notices in response to contact from owners having problems in carrying out repairs but this approach is not widespread.

94. Available evidence suggests that one of the main reason for the decline in the use of statutory powers has been the reduction in the resources allocated to tackling private sector housing problems linked to the fact that enforcement action in respect of BTS houses and those in disrepair carry with them a mandatory entitlement to grant on the part of the property owner.

95. In addition, the success of the slum clearance and improvement programmes up to the mid 1980's has removed most of the concentrations of BTS properties that the Housing Action Area procedures, in particular, were designed to address. As a result the number of action areas being declared has fallen significantly over the past 15 years.

96. The Task Force's first report also identified a number of other critical weaknesses with the existing powers available to local authorities. These are that:

- there is no area based power for addressing concentrations of houses in disrepair rather than BTS housing;
- there are no mechanisms for ensuring continuing maintenance of houses or even for ensuring that properties improved with public resources or through statutory action continue to be maintained in the future;
- there are no specific mechanisms for Local Authorities to support owners seeking to enforce common or shared obligations against one or more co-owners;
- in the private rented sector, other than HMO licensing there are no specific powers to address quality failures and no clear mechanisms to support tenants where they face problems of condition or in getting repairs done.

97. In respect of this final point sub group C has identified a number of important points of contact between their work in respect of the tenancy regime and the regulation and accreditation of private landlords and the powers of local authorities that need to be reflected in the approach we take to developing local authority powers. Sub group C has made specific recommendations to the task force on these matters. We have not attempted to cover them in this report.

98. We have also considered the specific role that local authority powers should play in supporting owners with common and shared obligations in overcoming the problems that arise when one or more owner refuses to co-operate with necessary repairs. The specific recommendations relating to the role and powers of local authorities in this respect have been set out in section 6 below dealing with issues of common and shared obligations.

Powers in respect of individual properties

99. The existing framework of powers makes a distinction between properties that fail the tolerable standard (BTS housing) and those properties that are not BTS but are in a condition of disrepair. We believe that whilst there is a need for greater consistency in the way the two sets of powers operate it remains appropriate to make this distinction. In particular to allow a higher level of response for BTS houses.

100. In considering the existing powers we identified four key obstacles to effective action. These are:

- the mandatory link to grant aid. If the primary responsibility for improving conditions in the private sector rests with property owners then a more flexible and targeted approach to resources is required and, more importantly decisions on the use of statutory powers should be based on the extent to which the condition warrants such intervention not predicated on judgements about the availability of public resources;
- the lack of an enforcement option available to require improvements to bring a house up to the tolerable standard other than through acquisition (either voluntarily or through the use of compulsory powers);
- the absence of any effective power to address lower level disrepair and failures of maintenance that are likely to give rise to disrepair problems; and,
- a lack of flexibility in the options available for enforcing notices and recovering costs.

101. We also believe that improved procedures in respect of compliance by owners and better guidance for local authorities on the use of powers will add transparency to the system.

102. These weaknesses aside we are agreed that the existing range of powers in respect of individual BTS properties should be retained. These allow local authorities to require owners to improve houses that fail the tolerable standard or, where improvement is not appropriate to control the occupancy and require the demolition of the house. We believe that they provide a broadly sound framework within which to work. In particular they contain a range of responses to any particular dwelling that fails the standard and allow enforcement to be determined in the light of extent to which it is reasonable for the house to remain in use (in the context of local housing conditions) and what would be a reasonable time within which it should be improved or removed.

103. In respect of properties in disrepair we believe that more change is required. These and other recommendations to strengthen the powers in respect of individual BTS properties are set out below.

Mandatory grants

104. We believe that the mandatory link between notices and grant aid should be removed. This would allow decisions on what conditions warranted intervention to be taken on the basis of the conditions themselves and decisions on to what extent public resources should be used to resolve the problem on the basis of resource specific issues.

105. Owners subject to statutory notices should retain a mandatory right to “assistance” but the level and nature of that assistance should be determined on the basis of the specifics of each owners situation rather than simply on the existence of a given housing quality problem. This may not always be grant aid though that should certainly be an option. Proposals for a revised “scheme of assistance” for owners are set out in section 5 of this report.

Improving BTS properties

106. In considering the enforcement options available in respect of BTS properties subject to improvement orders we have considered the likely impact of our proposed amendments to the tolerable standard and the need for flexibility in response. We are also aware of the fact that whilst considerable progress has been made in reducing the number of BTS houses a significant number remain.

107. In our view, there is a need for local authorities to have the powers to compulsorily carry out work to ensure they are brought up to the tolerable standard. We recognise that creating a statutory power to carry out improvement works represents a considerable extension to the powers of a local authority in this respect. This is particularly so in the light of the proposed changes to the Tolerable Standard set out in this report. Never the less we are of the view that if the process of eradicating BTS properties is to be effective then it is necessary to ensure that local authorities have the widest appropriate range of powers available to them to achieve this.

108. In particular we are concerned to ensure that where individual notices are used to require the improvements of groups of houses, for example in a tenement stair, that it should be possible to ensure that all the necessary works are carried out to all affected properties.

109. Where this involves, for example, works to replace water supplies, improve thermal efficiency or address structural instability this may only be possible by carrying out works to all the properties in such group. At present where one owner refuses to co-operate the only response available would be the acquisition of that property. In many circumstances this may take too long and would not represent an appropriate level of intervention.

110. We are of the view that there is no over riding requirement in this context that owners of BTS houses who fail to carry out improvement works should be removed as owners. We believe that it is no longer appropriate to limit enforcement options to acquisition by compulsory purchase. Though this should remain an option local authorities need to be able to respond more flexibly. They should have the option of carrying out the works in default and recovering the cost from relevant owners in the same way as they can in respect of properties in disrepair.

Enforcing improvements other than those required to meet the tolerable standard

111. A further issue that was raised frequently during our discussions was that relating to the extent to which a local authority should have a power to require works of improvement other than those required to meet the tolerable standard. This issue was commonly raised in connection with the replacement of flat roofs with pitched roofs or the installation of door entry systems. The practical problem seems most frequently to arise in respect of flatted accommodation where an RSL or local authority wishes to carry out such works to its own stock but can not secure the agreement of other owners in a block.

112. In formulating our recommendations we have taken the view that such a power represents a significant imposition on the rights of individual owners and could only be justified where substantial benefits would arise. In this context we have made recommendations for such a power to be available in the proposed new housing renewal area where a comprehensive programme of improvement is in place for the area as whole. Other

than in these circumstances we do not believe that it would be appropriate to make such a power generally available. Where such a power is used the onus should be clearly on the local authority to demonstrate that the proposed improvements represent the most cost effective and practical long term solution to the problem being addressed.

Developing more flexible enforcement options

113. Some residents, particularly the elderly, may for a variety of reasons not wish to face the disruption of carrying out repair or improvement works whereas, as noted in the first report of the Task Force, owners in general are often most likely to be willing to invest at or more immediately after purchase. In the light of this we believe that a “suspensive” option should be available in respect of improvement orders and notices served on individual properties in disrepair.

114. Such a notice would still require the current owner to correct the specified defects but could, at the option of the notice serving authority, be enforced by controlling the occupancy of the dwelling to the effect that new occupants (including any new owner or tenant) would not be able to move into the house until such time as the notice has been complied with.

115. Such a power would allow notice serving authorities to make a judgement on the severity of the defect and the appropriate time scale for its rectification in the light of the health, welfare and other interests of the current occupant/owner, the extent to which it represents a threat to neighbouring owners and land uses and the possible consequences for the occupant in carrying out the work.

116. In particular where a property is occupied by an elderly owner for whom the disruption of major works could have worse health implications than the property condition a suspensive notice would ensure that the owner is aware of the problem, could provide the basis for them to access mandatory assistance if they choose to carry out the works but most importantly will ensure that at the point at which the property is sold or occupancy changes the necessary works are carried out. Where the notice is served in respect of for example a BTS failure arising from a lead service pipe the use of suspensive powers would allow a lower key enforcement option that will, never the less, ensure that the works are carried out in due course.

117. Such an additional power would add flexibility to the range of responses available to local authorities in the light of the proposed extension of the Tolerable Standard and allow a wider range of options to owners of homes subject to notices in responding to notices.

Addressing minor disrepair and maintenance issues

118. In considering the powers available in respect of individual properties we looked at the experience of the City of Edinburgh Council in the use of notices under specific local legislation. Under this legislation the City Council has powers to serve notices without mandatory grant assistance and in respect of a wide range of repair defects including those that arise from a lack of regular maintenance but that could not be described as serious disrepair.

119. We also considered the wording of the notices available under the Civic Government Act and the Housing (Scotland) Act 1987 and agreed that there should be a single housing

notice to address repair related defects. Such a notice should, as at present be available for use in respect of properties in a condition of serious disrepair and those in disrepair where the condition is not serious but if not addressed may result in the building deteriorating into a condition of disrepair or cause damage to adjoining buildings. The power to serve a notice should also be available where through for example want of regular maintenance, a house has defects that would not qualify for action under the existing definitions but which should nevertheless be addressed.

120. Whilst this would provide a single notice serving power capable of addressing the full range of repair defects that may give rise to problems it will be insufficient to ensure that regular maintenance is carried out. To address this we believe that a new power should be created to serve a maintenance order. Such a notice should be available where the authority believes that disrepair has arisen as a result of the failure of owners with common or shared obligations to co-operate in carrying out works and in respect of a property where enforcement action has been required to carry out works.

121. In recognition of the problems that could arise from a lack of maintenance of, for example, walls, fences, un-adopted open space, roads, footpaths and lighting we recommend that this new power should be specified in broad terms to ensure that it can be deployed in respect of both houses and other features of housing areas that have an impact on safety, security and area quality.

122. The effect of the notice should be to require the owner or group of owners of a property to put in place and implement a maintenance plan. The maintenance plan including arrangements for its implementation should be submitted to the authority for approval or approval with amendments. Where appropriate the authority should have the option of requiring owners to appoint a property manager. Where no acceptable maintenance plan is submitted or the plan is not implemented the authority should have the power to prepare and implement such a plan and to recover costs from the relevant owners.

123. In order to ensure that prospective purchasers are aware of the existence of such a plan and how it relates to common and shared property obligations we have also recommended that the maintenance order and associated plan should be registered against the title with the Land Registers.

Notification and compliance

124. At present there is no procedure for notifying compliance with a notice or confirming that work has been completed to an appropriate standard. Whilst this weakness is not having any direct impact on the operation of the existing system it represents a weakness to the extent that notice serving authorities have no effective mechanism by which they will be aware that work has been completed or of ensuring that it meets the appropriate standard. This will be of greater practical importance where suspensive notices are used. In addition, potential new owners of properties that have been subject to notices have no mechanism for re-assuring themselves that the notice has been complied with.

125. In the light of this we believe that it is appropriate to ensure a more effective process of monitoring work that has been carried out following the serving of a notice, to ensure that such work is carried out to a satisfactory standard and to add transparency to the system. We agreed that there should be a formal procedure for notifying the completion of works to the

local authority and for the authority to issue a notice of compliance or take follow up action where it is not satisfied that the work meets the terms of the notice.

Area based powers

126. Currently the only powers available for action on an area basis are those relating to the declaration of Housing Action Areas. An authority can seek to declare a Housing Action Area where it can be demonstrated that at least 50% of the houses in the defined area fail the Tolerable Standard.

127. With the decline in the numbers of houses failing the tolerable standard, and the success in eradicating the worst slum concentrations, the number of locations where this condition is met has fallen dramatically. Few, if any HAAs have been declared in recent years. In addition, because of the more dispersed settlement pattern in rural areas and the often scattered occurrence of BTS housing within it, Action Area powers have been of little use in addressing housing quality problems outside the main urban centres.

128. As has already been noted no powers are available to address concentrations of disrepair or other housing market related problems. Even where large numbers of properties in an area suffer from significant disrepair problems the existing framework of powers requires that they are dealt with on a house by house basis. This can be particularly problematic when there is a need to tackle problems in houses acquired under the right to buy in a specific area linked to renewal programmes in the social rented stock.

129. Where suitable concentrations of BTS properties do exist the available powers, whilst area based do not have an area focus. They relate exclusively to the condition of the houses themselves and do not provide a mechanism for achieving genuine area improvements or addressing housing quality failings that arise from, for example, the condition of open space or the maintenance of un-adopted paths or lighting.

130. In the light of this we believe that a broader area based power is required suitable for addressing housing quality failures including disrepair and BTS housing and areas of market failure and decline in a planned and comprehensive way. For the purpose of this report we have used the term “housing renewal areas” to describe these areas. The remainder of this section sets out our views on how such areas should be defined, the process for declaration and the powers that should be available to secure their improvement.

Defining housing renewal areas

131. In considering the approaches to defining areas that could be designated as housing renewal areas we took the view that it is important to rely on quantifiable measures of housing quality problems whilst ensuring an appropriate degree of flexibility in the range of situations in which the power could be deployed. In particular we are of the view that to be too prescriptive about defining geographical limits or describing the physical, social or land use characteristics could reduce the extent to which such a power could be used in rural areas.

132. Bearing this in mind we are of the view that areas demonstrating the following features should be eligible for creation as housing renewal areas:

- Concentrations of properties that fail the Tolerable Standard

- Concentrations of properties in a condition of serious disrepair
- Concentrations of properties in a condition of disrepair, though not in serious disrepair, but which are likely to deteriorate rapidly or cause material damage to other properties or give rise to market failure if nothing is done to repair them;
- Concentrations of a mix of properties which are BTS, in serious disrepair or in disrepair and likely to deteriorate rapidly;
- Areas where there is evidence of market failure or decline such that if action is not taken there is likely to be a detrimental impact on the stability of the local community or the condition and or quality a significant proportion of the housing stock in the area or of the area as a whole.

133. We are of the view that the “trigger” level that should be regarded as a “concentration” is 50% of the houses in the defined area though we would anticipate some flexibility around this number in respect of any particular designation at the discretion of Scottish Ministers. The use of such discretion may be most appropriate in respect of rural areas.

134. We are also aware that whilst there has been some research around English based examples of market failure further consideration will need to be given to defining this term in the context of the legislation. Whilst it would be appropriate to undertake further consultation on how such a designation could be made in practice we are of the view that the following should be regarded as features of areas showing market failure or decline:

- falling house values;
- low or falling demand in both renting and owner occupation;
- tenure change and in particular the growth of poorly managed private rented accommodations leading to a loss of choice and other adverse impacts on the community;
- the presence of abandoned properties or derelict land;
- poor or declining physical conditions arising from disincentives to invest in repairs and improvements; and,
- closure of local shops and other services.

135. In addition we believe that there should be a strong link between the process of declaring housing renewal areas and local housing strategies. In this context we would expect local authorities to set out in their local housing strategies a clear process for identifying housing renewal areas and provide a strategic context for the declaration of new areas and the improvement of existing ones.

Declaring a housing renewal area

136. The use, or potential use of statutory powers in respect of housing carries the risk of “blight” on the area concerned. This risk is greater where time-scales are over long, intentions and anticipated outcomes are unclear or where information on the likely action by the council or the requirements placed on owners is limited. To minimise this risk housing renewal area designations should be subject to clear time limits and action plans for improvement.

137. In addition, experience in area regeneration elsewhere including in the use of the existing housing action area powers has demonstrated that the process by which areas are

declared can play a significant part in ensuring owner and resident commitment and to building the partnerships that will be necessary for successful implementation.

138. In the light of this we believe that a clear process, including rights of appeal, should be prescribed for the creation of housing renewal areas and whilst the ultimate decision should be a matter for the local authority the Scottish Executive should have a key role in ensuring that the power is used appropriately. Details of our view of how such a process should work are set out in the recommendations at the end of this section but the key features should be:

- The publishing by the local authority of a draft resolution identifying the area covered defined on a map, the reason for the declaration, an outline action plan for improvement of the area including specified time-scales, objectives, outputs and outcomes. The action plan should also include details of proposed works to specific buildings and land.
- Residents and owners within the area should have the opportunity to make objections and other representations on the draft resolution.
- A revised draft resolution and details of consultation responses and other representations should be submitted to the Scottish Executive according to a process similar to that now in force in respect of the declaration of Housing Action Areas. The Executive should have the option to require a hearing in public if they consider that appropriate prior to taking a view of the draft resolution.
- The Scottish Executive should have the option to reject or amend the draft resolution within a specified time scale.

Delivering comprehensive area improvement

139. Ensuring a comprehensive response to area based housing quality problems will require comprehensive powers on the part of the local authority. In setting out a list of what this would encompass (in summary at paragraph 145 and in full at the end of this section) we are clear that we would not expect all these powers to be used in every housing renewal area. The level of the response and the degree of enforcement involved should be set out clearly in the action plan and be determined in the context of the nature and severity of the problems being addressed and the attitudes and responses of individual owners and the community as a whole.

140. As has already been indicated the proposed powers include a power to enforce improvements other than those required to bring a house up to the tolerable standard. In making this proposal we have in mind improvements other than the ordinary degree of “betterment” that is often the result of modern repair solutions to old building elements (the installation of under slate felt for example or other higher standard repairs that may be required by the building regulations). These could include the installation of door entry systems, the replacement of worn out flat roofs with pitched ones or applying high insulation external rendering.

141. In any circumstances where such a power is used the onus should be clearly on the local authority to demonstrate that the proposed solution is required to ensure the future viability of the building and the proposed renewal area as a whole.

142. Most importantly we do not regard the process of area renewal as all one way, where powers are used there should also be a corresponding duty to ensure that the legitimate interests of owners and residents are protected. For this reason we have provided a list of both powers and duties. We believe that rights of appeal at key stages on the part of those affected should also be clearly established.

Appeals and guidance

143. It is important that in all circumstances owners have an effective right of appeal. At present all statutory notices are subject to a right of appeal within a specified time to the Sheriff Court. We believe that this is the appropriate forum for such appeals and all the revised powers in respect of individual properties we have recommended should be subject to such a right.

144. So far as the area-based powers are concerned it would not be appropriate or practical to allow every owner a right of appeal in the process of designation or at all stages of implementation. It is for this reason that we have recommended that The Scottish Executive should have a significant role in determining any such designation and made recommendations to allow for a hearing in public should that be appropriate. We do believe, however, that there is a role of individual rights of appeal in area based actions in respect of, for example, the issuing of accounts to owners or the determination of compliance with required works where this is done voluntarily.

145. We believe that local authorities will use the range of powers we have recommended appropriately and sensitively. However they represent a significant widening of the overall scope for public intervention in private housing. Whilst some local authorities have sustained a level of engagement with the private sector many lack the information, skills and experience that will be necessary to ensure consistent and effective intervention. In the light of this and the importance of a consistent approach nationally we believe that the Scottish Executive should, in consultation with relevant organisations, provide guidance on the use of the revised powers and work to provide information on best practice in this area.

146. We also recognise that, in the use of area based powers, successful area regeneration may well involve more than just action in respect of the physical conditions of houses and their surroundings. In the light of this we believe that the guidance provided by the Scottish Executive on the best practice in the use of these powers should extend to how such an area renewal programme can be linked to other area based initiatives including social inclusion partnerships to deliver wider community benefits.

Other associated powers and issues

147. In considering the wide range of other powers set out in the Housing (Scotland) Act 1987 we generally took the view that whilst many of them were little used it was still possible to conceive of situations where they could be of use. For example there does not seem to be any merit in amending or abolishing the powers in respect of over crowding.

148. With regard to those in respect of entry and inspection however, and in the light of the need to ensure that any revised powers should be capable of operating where the owner of a property was unknown or uncontactable we have made a number of further detailed

recommendations of an essentially technical nature. The intention is to ensure that in all circumstances local authorities have the necessary powers to inspect and where appropriate carry out works. These proposed revisions including where necessary powers to take access to adjacent property where this is required in pursuance of another power, to require an owner or occupier to remove from a property on a temporary basis to facilitate the carrying out of works and to take control of a property subject to a notice where either the owner can not be contacted or that owner refuses to co-operate in the carrying out of works under a notice.

149. With regard to the standards to be met by buildings that have been the subject of enforcement action we are of the view that the proposed Scottish Housing Quality Standard should not necessarily be used as the benchmark. On this basis it is proposed that the current standard, that a building should be in a “reasonable state of repair having regard to its age, character and location” should remain unchanged. However where additional defects are identified after a notice has been served a local authority should have the power to repair these defects as it does at present under existing serious disrepair powers.

150. With regard to the recovery of expenses we are of the view that the power to make a charging order should be retained and made more flexible. The charging order is a powerful tool for ensuring that public money used in enforcing notices is protected and properly collected. In particular its status as a “first charge” on the property is a key feature that, in the interests of protecting public money should be retained. It is, however, inflexible in the way it is specified, the way sums due are calculated and in the options available for recovery. It should be possible, for example, for local authorities to postpone repayment until the house is sold and to combine a charging order with the various forms of assistance described in section 5 including various types of loan finance discussed in that section.

151. Our recommendations will allow greater flexibility in all these areas and will provide local authorities with a wider range of options that can be used more sensitively where owners are facing problems meeting costs arising from enforcement action.

152. The group has also agreed that, in order to ensure that prospective buyers of properties subject to notices can be certain that they are aware of their existence details of notices served under housing powers should be recorded in the Building Standards Register to be created by the Buildings Bill currently being considered by parliament.

Summary of conclusions and recommendations

153. The full details of our recommendations are set out in annex two to this report. They can be summarised as follows:

Individual properties

154. Whilst the basic powers in respect of individual BTS properties are sound they should be extended to allow a local authority to carry out works to bring a house up to the standard without first acquiring it. A more general reform of powers in respect of disrepair and maintenance is required. The mandatory link between notices and grants should be removed.

In particular we recommend that:

- *The mandatory entitlement to grant aid for owners of buildings subject to notices in respect of repair or improvement should be removed and replaced with a provision for mandatory assistance. The form of the assistance to be provided should be determined by the local authority.*
- *The existing framework of powers in respect of individual BTS properties should be retained*
- *The enforcement options in respect of BTS properties should be extended to include a power to carry out works to bring a property up to the Tolerable Standard without first acquiring it.*
- *powers in respect of individual properties in disrepair should be extended to address a wider range of repair defects*
- *There should be a new power to make and enforce a maintenance order where the neglect of basic maintenance is likely to result in disrepair or where a property has been the subject of a repair notice.*
- *We also recommend that local authorities should have the option of serving repair notices and improvement orders “suspensively” to prohibit a change in the occupancy of a property until the notice has been complied with.*

Area based powers

- *In summary we recommend that local authorities should have comprehensive powers to:*
 - *acquire land and buildings, to require and enforce works to buildings and land and recover costs, and to require that owners put in place and operate a maintenance and management plan,.*
 - *require, where appropriate, works to buildings should include works of improvement other than those required to meet the tolerable standard where those improvements are required to provide for the safety or security of the occupants, for the more cost effective long term maintenance of the building, or to improve the amenity or marketability of the building or meet some other specific objective of the action plan;*
 - *require, with the approval of the Lands Tribunal that the titles in respect of community burdens of any property within the area be amended to ensure that they make effective provision for the management of common or shared maintenance obligations;*
 - *control the occupancy of dwellings in a condition of disrepair or failing the tolerable standard or carry out works or postpone the demolition of any dwellings in the same way as they may for existing Housing Action Areas and in the same way as proposed for properties subject to “suspensive” notices set out in earlier in this report; and*
 - *provide assistance (according to the agreed scheme of assistance) for any owner required to carry out works and to make conditions for that assistance in respect of future maintenance.*
- *The duties place on authorities should include:*
 - *consultation on all key aspects of the process of implementation;*

- *the provision of alternative housing for those displaced as a direct result of the implementation of the action plan;*
- *the provision of “assistance” to all owners within the area in accordance with the application of the “scheme of assistance” set out in the action plan;*
- *the certification of compliance with any provision of the action plan in respect of any dwelling, building or land where works are required on application by the owner or other person having control of the property; and*
- *to take all reasonable steps to ensure that the action plan is completed within the specified time period.*

Appeals and guidance

- *Notices in respect of individual properties should continue to be subject to a right of appeal to the Sheriff Courts. This right should be applied to all the new powers we have recommended.*
- *In addition we recommend that the Scottish Executive should issue detailed guidance on the use of statutory powers including approaches to informing and involving owners. Ministers should also work to provide details of best practice in this area.*

Other issues

- *We have made some further recommendations of an essentially technical nature to strengthen the powers of entry, ensure that the powers will work effectively even where an owner can not be identified and to increase the range of options for recovering costs by making the existing power to place a charging order on a property more flexible. Our proposals also include a new “control order” similar to that provided for under section 178 of the 1987 Act but available in a wider range of circumstances.*

Section five - Local authority assistance to private owners

Key objectives and principles

155. From the outset the Task Force has taken the view that the primary responsibility for maintaining and improving the condition of private sector housing rests with the owners. At the same time, there is no doubt that a proportion of owners genuinely need help for a variety of reasons in order to carry out their maintenance and improvement responsibilities, and that there is a role for the public authorities in providing them with suitable assistance. Research³ has shown that around 145,000 households in Scotland who own their houses have incomes below £6,000 per annum. As the first report of the Task Force showed, many of these households have significant “free equity” in their houses and assistance geared to helping them tap that equity could help them considerably. Others may need more direct financial support. Assistance needs to be tailored to the specific needs of relevant owners, in a way which supports a culture of individual responsibility.

156. We have taken it as a principle that the form of assistance provided should be appropriate to the difficulty that the owner faces in carrying out works. Lack of financial means is an obvious difficulty for many. However, for others the difficulty may be in organising finance, in organising works, in obtaining co-operation from others affected by or having a responsibility for the works, or indeed in simply knowing how to go about these things. We consider that the range of possible assistance should be made clear, and the aim should be for local authorities to provide the individual with those forms of assistance that are the most cost-effective in the circumstances.

157. Given the need to judge the appropriate assistance according to circumstances, the delivery of assistance should have a local focus. Given also that it is the responsibility of the local authority to establish a Local Housing Strategy for its area, and assistance to private house owners will be a tool for its implementation of that strategy, we consider that the local authority should remain the primary channel for assistance. Indeed, our view is that the local authority’s scope and flexibility in the use of assistance should be increased in line with their enhanced strategic role created by the Housing (Scotland) Act 2001. However, we consider that this should happen within a clear national framework to ensure that national priorities are addressed and that there is an appropriate level of consistency across Scotland.

158. We propose that the various forms of assistance that are and should be available for the repair, improvement and adaptation of houses are brought together in a single scheme which includes the national framework for their delivery.

Background

Grants under the Housing Acts

159. Intervention by public authorities to improve housing conditions has a history throughout the last century, but the current framework for financial assistance was set out in the Housing (Scotland) Act 1974. This focused on improvement and repairs grants, in parallel with compulsory powers to deal with individual houses and housing areas. The provisions

³ *Owner Occupation among low income households in Scotland*, Scottish Executive Central Research Unit 2002

were consolidated and revised without fundamental change by the Housing (Scotland) Act 1987 and were amended by the Housing (Scotland) Act 2001.

160. The legislation gives local authorities powers to pay grants to owners and tenants in the private sector. Improvement grants, in particular, were originally intended as an important mechanism for helping owners put in basic amenities and other works to bring their houses up to a reasonable standard but this system was extended during the 1970s to allow for the payment of grant towards essential repairs. To facilitate communal repairs in, for example, tenement blocks, it is also possible for local authorities to pay grant to commercial proprietors who own premises in a building that contains housing.

161. Improvement grants are currently used to bring houses up to the tolerable standard, to make houses suitable for persons with disabilities and to sub-divide a large house into smaller houses or to convert a non-residential property into a house. Repairs grants can be awarded for both internal and external repairs which are necessary to maintain the useful life of the house. Grants can also be provided for fire escapes in houses in multiple occupation.

162. Most grants are awarded at the discretion of the local authority, which also decides, within the resources available to it, how much to spend on improvement and repairs grants as a whole in its area. In some cases the local authority must make grant available, e.g. for provision of the standard amenities; or where it has made an improvement order, repairs notice or Housing Action Area resolution.

163. Part 6 of the 2001 Act (which has not yet been commenced) broadens the scope of works eligible for grant, increases the limit on the cost of works and effectively removes the distinction between improvement and repairs grants. More fundamentally, it introduces a test that links the amount of grant to the applicant's circumstances. Previously grant was in most cases determined only by the works involved. For owner-occupiers the proposed new test is based on their resources and may result in 100% grant for applicants on the lowest incomes and no grant for those above a certain income level. For other owners who are not occupiers, different factors affect their decision to invest in their property, and the proposed test is therefore differently based.

164. For any owner there are certain priority categories of works where any grant made will be at least at a defined minimum level whatever the owner's circumstances. These categories include: works to common parts of buildings in common ownership; works required following service of a statutory repair notice, improvement order or Housing Action Area resolution or notice requiring provision of a fire escape in a house in multiple occupation; adaptations to meet the needs of a disabled occupant; works to bring a house up to the Tolerable Standard, including standard amenities; and works to replace lead water pipes or to reduce exposure to radon gas.

Other forms of assistance

165. Although grant has been the predominant form of assistance, local authorities have other powers to provide assistance. They can make loans subject to criteria laid down in the 1987 Act but given those criteria and the nature of the modern financial market these powers are not widely used. Some local authorities find ways, within general powers or through local legislation, to provide tailored assistance to suit their circumstances. For example, the first report of the Task Force noted the use of local legislation in Edinburgh to establish a system

that includes practical assistance with repairs and the same authority's "Stair Partnership" initiative which facilitates the maintenance of common and shared areas (this is discussed further in section 6 of this report).

166. Part 5 of the 2001 Act permits local authorities to assist an individual in connection with the acquisition, construction, improvement, repair or maintenance of housing. Amongst other things, such assistance may take the form of granting or guaranteeing loans, making available the services of the staff of the local authority and providing or arranging for the provision of information. These new powers are, we understand, to be the subject of guidance and regulation in due course and although they are as yet untested, they provide considerable scope for broadening the range of assistance. This scope will be further increased at the local level by the proposed 'power to advance well-being' being introduced through the Local Government in Scotland Bill which is currently before the Scottish Parliament.

167. Other existing forms of assistance are mainly geared to the needs of the elderly, vulnerable and disabled. In this connection there is a strong link between policy expressed in the Housing Acts and in Social Work and Community Care legislation, and often an overlap in the arrangements for local delivery.

168. *Care and Repair* schemes assist people who are elderly or disabled or who are crofters to gain access to improvement and repairs grants but may also provide other assistance such as small repairs schemes, advice on entitlement to benefits etc. Facilitating access to housing grants is a standard feature of Care and Repair schemes but they vary considerably in their other content.

169. There are currently 40 schemes operating in 25 local authority areas, and it is expected that there will be schemes in all 32 authorities (most of them covering the whole of the authority's area) by 2003. The operational costs of schemes are funded 50% through Communities Scotland, with up to 50% provided by local authorities (again there is variation) in addition to the grant assistance given to individuals. Most schemes have a managing agent.

170. Local authorities' Social Work departments also give *assistance under the Social Work (Scotland) Act 1968* to individuals who need equipment and/or adaptations to their house to assist with everyday activities. Occupational Therapists are employed for their expertise in this area and liaise closely with housing department colleagues including those responsible for improvement and repairs grants. The Joint Future approach is driving efforts to co-ordinate the contribution of local authorities (social work and housing) and health bodies to community care and seeks joint planning, resourcing and management of community care services, including a single shared assessment of the individual's needs and more generally a 'person centred' approach. A strategic review of policy on equipment and adaptations is currently being carried out by the Strategy Forum on Equipment and Adaptations, which is due to publish its findings soon. Links between these two strands of policy development should be maintained.

171. The *Central Heating Initiative* and the *Warm Deal* are self-contained programmes to provide central heating and insulation for vulnerable and low-income households. It is assumed that these will continue in the meantime as separate programmes since they are well established.

Central funding

172. We welcome the announcement by Scottish Ministers that expenditure by local authorities will be funded by a Private Sector Housing Grant linked to outcome agreements between local authorities and Communities Scotland. This will allow local authorities to plan more effectively for investment in the private housing stock without direct competition for the resources involved from other areas of their activity. We expect the Grant to be applied primarily to the capital costs of providing assistance and also to some revenue costs such as the initial establishment of the new scheme in the authority's area. We encourage local authorities to consider using the Grant to support borrowing that will fund subsidised and equity loans to relevant owners.

Summary of current position

173. The current arrangements for assistance are dominated by an established system of grants which has evolved over the years but still to a large extent reflects the housing problems and social climate of the 1970s. Recent changes to target grants according to the individual's circumstances and developments in other forms of assistance generally support the principles and key objectives that we have proposed, but produce a complex situation that is difficult to understand and to administer effectively.

Scheme of Assistance

174. In developing a scheme for the provision of assistance we have sought to bring together the various existing strands of policy and to build on them to form a more coherent, balanced whole that promotes a culture of individual responsibility and increases local discretion within a national framework. We have set out in paragraphs 175 to 202 a set of proposals that in our view link together as a scheme supporting the principles and objectives in paragraphs 155 to 158 above.

Standards

175. Works should normally only be eligible for public assistance if they will bring the house to a defined standard. In the light of the recommendations on standards that we make in section 2 of this report, we recommend that assistance should normally be directed at achieving either the Tolerable Standard or the Scottish Housing Quality Standard. However, there will need to be some flexibility to allow for:

- locally determined higher standards in Housing Renewal Areas where this is necessary to meet the aims of the designation;
- assistance for adaptations to meet the specific needs of a particular disabled person.

176. The priorities for directing public resources to the achievement of these various standards will differ between areas and classes of housing according to local needs and circumstances. The strategic decisions on the standards to apply and the prioritising of resources should be taken by local authorities in the context of their Local Housing Strategies. They should take into account the national framework of strategic housing priorities, which should be part of the outcome agreements between local authorities and Communities Scotland which will govern the allocation of Private Sector Housing Grant.

177. We propose that, as part of the national framework, the improvement of houses that are below the Tolerable Standard and the adaptation of houses for the disabled should be identified as national priorities for assistance.

Forms of assistance

178. We consider that each local authority should consider how to make each of the following forms of assistance available in its area, and in what circumstances, subject to the national framework, applicants will be eligible for each type of assistance.

General advice and guidance

179. The most basic assistance for improvements is general advice and guidance, usually in the form of leaflets, web sites and general advice given in advice centres. This should be available to everyone as part of the housing advice services provided by local authorities and by a range of local advice agencies, retailers and others, and those services should be underpinned by suitably resourced training. We note that Communities Scotland's HomePoint service co-ordinates and seeks to improve housing advice, providing a range of information and developing and supporting a network of housing advice providers with training materials and an accreditation system built on its *Scottish National Standards and Good Practice for Housing Information Services*.

180. We suggest that HomePoint should ensure that its services promote and support the proposals of the Task Force, and that it should consider, at an appropriate time, the provision of information and education through a national publicity campaign.

Practical assistance

181. Some people are able to afford improvement works but find it difficult to arrange the work or the finance. Each local authority should ensure, as part of the outcome agreement referred to in paragraph 172, that there is the capacity in its area to provide disabled and elderly people with the equivalent of at least the current core services of Care and Repair schemes together with: services to carry out small repairs ancillary to improvement works; 'handyman' services for tasks like changing tap washers; and advice on loans with access to grants for arrangement fees. In our view no particular model for this type of assistance should be imposed across the country as it is important to retain sensitivity to local circumstances and the local availability of skills in the provision of this small-scale and personal assistance. However, we believe that delivery of these services by an organisation which is seen as independent from the local authority will maximise take-up by the client group. These services should also be extended to those other vulnerable people who need them.

182. We also consider that a small repair service available to all disabled, elderly and vulnerable people who need it to help with pre-emptive repairs would lead to an increase in the general quality of the housing stock. We do not wish to discourage people in these groups who are able to manage their own maintenance responsibilities, and so consider that preventative small repairs services should be available to those assessed as needing them, primarily through their inability to manage the works. It would be reasonable to charge for all or part of the service where the individual has the means.

183. Practical assistance may also help individuals overcome problems in dealing with neighbours on joint and shared responsibilities. We recommend in section 6 of this report that local authorities encourage the establishment of owners' associations, property management arrangements and sinking funds and have the power to make modest grants to this end. We also encourage the use of community mediation schemes, subject to a review of the scope for doing so. These forms of practical assistance should be regarded as part of the range of options for assistance available under the scheme.

Loans

184. The normal commercial market provides a wide range of loans but in some cases it is not practical for an owner to obtain a loan. The local authority should be encouraged to make loans available where this is a significant problem, either direct or through an intermediary and for all or part of the work. In particular, the administrative costs of small loans can be disproportionately high and they can as a result be difficult to obtain at reasonable cost on the commercial market. Assistance with small loans could facilitate smaller-scale works and more substantial works where the applicant has difficulty in funding the balance of cost after grant.

185. Loans could be:

- normal commercial loans with regular repayment of capital and interest where these are not available from reputable financial providers (for example small loans); or
- equity loans where the capital is repaid when the property is sold - again where such a loan is not available from reputable financial providers. Such a loan could involve interest only payments made at regular intervals, interest 'rolled up' into the capital sum and recovered when the property is sold, or the lender taking a share in the equity and recovering the same proportion of the value of the property when it is sold.

Subsidised loans

186. Local authorities should be able to subsidise conventional loans by reducing interest payments and to subsidise equity loans by reducing the amount of interest, whether it is paid regularly or 'rolled up' into the capital sum, or abating the capital sum recovered on sale. In addition, they should be able to make small grants to assist people with access to commercial loans, for example with survey, arrangement or legal fees. A small grant would only be made where the local authority was satisfied that the applicant needed it in order to be able to carry out works.

Subsidy through grant

187. Where necessary, grant for building works should be available, calculated as a percentage of the approved cost of the improvement works and depending on the house and the owner's circumstances. We expect that grant will in practice remain as a significant form of assistance used in a substantial number of cases. The nature of grant assistance has been refined over the years and in particular was the subject of extensive consultation in connection with the Housing (Scotland) Act 2001. We do not propose to part radically from the basic nature of grant assistance although we do make proposals below on the targeting and calculation of grant.

Change of tenure

188. In some circumstances the works needed may be such that the best course of action is for the owner to sell and move into the rented sector. This may result in significant social disruption for the household and in such circumstances the local authority should be able to offer change of tenure as an option under the scheme of assistance. Change of tenure involves sale of the property to a Registered Social Landlord or the local authority, with the owner becoming the tenant. The landlord would carry out necessary improvements and charge an affordable rent.

189. We expect that the arrangements should follow those for the Mortgage to Rent Scheme currently being introduced by Communities Scotland, subject to experience from the initial phase of that Scheme. Because this approach subsidises both the cost of bringing the property up to a lettable standard and the setting of an affordable rent, we consider that change of tenure should be available under the scheme of assistance only as a last resort and if the level of subsidy involved is justified in the light of the following criteria:

- other forms of assistance under the scheme will not enable the applicant to bring the house to an acceptable standard and sustain owner-occupation
- without change of tenure the applicant will need to be re-housed in the social rented sector
- it is desirable for the household to remain in the house
- the necessary work will not proceed otherwise
- the owner would not be able to maintain the house in the future

190. Our view is that change of tenure to achieve improvements or repairs should be managed by the local authority as an integral part of the local administration of the scheme of assistance. We do, however, recognise that a nationally run and funded scheme (perhaps as part of the existing Mortgage to Rent scheme) might offer benefits, particularly as local authorities may find it difficult to develop the necessary expertise in this area. We suggest that this matter be kept under review in the light of demand for tenure change and of experience with Mortgage to Rent.

191. In some cases the former landlord – local authority or RSL – may wish to buy back properties purchased under the Right to Buy, in order to facilitate a scheme of repairs or improvements on its own properties. If the owner does not meet the criteria we propose above, our view is that the buy-back should be justified and funded as part of the landlord's scheme for its own stock and not be dealt with as a change of tenure funded from Private Sector Housing Grant under this scheme of assistance.

192. Shared ownership as a half-way house to change of tenure could in theory be used to release funds for repair and maintenance, with the local authority/RSL buying a share in the property and carrying out the necessary works, rather than taking full ownership in the manner described above. The price paid would be the value of the share minus the cost of the works. However, the resulting arrangement can be very complex legally. In our view there is not a case for the local authority to become involved in part ownership of the property simply to release funds for works when the same purpose could be achieved with less difficulty by use of an equity loan or other options in this scheme.

National criteria for deciding on the type and amount of assistance

193. Applications for assistance should be made to the appropriate local authority. The local authority should decide applications on the basis of its Local Housing Strategy priorities and its policies within the national framework of criteria contained in the following paragraphs.

194. Local authorities should have substantial discretion in their use of the tools available for providing assistance, subject to the principle that the primary responsibility for the improvement of a privately owned house lies with the owner. They should use the most cost-effective combination for achieving their objectives. In general this means that subsidised financial assistance should normally come into play only where facilitation and access to finance is not sufficient to ensure that necessary works are carried out. Where a loan is not an acceptable form of assistance on religious grounds it should not be considered as an option by the local authority.

195. The following criteria should apply to assistance for works to *individual houses*.

- If the house is below the Tolerable Standard, the local authority has a duty to ensure that it is closed or improved within a reasonable time. This may not be until the house next changes hands. It should be required to provide assistance to the owner but the type and combination of assistance necessary in order to help it fulfil its duty should be for the local authority to determine. We recommend also in section 4 of our report that there should no longer be a mandatory requirement on the local authority to make grant.
- If the house is above the Tolerable Standard, the local authority should deal with the application in accordance with its strategic decisions on standards in terms of paragraph 176 above.
- Where a loan or grant is made, the amount should be limited to the reasonable cost of the works (including ancillary costs such as legal, valuation and arrangement fees) necessary to bring the house to the appropriate standard. The local authority should judge reasonable cost, which could allow, for example, for requirements for buildings of historical or architectural significance.
- Where a grant or subsidised loan is made to an owner-occupier the amount of subsidy should reflect the financial circumstances of the owner (or the disabled person where the subsidy is for disabled adaptations) and their spouse or partner. There should be a nationally defined test for deciding the owner's contribution, but the local authority should be able to adjust the test for a defined area (whether that is the whole of the local authority's area or part of it) on the basis of evidence that the distribution of income levels in that area is significantly different from the national distribution of incomes. We expect that the nationally defined test will, at least initially, be that which will apply under the Housing (Scotland) Act 2001, but recommend that the impact of the test be assessed and it be reviewed on a regular basis, with changes being made when necessary.
- Nationally defined minimum percentages should apply where subsidy is provided for houses that are below the Tolerable Standard or the subject of a statutory repairs notice; for works to adapt a house to the needs of a disabled person; and, for works to common and shared parts of buildings and to works to meet fire safety requirements. The local

authority should be able to vary the minimum levels upwards or downwards for different classes of application and in designated Housing Renewal Areas where there are explicit grounds for requiring different minimum percentages are required to address the local authority's strategic priorities.

- Loan, subsidised loan or grant should be provided to tenants only where the tenant has a contractual responsibility for repairs and maintenance. Where the applicant is a landlord, a developer or the owner of a non-housing property sharing in necessary communal works that benefit houses in that property, the local authority should have discretion to decide the amount of any subsidy.
- Where the house is a second or holiday home that will not be kept available for letting, no assistance other than general advice and guidance should be given. Houses in these categories do not provide for the basic housing needs of the owner or tenant or for the expansion of the available stock and so should not be the subject of public assistance.
- The local authority should ensure that practical assistance in terms of paragraphs 181 and 182 is available for the elderly and disabled and those other vulnerable people assessed as needing it.

196. For *common and shared works*, in addition to the provisions for minimum grants and for non-housing properties in paragraphs 195, the local authority should also be able to provide assistance for improvements for the common benefit to land attached to the building. It will be for the local authority to decide, in the light of any action it may take as provided for in section 5 of this report, the amount of any grant to be made towards the establishment of owners' associations, property management arrangements, sinking funds and community mediation schemes as indicated in paragraph 183.

197. We consider that the statutory administrative processes involved in providing assistance should be simplified and streamlined both to benefit the processing of individual applications and to facilitate a co-ordinated and consultative approach when action is taken on an area basis.

Delivering assistance for disabled, elderly and vulnerable people

198. The scheme we propose here makes special provision for the disabled, elderly and vulnerable in a number of ways, including practical assistance, minimum percentage grants for adaptations for the disabled, and defining adaptations for the disabled as a national priority (see paragraph 177). As noted in paragraph 167, assistance with housing works for this group of people is closely related to community care services. We consider that assistance should be an integral part of the present scheme to ensure that it remains consistent with other forms of assistance under the scheme and because an individual may well seek to carry out works that are related to the general standard of the house as well as to his or her particular needs. However, we consider that the delivery of assistance should as far as possible be integrated with related community care services in a 'person centred' approach that includes a single shared assessment and considers the full range of options for enhancing the availability and quality of housing to meet the assessed needs.

199. The variations in the way that housing grants, Care and Repair and social work assistance operate across the country mean that if we were to propose a single formula for the

mechanics of delivery or even a limited set of prescribed options that would be likely to be too restrictive for the future. The Joint Future approach which is currently being developed is addressing this issue on a broader front, and we consider that the local authority should, within that context, co-ordinate its housing and social work functions and resources in relation to the private sector and the work of partner organisations to deliver person-centred assistance that aims to ensure that:

- People with particular needs live in houses that are suitable for them; and,
- Help is available to individuals who need it to manage the process of arranging improvements and maintenance.

Conditions of assistance

200. Current legislation specifies conditions attached to the payment of grant, and this principle should continue. The local authority should attach conditions to any loan or subsidy to protect its investment, requiring that the house is maintained in a good state of repair. This requirement should last for the period of the loan or in the case of grant (other than a small grant for access to finance) it should attach to the house and last for ten years. We consider that the current period of 5 years is insufficient to ensure the full benefit of what may be a substantial public investment, but to go beyond 10 years would be unreasonable.

201. It should also be a condition of loan or grant that the house will be used as a private dwelling house, it will be the occupants' only or main residence and, if it is a rented property, will be kept available for let. The same time periods should apply. The owner should be able to lift these conditions by repaying the loan or grant with interest.

202. We also consider that the local authority should be able to make additional conditions where these are appropriate. In particular, it should be able to require the recipient of loan or grant to join a scheme for the management of house inspection and maintenance which is acceptable to the local authority. Section 6 of this report deals with such schemes.

Implementing the Scheme

203. The scheme as proposed could for the most part be introduced using the existing range of statutory powers modified by secondary legislation. It would be desirable to consolidate the relevant primary legislation to clarify the statutory intention and the shift of emphasis from grant to a range of assistance geared to housing strategies.

204. Primary legislation may be needed for some particular aspects of the scheme including:

- discretion for local authorities to adjust the test of resources according to local income levels;
- discretion for local authorities in setting minimum subsidy levels for defined categories;

205. The impact of the scheme should be monitored through the data collection systems of the Scottish Executive and the Scottish House Condition Survey. Individual local authorities should assess the local impact as part of their monitoring systems for their Local Housing Strategies, allowing them to adjust their approach to improve targeting. Specific research

might be necessary to understand changes in individuals' decision-making in response to the new scheme. We propose the following criteria for judging the effectiveness of the scheme as a whole:

- whether the scheme provides a coherent, consistent package that covers the range of relevant assistance;
- the extent to which people carry out, with assistance, necessary works that they would otherwise not undertake;
- the extent to which encouragement through assistance facilitates the achievement of local and national housing objectives and avoids the need for compulsory action;
- the extent to which the provision of assistance supports and complements other action proposed by the Task Force, particularly in relation to communal repairs and maintenance in flatted blocks and to the repairs and maintenance in the private rented sector.

Summary of conclusions and recommendations

206. We suggest the following recommendations to provide for an improved package of assistance with the improvement, repair and adaptation of houses:

- *For the Scottish Executive to establish an integrated scheme of assistance for the repair, improvement and adaptation of houses, including a national framework for its delivery.*
- *For the Scottish Executive to ensure that the provision in the scheme for the adaptation of houses to the needs of disabled applicants is developed in conjunction with the policies on the delivery of community care services.*
- *For local authorities to decide priorities for directing public resources to the achievement of housing standards according to local needs and circumstances, in the context of their Local Housing Strategies and taking account of the national framework of strategic housing priorities.*
- *For the Scottish Executive's national priorities to be incorporated in the outcome agreements to be made between Communities Scotland and local authorities in connection with the allocation of Private Sector Housing Grant.*
- *For the Scottish Executive to define the improvement of houses that are below the Tolerable Standard and the adaptation of houses for the disabled as national priorities.*
- *For local authorities to consider how to make each of the forms of assistance identified in this report available in its area, and in what circumstances, subject to the national framework, applicants will be eligible for each type of assistance.*
- *For the Scottish Executive through Communities Scotland to ensure that HomePoint services promote and support new scheme of assistance and to consider, at an appropriate time, the provision of information and education on the scheme through a national publicity exercise.*

- *For each local authority to ensure that there is the capacity in its area to provide disabled and elderly people with the equivalent of at least the current core services of Care and Repair schemes together with services to carry out small repairs ancillary to improvement works; ‘handyman’ services; advice on loans with access to grants for arrangement fees; and for those assessed as needing them, whether or not on a payment basis, preventative small repairs services.*
- *For the Scottish Executive to encourage local authorities to provide, directly or indirectly, loans for works of repair, improvement or adaptation to those for whom a normal commercial loan is not practicable.*
- *For the Scottish Executive to provide for local authorities to make equity loans and small grants to assist access to commercial loans.*
- *For the Scottish Executive to provide for local authorities to be able to offer change of tenure as a means of ensuring that necessary works are carried out, but only as a last resort and subject to the criteria specified in this report, and to keep under review the possibility that this type of assistance should be available through a national agency.*
- *For any buy-back of houses purchased under the Right to Buy to be out with the scheme of assistance unless the criteria in this report are satisfied.*
- *For the Scottish Executive to legislate for a national framework of criteria proposed in paragraphs 193 to 197 of this report, and for local authorities to decide their policies and priorities on assistance in the light of those criteria and on the basis that they should use the most cost-effective combination of assistance to achieve their objectives.*
- *For local authorities to co-ordinate their housing and social work functions and resources and the work of partner organisations to ensure that assistance for the disabled, elderly and vulnerable is delivered in a person-centred approach consistent with Joint Future policies*

For the Scottish Executive to legislate to provide that conditions currently applying to the payment of improvement and repairs grants apply also to loans and other grants, their period be extended to 10 years and local authorities be able to apply additional conditions.

Section six - Common repairs and maintenance

Key objectives and principles

207. We are firmly of the view that there needs to be effective mechanisms to facilitate, encourage and, if necessary, require owners to undertake communal repairs and maintenance. The first report of the Task Force noted that almost 400,000 dwellings in the private sector (approximately 25%) are flats where there is some degree of shared responsibility by owners for the maintenance and repair of communally owned parts of the building such as roofs and common stairs and that, in addition, many owners of flats and, in some cases, houses have a shared responsibility for the maintenance of common open spaces.

208. We believe that effectiveness can be judged against the following key criteria:

- the extent to which there are mechanisms for getting agreement between the owners on what work needs to be done and when;
- whether there is an agreed and established basis for deciding the respective contributions from each of the owners with an obligation to contribute and mechanisms for ensuring payment so that the necessary work is not frustrated by the unwillingness of some owners to contribute to meet their share of the cost;
- whether there are arrangements for managing the property so that communal repair and maintenance requirements are identified and contractors appointed and paid;
- whether there is clear understanding by owners of the extent and nature of their responsibilities for communal repairs;
- the extent to which owners wishing to undertake communal repairs and maintenance know how to identify and contact other owners, particularly absentee owners and landlords, to discuss the work that needs to be carried out and to secure their contribution to the total costs;
- whether there are adequate arrangements for insurance of communal owned parts of the building.

Background

209. The responsibility of individual owners for communal repairs and maintenance is either set out in their title deeds or if the title deeds are silent, determined according to an area of common law known as “the law of the tenement”. The title deeds set out the “real burdens” relating to communal repair and maintenance imposed when the house was originally built and which remain when the house is sold on.

210. There are, however, a number of well known weaknesses in this legal framework. In particular, some older title deeds may specify that owners are obliged to contribute to the maintenance and repair of communal property and land but do not contain a decision making mechanism. Where the title deeds are silent, the common law requires all owners to consent before work can go ahead. Similarly, where the title deeds are silent, the common law

currently specifies that the owners of flats at the top floor of tenements are solely responsible for the maintenance and repair of the roof and the owners of the ground floor flats are solely responsible for the solum.

211. To address these and other weaknesses, the Scottish Law Commission has brought forward proposals for reform of the law on “real burdens” and the law of the tenement. Its proposals for reform of the law on real burdens have formed the basis of the Title Conditions (Scotland) Bill which is now before the Scottish Parliament. The Scottish Law Commission has also prepared a draft bill on the law of the tenement (the “Tenement (Scotland) Bill) and Scottish Ministers have indicated that they intend to introduce this further proposed legislation when an opportunity presents itself. We have taken account of these legislative proposals in considering our own recommendations and, where appropriate, these are referred to in the discussion below.

212. The first report did note that title deeds for modern flatted developments contained more comprehensive provisions relating to communal repair and maintenance. The Scottish Executive subsequently commissioned research to get more precise information on what arrangements were included in the modern title deeds and we have referred to the results of this work in the relevant sub-sections below.

213. The first report of the Task Force also noted a number of other significant weaknesses of the current arrangements as they operate in practice. In particular, it concluded that many people become flat owners without understanding their particular rights and obligations, that often there are no formal and continuing arrangements for owners to get together to make decisions on communal repairs and maintenance and that recovery of costs from obstructive owners is a continuing problem. We have borne these conclusions in mind in considering our policy recommendations.

214. Because the existing civil law framework does not always ensure that communal repair and maintenance work is carried out, local authorities have found it necessary, in some cases, to use their powers to require work to be undertaken. There are 2 rather different traditions here. Most local authorities have only stepped in with repair notices or improvement orders where there are serious failures that need to be addressed and the current requirement to offer grant assistance when housing legislation is used to compel repairs and maintenance to be carried out, is itself a constraint on the use of these powers. The second approach, most developed by Edinburgh using its bye law powers, is to intervene at an early stage prompted by complaints by individual owners that they cannot get other owners to agree to tackle a particular problem. Repair orders are then placed on all the owners (in Edinburgh’s case using the bye-law powers which carry no entitlement to grant) and if they fail to respond the council itself will instruct the work and charge the owners including a charge for the cost of administering the work. Taking account of these different approaches, we have looked in detail at the role of local authorities in both encouraging owners to undertake communal repairs and maintenance and as a possible backstop to require works when the normal arrangements break down. Our recommendations on the role of local authorities are also set out below.

Making decisions on communal repairs and maintenance

The common law framework

215. As noted above, the current position is that decisions on communal repairs and maintenance are either in accordance with the provisions in the title deeds or, in the absence of any specific provision, according to common law which requires the consent of all relevant owners before work can go ahead. Where there is an explicit provision in the title deeds, this frequently specifies that decisions can be made by a majority of the relevant owners with each owner having an equal say. Other arrangements may, however, be provided for, for example, a requirement for 75% of the owners to endorse proposals for repair and maintenance work. We do not have detailed information on the overall position but recent research on a sample of 50 modern title deeds (covering developments built over the past 20 years) suggests that decisions on repair, management and maintenance could be made by simple majorities of all owners in between 80% and 90% of cases. Some title deeds did, however, require unanimity.

Proposed changes to the common law framework

216. Where there is no explicit provision in the title deeds, the requirement for unanimity which can allow one dissenting owner to effectively block work from going ahead is a longstanding, recognised weakness which both the Title Conditions and Tenements Bill seek to address. Both effectively provide for majority decision making in this situation. Section 28 of the Title Conditions Bill provides that a majority of owners who are subject to a burden in their titles obliging them to contribute to the cost of repair and maintenance will be able to decide that work needs to be carried out, instruct or carry out such work and require that each owner deposit their share of the estimated cost. Similarly, the Tenements Bill provides for a majority to instruct and carry out communal repair and maintenance work and also appoint a manager and delegate the manager to decide that repair maintenance should be carried out (up to any specified cost threshold). We noted and endorsed these proposed provisions. The implications of this for cost recovery are discussed in the sub-section on funding communal repairs.

217. We also considered whether the requirements in the Tenements Bill for majority decision making should be extended to all flatted blocks and other developments where there are communal repairs irrespective of the requirements in the title deeds. In general, we believe that majority decision making is the right principle but we recognise that, in some circumstances, other arrangements might be justified. The Scottish Law Commission in its report on the Law of the Tenement endorsed the principle of “free variation” i.e. that developers should be able to draw up title deeds to meet their requirements and purchasers (and subsequent purchasers) have, by agreeing to purchase the property, entered into a contract on that basis. This report also suggested that “no general rules could provide solutions which apply with equal appropriateness to every case”. Recognising this, we considered recommending that along with a general requirement for majority decision making (irrespective of the provisions in the title deeds), there might be scope for existing owners and developers for new developments to seek the approval of the Lands Tribunal to depart from this rule. We agreed, however, on reflection to endorse the Scottish Law Commission approach bearing in mind that the Title Conditions Bill does provide new and easier ways for owners to change their title deeds to, for example, to provide for majority decision making should they wish to do so.

Owners associations

218. Having an agreed and understood basis for decision making on common repairs and maintenance is essential, but we also believe that some formal arrangement for owners to get together on a periodic basis would facilitate decision making and encourage them to take a planned view about maintenance requirements rather than merely reacting to particular problems. Owners associations can also provide a mechanism for overseeing the work of property managers and for making decisions on the use of any reserve or sinking funds.

219. At present, owners associations are relatively uncommon in older blocks of flats but they are more often found in newer developments. The research on modern title deeds found that there was provision for an owners association in approximately 25% of the title deeds that were examined and almost 60% of title deeds included formal requirements for calling meetings of owners. Our view is that it would be impractical to try to legislate to require all existing owners to establish owners associations but we do believe that it should be the norm for new residential developments. We recommend, therefore, that there should be an amendment to the civil law framework (possibly by way of a new provision to be added to the Tenements Bill) to require all title deeds for new residential developments, where the owners are subject to burdens relating to communal repairs and maintenance, to make provision for the establishment of an owners association. It should be for the developer to decide what form of owners association is appropriate to the development in question⁴ but, in general, there should, as a minimum, be a requirement for a constitution with provisions for annual and other meetings, specified voting rights and powers to appoint a property manager if they should wish to do so. It would also be important to allow the owners association to delegate decisions to any property manager. We consider that there would need to be a minimum threshold where this requirement would not apply and we suggest that this should be blocks with less than 8 flats. Given the possibility of exceptional cases where an owners association would not be sensible, there should also be the opportunity for developers to apply to the Lands Tribunal to have this requirement set aside. We also recommend that the Scottish Executive should seek to provide advice for developers on good practice in setting up owners associations and advice and information for owners on taking part in any owners association.

220. We also consider that more should be done by local authorities to promote actively the establishment of owners associations in existing blocks of flats, particularly where they were directly involved in instigating repair and maintenance work, for example, in the proposed Housing Renewal Areas. In such cases, the establishment of an owners association should be the norm and the aim should be to encourage this to continue after the major renewal work has been undertaken. We recommend that local authorities should have the power to provide modest grants for the establishment of owner associations both in Housing Renewal Areas and, more generally, when there is a need. These powers could be used in conjunction with our proposals to give local authorities powers to require owners to produce maintenance plans as described in section 4.

Community mediation

⁴ The Scottish Law Commission has drawn up proposals for a Development Management Scheme which allows for owners associations to be “body corporates”. We understand that provision for this is likely to be added to the Title Conditions Bill, currently before Parliament, in line with the Law Commission’s recommendations. Body corporate status allows the owners association to enter into contracts and to undertake other activities in its own right but does not involve the formality or regulation required if the association is constituted as a company. This model may, therefore, be particularly appropriate to owners associations for larger schemes.

221. In some cases, groups of owners may find it helpful to get outside assistance to resolve disputes about work that needs to be done or, indeed, on respective contributions to the cost and the first report of the Task Force noted there was no specific arrangements in place for the mediation of disputes between owners although we understand that mediation has been successfully used to resolve issues with regard to shared responsibility for repair and maintenance. There is, however, an established network of community mediation services available in Scotland (although not in all parts of Scotland) for resolving other forms of neighbourhood disputes. Information and support to local schemes is provided through SACRO (with Scottish Executive funding) and the Scottish Mediation Network (SMN). We recommend that the Scottish Executive should give further consideration to extending the scope of these mediation services to include disputes between owners on common repair and maintenance matters. A key issue is whether it is necessary for mediators to have technical, building training and expertise. If the conclusions of this initial review are positive then, we would wish to recommend that local authorities encourage community mediation for this purpose at the local level and that the Scottish Executive should provide funding to extend the work of SACRO and the SMN to support local community mediation groups in providing this additional service.

The role of the local authority

222. There will always be cases where owners decide not to go ahead with the necessary work and there is a clear public interest on grounds of public safety, protection of the environment and damage to neighbouring buildings for ensuring that the work is carried out. In these circumstances, local authorities have a clear responsibility to use their powers to take appropriate action. Relevant powers could include the repair notices, improvement orders and maintenance plan notices described in section 4.

Funding Communal Repairs

The common law framework

223. The apportionment of costs for communal repair and maintenance work is normally set out in the title deeds. In the past apportionments were often allocated according to rateable value or, possibly, feu duty payments. More recently, title deeds have often provided for equal shares – this was the case in almost 90% of the deeds included in the recent research study.

Proposed changes to the common law framework

224. In some cases, the title deeds may make no provision for the allocation of costs but, more commonly, the title deeds are deficient in some way because, for example, they fail to provide for 100% of the cost or for the maintenance or running costs of a particular facility such as an entryphone system or a common central heating system. The Tenements Bill as drafted by the Scottish Law Commission would resolve the problem of silent, incoherent or otherwise deficient title deeds by substituting the provisions of the proposed Tenement Management Scheme. This provides for equal contributions except where the floor area of the largest flat is more than 1½ times that of the smallest when costs are divided in proportion to floor area. We welcome the thinking behind these provisions although we have some sympathy with the view that equal contributions should simply be the norm irrespective of differences in floor area since this would make the scheme much easier to operate. With this

proviso, we recommend that the Scottish Executive should progress the Tenements Bill at the earliest possible opportunity.

225. We also considered whether to recommend that the general formula for the apportionment of costs in the Tenement Management Scheme should be applied to all tenements and other residential properties with communal and shared obligations irrespective of the provisions in the title deeds. There may be cases where the existing allocation of costs seems, *prima facie*, inequitable, for example, where the full cost of roof repairs is the responsibility of one or two owners. When responsibility for costs has been allocated in a very uneven way, then it is likely that those owners having to fund the bulk of the cost will be very reluctant to agree to work going ahead or, if this can be decided despite their opposition, to contribute their share of the cost. But there are also strong arguments against simply riding roughshod over the existing title deeds since owners will have bought, at least in theory, in the knowledge of the share of costs allocated to them. Also, in many blocks of flats there is a mixture of commercial and residential properties and the commercial properties may quite reasonably be required to pay a larger or smaller share than the Tenements Management Scheme would suggest. The provisions in the title deeds may also simply reflect an agreement between the owners. Whatever the justice of the present arrangements, it is unlikely that those owners who would be required to pay more would welcome the change and it is possible that an interference of this nature in property rights by the state would, in the absence of compensation, conflict with the Human Rights Act. Since compensation could be prohibitively expensive, we decided, on balance, not to endorse this possible recommendation.

Recovering costs from owners

226. In reality, whatever the civil law framework says about the allocation of responsibility for meeting the costs of communal repairs and maintenance, some owners may be unwilling or unable to meet their share of the costs and, therefore, effectively prevent necessary work from going ahead. Providing the decision has been made in accordance with the title deeds (or, in future, the default provisions in the Title Conditions and Tenements Bill, if these become law) then this can be enforced by application to the Sheriff Court and normal debt recovery action can be progressed. In practice, however, owners and property managers may be very reluctant to go ahead on the strength of normal debt recovery procedures and indeed, it is usually the case that major works will not go ahead unless the necessary funding is provided in advance and this is why the proposed default Tenements Management Scheme allows a majority of owners to decide to require each owner to deposit their share of the cost in advance.

Attaching debts to the property

227. One particular problem which was noted in the first report of the Task Force is that the law requires owners to be pursued personally and the debt cannot be attached to the property itself. This means that if the house is sold, it is not possible to recoup any outstanding debt for communal repair and maintenance work from the sales proceeds. However, both the Title Conditions Bill and the Tenements Bill make provisions for both former owners and new owners to be severally liable for any outstanding costs arising out of obligations to contribute to common repair and maintenance work and the objective of these proposed legislative changes is to ensure that Solicitors acting on behalf of purchasers insist

that any outstanding debts are met by the seller before the sale is finalised. We welcome these proposed changes as a helpful contribution to resolving this problem.

Reserve or sinking funds

228. Our view is that, in an ideal world, owners would collectively agree to set aside money, in anticipation of future expenditure on repair and maintenance, through payments into a reserve or sinking fund. Providing the contributions were sufficient, this would ensure that the necessary money was available in advance and work could be commissioned on that basis. In practice, however, relatively few owners contribute to reserve or sinking funds of this nature. The research on modern title deeds (where these arrangements are most likely to be found) identified that in just over 10% of developments in the sample, the title deeds made provision for contributions into a non-repayable sinking fund. Almost 60% of title deeds, however, made provision for one-off contributions where the house is bought into a float which may help to a degree but is unlikely to be sufficient for anything more than emergency work.

229. The limited use of reserve or sinking funds at present is not entirely a result of the reluctance of owners to put aside money which might otherwise be spent on other things. They have to be managed carefully and accounted for and this is not a straightforward task. And deciding on the level of contributions requires a difficult judgement about future work. As a result, it is probably easier to see reserve or sinking funds in the private sector being used for routine maintenance rather than major refurbishment work.

230. Our view is that it would be impractical for the state to seek to use the law to compel owners to establish and contribute to reserve or sinking funds in either existing or new developments. Compulsion of this sort would require local authorities or some other public agency to keep information on the extent of reserve or sinking funds and to oversee and regulate their management. It would also require penalties against owners that failed to comply. There would be a great danger that the bureaucracy required to enforce this legislation would simply collapse under its own weight.

231. We do, however, feel that there should be greater encouragement given to owners to establish reserve or sinking funds and for developers to include provision for sinking funds in the title deeds of new developments. We recommend, therefore, that:

- The Scottish Executive should provide advice and information on the establishment and management of reserve or sinking funds. Different levels of advice will be required for owners and property managers; and for developers and their legal advisers drawing up title deeds;
- Local authorities should have discretionary powers to require owners subject to a maintenance plan notice to set up a reserve or sinking fund;
- Local authorities should also have the powers to provide grant aid to owners to encourage them to establish a reserve or sinking funds. This grant aid would be limited to meeting the costs of the work necessary to establish the reserve or sinking fund rather than contributions to the fund itself.

Forced repossession to recover costs

232. At the workshop organised by the Task Force on communal and shared obligations, a number of property managers were of the view that the problem of ensuring payment would only be resolved if “majority owners” (or, more likely, property managers acting as the agent of the owners) had the power to repossess the property of owners refusing to contribute and to use the proceeds to pay off the debt. At present, forced repossession is only possible when a loan has been taken out which is secured against the value of the property⁵.

233. Our view is that forced repossession is a very draconian remedy that can only be justified in exceptional circumstances where relatively large sums of money are involved. We also noted the Scottish Executive has recently consulted on reform of the law on diligence brought forward by the Scottish Law Commission with a new proposed method of recovery known as “land attachment”. This procedure could allow creditors to force the sale of the property subject to the approval of the sheriff and following initial stages such as registration of the creditors interest. It is envisaged that there would be certain debtor protections built into the arrangements, for example, limiting the use of the procedure to cases where debt exceeding a certain threshold. We welcome this proposal and recommend that it should be developed further with a view to legislation. However, although land attachment could help to recover costs in some circumstances, our view remains that forced sales would only provide a practical answer in relatively few cases.

Local authority involvement

234. Whilst the improvement in recovery procedures noted above should help to tackle the problem, there are still likely to be cases where one or more owners are in a position to block work going ahead by refusing to deposit the necessary money. We consider that local authorities should have a responsibility to act as a “backstop” in these circumstances. The need is a procedure that can be used when genuine difficulties occur but which does not simply become the automatic recourse of individual owners faced with a repair problem. There is a need to encourage owners to work together to resolve differences whilst still allowing local authorities to step in when the civil law framework has clearly broken down. We therefore, recommend that legislation should provide for the following procedures:

- for owners to be able to issue a notice specifying that certain works had been agreed according to the necessary decision making procedures set out in the title deeds (or the default procedures envisaged in the Title Conditions and Tenements Bill once these have become law) and that some owners were blocking the work going ahead by refusing to deposit the necessary money;
- for the local authority to satisfy itself that this is a correct assessment;

⁵ Currently, creditors can take 2 other forms of action in relation to heritable property known as “inhibition” and “adjudication for debt”. Inhibition prevents a debtor from dealing with his heritable property in an way which prejudice recovery of the debt by the creditor. Adjudication for debt is more complex and gives the creditor a priority over third parties and allows them to grant leases and to receive any rents. The Law Commission has recommended retention of inhibition but abolition of adjudication for debt.

- for the local authority to have powers to meet the costs of the work and to place a charging order on non-compliant owners together with a levy for its administration costs (which would only be applied to the non-compliant owners).

The effect of this would be that the local authority would be able to recover its costs when the house is subsequently sold. It would not, however, specify the standard of the work or get involved in appointment of contractors or supervising the work (it would merely satisfy itself that the proposed works were reasonable given the age and condition of the building). The responsibility for compliance with building standards, for overseeing the procurement procedure and ensuring the quality of the work undertaken was adequate would still lie with the owners including the owner in respect of whom the local authority had acted. The clear aim would be to reinforce collective decision making by the owners themselves not to replace this by local authority action. Since this is a new procedure, legislation would need to be reinforced with suitable advice and guidance by the Scottish Executive for local authorities, property managers and owners.

Managing communal repairs and maintenance

The current position

235. There are a variety of arrangements in place, at present, for organising and managing communal repairs and maintenance with one or more owners taking responsibility for the appointment of a professional manager or factor. In many cases, particularly in the West of Scotland, the title deeds may require owners to pay for the services of a property manager and this is also the norm throughout Scotland for modern flatted developments. The research on modern title deeds identified that almost 90% of the title deeds required the use of a property manager appointed initially by the developer with the owners themselves taking on responsibility for subsequent appointments.

236. Our view is that the appointment of a professional property manager with a continuing responsibility for monitoring the condition of the property and for organising repair and maintenance work on behalf of the owners is likely to be the most effective arrangement in the majority of cases. But it is impossible to be prescriptive about this since owners might quite legitimately prefer to carry out the work themselves and, particularly in small developments, for example, 2 or 3 flats in a converted house, this might be the most cost effective approach. Moreover, the appointment of a property manager is not in itself a panacea. The service provided by the property manager may be poor, there may be a lack of clarity over exactly what the role of the property manager is and owners may feel that they have little control over the activities of the property manager. Above all, it is important to bear in mind that property managers are the agents of the owners and can only exercise powers and functions granted to them by the owners. Property managers cannot dictate to owners but, equally, they are not themselves responsible for communal repairs and maintenance. But whatever the limitations of existing property management arrangements, our view is that the policy aim should be to encourage owners to establish continuing arrangements for managing communal repairs and maintenance and to ensure that good quality of professional property management services are available to them.

Changes to the civil law framework

237. Some progress in this direction can be made by changes to the common law framework. There has been considerable controversy about the extent to which initial developers and social landlords (in the case of right to buy sales) can impose a property manager on owners. The Title Conditions Bill seeks to clarify the position here and we welcome this clarification. In effect, developers will have the right to appoint a property manager but this right will continue only until the last house is sold or until the expiry of 5 years after the first house is sold. Social landlords will also have the right to appoint property managers for a period of up to 30 years after the first right to buy sale in a particular block although even during this period, owners of two-thirds of properties may dismiss the property manager if they so wish. After these various “manager burdens” have expired, then a majority of the owners will have the right to appoint or dismiss a property manager.

238. The Title Conditions Bill and the Scottish Law Commission’s proposals for the Tenements Bill also clarifies the position where there is no provision in the title deeds for the appointment of a property manager. In both cases, they provide a power for a majority of owners to appoint or dismiss a manager.

239. We endorse both of these proposals for changes to the civil law framework. We also considered whether to recommend that it should be a requirement for all title deeds for new developments to require owners to appoint a property manager as a complement to the recommendation in relation to owners associations. On balance, we decided that it would be wrong to seek to prescribe in each and every case since there would inevitably be some developments where a professional manager was not appropriate and it was clear from the research that, in almost all cases, the title deeds did include a provision along these lines in any event. We do recommend, however, that the Scottish Executive should seek to provide advice to developers and their legal advisers on good practice on specifying property manager burdens in new title deeds.

Encouraging owners to establish effective property management arrangements

240. We noted with interest a scheme developed by Edinburgh Council known as the Edinburgh Stair Partnership. This provides owners with a property management service for an annual fee of £50 + VAT although we understand that this charge does not fully cover the costs. The service includes carrying out a building technical inspection and report, specifying works that may be required, appointing and supervising contractors and collecting owners’ shares of the costs. In addition the Partnership provides each owner with a log book of maintenance reports to build up over the 3 years of the contract. At present, this scheme has only been in operation for just over a year and it is, therefore, too early to draw hard and fast conclusions about its success. Nevertheless, we considered that it was an initiative that other local authorities might wish to emulate particularly in areas where there is no strong tradition of private sector property management or factoring. We therefore recommend that local authorities should consider whether to initiate a scheme of this nature or to encourage RSLs with experience of private sector property management work to manage and run such a scheme in its area. We also recommend that local authorities should have the necessary powers to provide limited pump priming funding to RSLs and others to establish schemes of this nature and that the Scottish Executive should recognise this as a legitimate area of expenditure by local authorities in relation to its support to the private sector.

241. We also considered that local authorities should have the power to require owners to make arrangements for property management in certain circumstances, for example where a

property was likely to deteriorate as a result of a failure of owners to undertake regular maintenance or where a local authority has felt it necessary to serve statutory notices as a result of disrepair. This would be part and parcel of the powers to require owners to produce a maintenance plan which are discussed in more detail in section 4. In essence, owners would be required to draw up proposals for property management (which might include the appointment of a professional property manager, on owner or owners or some other organisation or body) as part and parcel of its maintenance plan to get these approved by the local authority.

Accreditation of property managers

242. There is a need to ensure that owners have confidence in the property managers who act on their behalf. The changes envisaged in the Title Conditions Bill will help in this respect since they will clarify the position on the appointment and dismissal of managers. There have also been concerns, noted in the first report of the Task Force, about the quality of the property management service provided by some local authorities to right to buy owners and we noted that, as a result of these concerns, the Housing (Scotland) Act 2001 provides for the regulation of property management services provided by local authorities and RSLs.

243. There is, however, nothing equivalent to this in Scotland for private sector property managers. In the private sector, the property management function may be carried out by chartered surveyors, solicitors and estate agents but anyone can set himself or herself up as a property manager. There is no professional body as such although an industry body, the Property Managers Association of Scotland, has a small membership.

244. We consider that regulation and licensing of property managers, i.e. legislation to make it illegal for unlicensed persons to provide commercial property management services would be too heavy handed and bureaucratic. Moreover, such research as does exist, for example, the research undertaken in connection with modern title deeds, and a survey by Friends of Glasgow West suggest that there is a reasonably high level of satisfaction with property management. Nevertheless, we do see merit in the establishment of a single, national accreditation scheme to be set up in partnership with the ‘industry’, local authorities and consumer interests. This would be a voluntary scheme but there should be a clear market incentive for property managers to join and this would be reinforced by discretionary powers to allow local authorities to require owners subject to maintenance orders to appoint an accredited manager if they were planning to use a professional manager. Our view is that the size of the property management sector in Scotland means that a national scheme is to be preferred over a multiplicity of local schemes run by councils directly and that, therefore, responsibility for establishing a scheme including setting standards, eligibility criteria, promotion etc should probably lie with Communities Scotland within the Scottish Executive bearing in mind their current responsibilities for the regulation of property management services by social landlords.

Ensuring that owners understand their responsibilities for communal repairs

245. One of the concerns is that owners do not always fully understand the extent and nature of their responsibilities for communal repairs and maintenance. It is difficult to know to what extent this is a problem in practice, but it is clearly a fairly fundamental requirement.

246. Solicitors acting on behalf of prospective buyers should always advise their clients of the relevant common repair and maintenance burdens associated with the house they plan to buy. To reinforce this and to ensure it is not overlooked, sub-group B has decided that the purchasers information pack, which they propose sellers should be encouraged to provide, ought to include details of the title provisions and procedures concerning common repairs and maintenance. We endorse this approach.

247. Title deeds are, however, often written in legal and/or technical language and, in some cases, the deeds may be hand-written. Some deeds also contain pages of narrative of the circumstances of the conveyance as well as a full description of the property so that it may be difficult to easily identify the relevant provisions. However, when properties are registered in the Land Register of Scotland, the Keepers staff will edit out obsolete references to ensure that only subsisting burdens are shown in the relevant section of the Land Certificate and it should provide a more comprehensible and accessible record. We recommend, therefore, that the burdens section of the Land Certificate should be included in the proposed purchasers information pack.

Identifying owners

248. In some blocks of flats, the difficulty of identifying and contacting owners can be a further hurdle to effective arrangements for communal repairs and maintenance. This is most likely to be a problem if the house is let out or is empty. Registers of Scotland maintain property registers (the Register of Sasines and the Land Register which is gradually replacing it) which show the names of the owners of almost all properties. Registers of Scotland now operate an online Registers Direct service whereby enquiries can be made about ownership for a modest charge providing the property address and location within the tenement can be supplied. Identifying ownership should not therefore cause too many difficulties.

249. The main difficulty arises when a contact address for the owner is not available. Tenants and letting agents may be able to help in the case of let property but this is unlikely to be of assistance in the cause of absentee owners of empty property.

250. Section 65 of the Title Conditions Bill imposes a duty on any person who was an owner of a property with a common repair and maintenance “burden” to disclose to any other person who also has an interest in that burden the name and address of the current owner or any information the former owner may have to help identify the name and address of the owner. This provision could be helpful in some circumstances although it clearly does not provide a complete solution. To complement this proposed legislation, we recommend that there should be a duty on an owner with a common repair and maintenance burden who does not have the house as his sole or main residence to notify other owners with a similar burden, or the property manager if there is one, of a contact address. We accept that enforcement of legislation duty along these lines may be difficult in practice but it would nevertheless, create a clear expectation about what is required.

Insurance

251. Within a block of flats, each owner may be affected by damage to parts of the building which are not his or her property and there is a real danger that, if some owners do not carry insurance or are under insured, and the tenement block is badly damaged, for example, by fire or flood, then this may prevent the building from being restored.

252. This problem was noted and discussed by the Scottish Law Commission in its report on the law of the tenement. The Commission recommended that insurance should be made compulsory and its draft Bill would place a duty on each owner to insure against such prescribed rights as set out in regulations made by Scottish Ministers. It envisaged that enforcement should be a matter for individual owners within the tenement and that to assist in this each owner should be obliged to produce, on request by another owner, a copy of the insurance policy and evidence of payment.

253. We very much support the principle of compulsory insurance but we think that this is best achieved by some form of common policy for the block of flats as a whole. The Scottish Law Commission recognised that common insurance was preferable and their default Tenement Management Scheme would allow for a majority of owners to agree that a common policy should be taken out. However, we would prefer to see common insurance as the norm in all cases and we recommend that the proposals for the Tenements (Scotland) Bill should be modified to make this mandatory for all owners in flatted blocks. Given the practical difficulties of implementing this, we suggest that it should be introduced on a phased basis. In the first instance it might be most appropriate to ensure that it is a requirement in respect of all new developments.

Summary of conclusions and recommendations

254. We suggest the following recommendations to help improve the effectiveness of the current arrangements for common repair and maintenance:

- *For the Scottish Executive to seek to ensure that changes to the civil law framework as envisaged in the Title Conditions (Scotland) Bill (now before Parliament) and the Tenements (Scotland) Bill drawn up by the Scottish Law Commission are approved by Parliament and implemented as soon as possible.*
- *For some further changes to be made to this civil law framework, possibly through amendments to the Tenements (Scotland) Bill, to require all title deeds for new developments above a specified minimum size threshold, where owners are subject to burdens relating to communal repairs and maintenance, to make provision for the establishment of an owners association (with a minimum specification for what this should be); and to put a duty on owners who do not use their house as their main or principal residence to provide other owners sharing common repair and maintenance burdens or a property manager appointed by these owners and contact address.*
- *For the Scottish Executive in consultation with the Law Society for Scotland, property managers and other interested parties to prepare good practice guidance on the inclusion of common repair and maintenance burdens in title deeds for new developments with particular reference to models for owners associations, provisions on decision making, the appointment of property managers and the establishment and management of sinking funds.*
- *For local authorities to provide encouragement to the establishment of owners' associations, particularly where they are involved in instigating repair and maintenance work, and to have the powers to provide modest grants for the establishment of owners' associations; and, similarly, to establish schemes (along the*

lines of the Edinburgh Stair Partnership) to encourage owners to establish effective property management arrangements and to have the powers to provide limited initial funding to RSLs and others to establish appropriate schemes.

- *For local authorities to have the power to require owners to establish property management arrangements linked to the proposals for maintenance plans.*
- *For local authorities to have powers to require owners subject to a maintenance plan to establish a reserve or sinking fund, provide grant aid to owners to establish such funds, and to manage funds on behalf of owners.*
- *For legislation to provide for a new procedure for dealing with the problem of owners who will not contribute their share of the costs of essential maintenance or repair. This new procedure would allow owners to issue a notice to local authorities specifying the works that had been agreed according to the required decision making processes but were being blocked by some of the owners refusing to deposit the necessary money. The local authority would then have the power to meet the costs to allow the work to go ahead and to place a charging order on the non-compliant owner together with a levy to meet the administration costs so that these costs could be recovered when the house is next sold.*
- *For the Scottish Executive to bring forward legislation based on the Scottish Law Commission's proposals for land attachment orders to help with serious problems of recovery of costs from non-compliant owners.*
- *For the Scottish Executive to review the scope for extending community mediation schemes to include disputes between owners and if the conclusions of this review are positive for the Executive and local authorities to encourage the use of community mediation to resolve disputes between owners.*
- *For the Scottish Executive through Communities Scotland to establish a single, national accreditation scheme for property managers in Scotland in partnership with the industry, local authorities and consumer interests.*
- *For sub-group B to require a copy of the relevant section of the Land Certificate setting out communal repair and maintenance burdens in the information provided as part of the proposed purchasers information pack.*
- *For the Scottish Executive through HomePoint within Communities Scotland to review the information available to owners and property managers on communal repairs to ensure that there is adequate information and advice available on the forthcoming civil law changes and key aspects of the process such as setting up an owners association, appointing property managers and the role of property managers, and establishing and managing reserve or sinking funds.*
- *For the proposals in the Tenement (Scotland) Bill to be modified to require compulsory common insurance for all flatted blocks. In the first instance, this should be applied to all new developments.*

Section seven - The building industry

Background

255. The Task Force's first report identified the problems faced by householders in identifying reliable builders and the negative impact this may have on the maintenance of their property. This is far from a new issue and there have been several recent developments in self-monitoring of the industry.

256. Many of the reported problems arise from work done by people operating outside the normal business controls, the so-called 'Cowboy Builders'. Also, a lot of small-scale work is done by householders or friends or family.

257. The UK Government has in the past given considerable thought as to whether a compulsory registration scheme for builders would have significant advantages. The conclusion has always been that the effort in monitoring 165,000 or so firms, with a constantly changing workforce, would involve considerable resources but the results would not necessarily be significant.

258. It has not been considered reasonable to insist that building work is done only by registered firms. Effort has therefore been concentrated in identifying reliable firms so as to give householders assistance in finding good firms when they need to.

259. The Department of Trade and Industry (DTI) ran a pilot Quality Mark Scheme in Birmingham and Somerset, and on 12 March 2002 announced the roll-out of the scheme across England and Wales.

260. In Scotland, the Scottish construction trade associations have developed a self-regulation scheme run by the Scottish Construction Licensing Executive (CLE). This board is largely independent of the trade associations themselves, with the chairperson being a member of the Society of Chief Officers of Trading Standards in Scotland and the vice-chair from the Scottish Consumer Council. The Scottish Executive has observer status on the board.

261. The licensing scheme provides the framework for trade associations to achieve accreditation, who, in turn assess their members according to strict quality criteria. Individual companies can apply direct to the CLE for registration.

262. Formal applications to the CLE have been made by the Scottish Electrical Contractors Organisation (SELECT), the Scottish and Northern Ireland Plumbing Employers Federation (SNIPEF) and the Scottish Builders trade association. It is expected that 400 SNIPEF contractors and 550 Scottish Building members will attain the accreditation standards within the next 18 months.

263. The DTI is content to see how the licensing scheme develops and will not actively promote Quality Mark in Scotland in the mean time. They retain the option to introduce their scheme in Scotland should the CLE scheme fail to achieve its aims.

264. On 29 August 2002 Scottish Executive and DTI officials met to discuss options for developing a joint approach between the two schemes. The Executive facilitated a meeting

on 6 November 2002 between DTI and DLE officials to agree a process for establishing mutual recognition. Actions were agreed and quarterly meetings now take place.

265. Also in development over the last couple of years has been a replacement for the building control system for Scotland. Following two earlier consultations on problems and initial proposals, a third consultation document issued in March 2002 set out our proposals. Responses received by the closing date of 14th June indicate strong support for the proposed Building Standards system. This will include ways of approving certain builders to certify selected building works. It is likely the approval system will recognise and make use of the licensing scheme, assuming the scheme is successful. Recognition is intended to include appropriate reductions in building warrant fees where building work is certified. It is hoped this will also encourage the use of reliable contractors.

266. The new building standards system is also intended to have more supporting guidance than the existing system, and careful consideration is being given as how this can be provided directly to householders and small builders when they need it. For example, the need to buy a complete set of Technical Standards (at £85) will be removed. Small project specific guidance, for example on 'What to do to replace your windows', will be available at low cost.

Issues

267. Previous Government consideration of the problems of poor service by builders has concluded that there will never be sufficient resources to 'control' all projects, so regulation will be of limited effect. Improvement is more likely through industry led schemes than through regulation, particularly if clients, including householders, are better informed and builders are given more guidance on how regulations should and can be met. Equally importantly, such schemes will provide a simpler route for complaints and disputes to be dealt with rather than going to court.

268. Current developments in voluntary industry schemes, supported by proposed changes to the building standards system, will it is hoped provide a realistic way of helping householders. This will take time, as the new building standards will not be fully in place until about April 2005, but the licensing scheme should be expanding during the development of the new system.

269. In the light of this we did not consider there to be any value in making any recommendation for the introduction of a mandatory licensing or registration scheme though we recognise that the public are likely to be deeply sceptical of the capacity of the industry to effectively self-regulate. Rather we are of the opinion that the current initiatives should be closely monitored by the Scottish Executive. In the event that they fail to meet their objectives in providing householders with a mechanism of identifying reliable contractors The Executive should give further consideration to the licensing of the building industry.

Summary of conclusions and recommendations

270. In the light of the above we do not consider it appropriate to attempt to make new recommendations on the accreditation or regulation of the building industry. Rather we feel that the measures that have recently been introduced should be allowed time to prove themselves. However, this is a long standing issue that has seen little real progress despite a number of initiatives and numerous proposals from the industry. Should the current

initiatives prove unsuccessful, the Scottish Executive should look again at the issue of regulation. Consequently we recommend that:

- ***The Scottish Executive should monitor the success of the CLE. Should the scheme fail in its objectives they should give further consideration to introducing licensing for the building industry in Scotland.***

Section eight - Tax and benefit incentives

Background

271. We have taken the view that in the interests of setting out a comprehensive approach it was appropriate to consider what, if any options, are available to use the tax system to encourage owners to invest in their properties and to give a higher priority to repair and maintenance. In doing so we are aware that these are matters are reserved to Westminster and that any changes would have to be made at UK level.

272. Our objective has been to ensure that our recommendations for action cover the widest possible range of options. We hope to ensure that our recommendations place the Scottish Executive in the best position to make judgements about the appropriate balance of options and approaches.

273. The specialist and technical nature of the subject matter is such that the most appropriate approach to the issue was to appoint a specialist consultant to report on the range of options that could be available. The consultant provided a report (to be published in due course) covering a wide range of issues and options which we considered in some detail.

Issues

274. Tax and benefits policy is a complex area and one where it is notoriously difficult to draw direct lines between changes made to the system and changes in behaviour or outcomes in respect of individual consumers. For this reason we do not regard policy changes in this area as central to achieving our objectives. Whilst we believe that there may be some scope for clarification of the framework or to target incentives and benefits at particular groups we believe that the main body of our recommendations addresses the key issues directly and comprehensively.

275. Changes to the tax and benefits system may help achieve our objectives, they may be of value in reinforcing certain messages and our general objective of achieving a change in attitudes on the part of owners. They are not, however, the full answer nor do we believe that they are wholly necessary to our purpose. We are firmly of the view that all the beneficial changes we have sought to achieve can be brought about within the existing tax and benefits framework.

276. That said the consultants report demonstrated a strong and long running debate around these issues and the possibility of some genuine additional benefits from adjustments in some areas. In particular we believe that there is scope to consider the following:

- Changes to the VAT rules to reduce the incentives to opt for “cash in hand” operators when having work carried out;
- A more positive tax framework for sinking funds to encourage their use in respect of common and shared maintenance costs;
- Changes to the Consumer Credit Act in respect of small loans to reduce the administrative barriers to the making of small secured loans for investment in repairs and improvements;

- Changes to the income support rules to allow for advanced determination of the eligibility of a loan for support and for assistance with loans for works of improvements to be included rather than just repair.

277. In considering the consultants recommendations we are clear however, that we do not see any real benefit in the proposals that have been made in respect of differential lending rates for properties in disrepair.

278. The report makes particular mention of the problem for Muslim home owners were in the payment of interest on loans and the impact that a loan based approach to public assistance may have as well as the establish problems of accessing traditional mortgage products. We are aware of recent work by the Council of Mortgage Lenders and others to develop options to improve services to the Muslim community and we commend these efforts. We believe that the reports recommendation in this respect should be given careful consideration.

Summary of conclusions and recommendations

279. In making recommendations in this area we would stress that we believe that whilst such changes could have some beneficial effects, we believe that the package of recommendations we have made across the other areas of our remit will be capable of addressing the issues identified in the Task Force's first report.

280. The two exceptions we would make to this is in respect of the equalities issues arising from the extent to which the national regulatory framework for the making of loans constrains the ability of lenders and local authorities to offer mortgage and other loan products that are acceptable to the Muslim community. We also believe that changes to the benefit rules in respect of support for loans for house repairs and improvements could be of significant assistance to many owners with disabilities who are dependant on benefits for their income and to many low income owners.

Bearing this in mind we recommend that:

- *The Scottish Executive give detailed consideration to the options set out in the research report and in particular the proposals in respect of:*
 - *changes to the VAT rules to in respect of repair and maintenance expenditure;*
 - *developing a more positive tax framework for sinking funds;*
 - *changes to the Consumer Credit Act in respect of small loans to reduce the administrative barriers;*
 - *changes to the income support rules to provide more certainty and a wider range of support for owner occupiers on low incomes;*
 - *changing rules in respect of lending to facilitate the availability of loan products accessible by the Muslim community*

and enter into discussions with UK Ministers as to how best to take these matters forward.

Options and issues in specifying thermal and energy efficiency as part of the tolerable standard

Purpose

1. This annex provides an overview of the options and issues in measuring energy efficiency and thermal insulation in dwellings in the context of the discussion of the Tolerable Standard.

Introduction

2. In considering how to specify energy or thermal efficiency requirements within the tolerable standard three key questions require to be answered. These are:
 - How should the energy or thermal efficiency requirements be expressed within the standard?
 - What measure of energy or thermal efficiency should be used?
 - What benchmark for performance against that measure should be required?
3. As indicated in the main report two approaches are available:
 - proscribing a minimum performance within the standard, a minimum NHER or SAP rating for example; or,
 - using a qualified descriptor of performance such as “reasonable” or “basic” and developing detailed guidance on interpretation.
4. Before a prescriptive minimum standard could be applied the following would be necessary:
 - an appropriate standard was available
 - that a level could be set for it that was capable of being achieved across the whole stock
 - that failure would, in every case, represent sufficient grounds in itself for statutory intervention
 - that meeting the specified standard would achieve the intended objective.
5. The following section examines the measures available and tests them against these requirements.

Established measures of energy efficiency

6. There is a variety of whole property energy rating and auditing systems available. They are however all composite measures combining information on the size, that is heated volume, of the property, its construction and in particular the insulation properties of the materials, the heating type and the fuels used. The two most widely used energy audit systems are:

- NHER
- SAP

NHER (National Home Energy Efficiency Rating System)

7. This measure is a commercial product owned by National Energy Surveys. NES market the necessary software and guidance material for using the rating. They also train and certificate surveyors and quality control a sample of rating certificates issued.
8. An NHER assessment gives a figure of 0-10 representing the cost of energy used per metre square of floor area of the property. 0 being very inefficient with high fuel costs and 10 being low annual fuel costs, high insulation levels and efficient heating appliances.
9. There are four levels of assessment within the NHER scheme rising from level 0 requiring only 10 pieces of information for an assessment to be carried out to level 3 requiring information on construction details, heating controls and the use of the heating system by the occupants.

SAP (Standard Assessment Procedure)

10. The SAP rating system has been developed specifically to be included in the building regulations. Developed by the Building Research Establishment the SAP system produces a rating between 1 (very inefficient) and 120 (very efficient). Unlike NHER the location of a property is not taken into account (so similar buildings will have similar ratings even though one is in Thurso and the other Torquay). As with NHER, assessment bodies and surveyors are licensed and a proportion of certifications back checked for monitoring and validation purposes.
11. The SAP rating system is generally simpler than that for NHER but has been developed specifically for use in assessing new build designs rather than as a basis for assessing and surveying older properties.

Issues in the use of SAP and NHER within the Tolerable Standard

12. Both SAP and NHER are composite measures of energy efficiency not measures of thermal efficiency. Both systems allow any particular rating to be achieved by a combination of efficiency in the heating system, the fuel used or the level of thermal insulation of the property. Properties with very efficient heating systems need not, for example, be so well thermally insulated to achieve the same rating as better insulated properties with less efficient heating systems.
13. The problem in the context of the tolerable standard is that what is being measured is not discreet aspects of the fabric or structure of the building but the interaction between the fabric and the heating system. The extent to which a high SAP or NHER rating reflects levels of comfort within the property will depend on the extent to which the heating system is used at its most efficient. The measure is not an absolute measure of levels of comfort, utility or performance. In this sense the use of both NHER and SAP would be inconsistent with the way the Tolerable Standard is designed to operate.

14. As a composite measure it is also not clear that a property that meets a particular target audit rating will perform at the same level throughout its structure. For example where part of the house is more exposed or significantly less well insulated than other parts, typically the case with kitchen and bathroom extensions to older properties for example, these areas may continue to suffer from condensation and mould growth even though the property overall meets a particular target rating.
15. In addition the detail of the calculation of both SAP and NHER are controlled by bodies other than the Scottish Executive. The measures are owned by specialist, all be it not for profit, organisations who have control over the calculation and calibration of the measures and the quality control and accreditation of surveyors. To refer to them specifically within legislation without also taking full ownership of the product would effectively give control of the operation of that legislative provision to those organisations.
16. These measures may be appropriate to use in specifying and measuring the proposed Scottish Housing Standard (Index of Housing Quality) where the objective is to achieve a desired higher level of performance from basically sound building structures. It may also be appropriate to refer to them in guidance as one of a number of factors to be taken into account in assessing a property. However, neither SAP nor NHER are suitable for use on the face of a statutory condemnatory standard.

Alternatives to SAP and NHER

17. The most obvious alternative to using whole house composite measures of energy efficiency is to set minimum thermal insulation performance levels for the fabric and structure of the building.
18. The thermal performance of building materials is assessed by the calculation of a “U” value. That is a measure of the rate at which heat passes through the material or building elements.
19. “U” values are available for all commonly used building materials and can be calculated for any given construction detail of walls, floors, ceilings, roofs windows and doors). Using “U” values would allow a simple and direct measure of thermal performance of each element of the property to be assessed and would ensure that the whole of the fabric of a property meets the specified standard rather than allowing for theoretical heating performance to be off set against deficiencies in thermal insulation.
20. The advantage of using “U” values is that it relates directly and specifically to the performance of the fabric of the building. As an assessment of actual performance it is not dependant on the actions of occupants in the use of heating systems and it would identify those properties that are genuinely deficient in terms of the thermal performance of the fabric of the building.
21. The disadvantage of this approach is that whilst specifying minimum “U” values for each element is relatively straight forward it is far from easy to assess the performance of any particular property. Individual property assessments would require details of the construction of each of the key elements. Whilst in most buildings this will be relatively clear there will be some cases were it will only be possible to confirm the construction material through disruptive survey work. In addition construction defects resulting in

cold bridges in cavity walls for example may result in actual performance being below the theoretical calculation. Such defects will be difficult to detect in practice.

22. A “U” value based approach would not produce a simple single measure of efficiency nor would it allow much flexibility in the design of remedial works. Where a specified element failed to meet a target “U” value this could only be rectified by work to that element. In the case of external walls in high rise blocks or tenements this may not leave many options in bringing the property up to standard.

Annex to section four

Recommendations in respect of local authority powers

Our detailed recommendations on all of these issues covered in this section are set out below. Over all we believe that these changes will ensure that local authorities have the necessary tools to give effect to the strategies for dealing with BTS housing, properties in disrepair and problems arising from a lack of maintenance including such problems in properties with common and shared repairing obligations and area wide problems. They also provide the flexibility of options and protection that individual owners can expect when faced with statutory action by a local council.

Powers in respect of individual properties

- The existing framework of powers in respect of individual BTS properties should be retained.
- Section 88 (4) of the Housing Scotland Act 1987 should be amended to provide an additional power for a Local Authority to take entry to a property subject to an Improvement Order that has not been complied with and carry out such works as are necessary to bring the property up to the tolerable standard and any other such works that are required to ensure that the property is in a reasonable state of repair, having regard to its age, character and location. Powers and options to recover expenditure incurred through the use of this power should be the same as those in respect of a repair notice.
- The powers to serve and enforce notices on properties in a condition of serious disrepair set out in section 108 of the Housing (Scotland) Act 1987 should be extended to allow the serving of a notice in respects of defects arising from a lack of maintenance that do not amount to disrepair but if left un-addressed could result in disrepair.
- A new power should be created to allow the serving of a maintenance order on any building or group of buildings and associated land and which comprises or includes a dwelling. Such an order should have the effect of requiring the owners to submit to the authority for approval and operate a maintenance plan for the building and any associated garden ground, boundary fences or walls or access ways including un-adopted streetlights roadways footpaths or other services. In approving such a plan a local authority should have the power to reject or amend it and where appropriate to require the appointment of a property manager. Where owners fail to submit an acceptable maintenance plan or fail to operate an approved plan the local authority should have a power to put in place and operate such a scheme and to recover costs. Such a notice should be recorded on the titles in the Land Register or register of sasines as appropriate.
- The mandatory entitlement to grant aid for owners of buildings subject to notices requiring repairs or improvements should be removed and replaced with a provision for mandatory “assistance”. Such assistance should be in a form determined within the terms of the agreed “scheme of assistance” established by the local authority. The nature of the assistance provided should be determined according to the means (including free equity) of the owner and should not automatically be in the form of grant.

- Any entitlement to mandatory assistance should not extend to successors in title. That is where a property subject to a notice is sold or ownership changes by any other means, there should be no entitlement to assistance on the part of the new owner. The local authority should retain the option of making assistance available on a discretionary basis where this is felt to be appropriate.
- The notices served on individual properties should include an option of serving the notice with the effect that where it has not been complied with at the point at which the occupants of the property at the time the notice was served remove from the property, it will be an offence for any other individuals either to occupy the property or to allow or cause it to be occupied until such time as the notice has been complied with (similar to the offence created under the Closing Order provisions). The notice should also carry powers to control the occupancy of any property similar to those for the control of occupancy set in section 97 of the Housing (Scotland) Act 1987.
- There should be a procedure for notifying the local authority that a notice has been complied with and a requirement on the authority to re-inspect the property and either confirm compliance with the notice or indicate the extent to which the property continues to fail to meet the terms of the notice. In the latter situation the authority may specify a further period for compliance. This process should also be available in respect of any property that has been identified by the local authority as failing the tolerable standard but not subject to a notice.

Area based powers

Definition of a Renewal Area

- The existing provision for the declaration of housing renewal areas in respect of concentrations of BTS properties set out in the Housing (Scotland) Act 1987 should be abolished and replaced with a new power to declare a Housing Renewal Area to facilitate action in respect of:
 - (a) Concentrations of properties that fail the Tolerable Standard
 - (b) Concentrations of properties in a condition of serious disrepair
 - (c) Concentrations of properties in a condition of disrepair, though not in serious disrepair, but which are likely to deteriorate rapidly or cause material damage to other properties or give rise to market failure if nothing is done to repair them;
 - (d) Concentrations of properties in any combinations of conditions (a)-(c)
 - (e) Areas where there is evidence of market failure or decline such that if action is not taken there is likely to be a detrimental impact on the stability of the local community or the condition and or quality a significant proportion of the housing stock in the area or of the area as a whole.

And where in the view of the Authority the most effective way of dealing with the area is declare a renewal area.

- The level of concentration of properties in categories (a) to (e) should be 50% but that The Scottish Executive should have a power to approve renewal areas where the % is lower than this where this is justified in the submission. Such a power would normally be of most use in respect of rural renewal areas.

Process for the declaration of a renewal Area

- A local authority should seek to identify, through its Local Housing Strategy the criteria to be used in identifying areas to be subject to housing renewal area designation and the policies and approaches to be adopted in the declaration of those areas.
- In seeking to declare a renewal area a local authority should first make and publish (including serve a copy on every household, and business in the area and on any non resident owners), a draft resolution identifying the following:
 - The area covered, defined on a map;
 - The reason for the declaration;
 - An outline action plan for improvement of the area including specified objectives, outputs and outcomes;
 - Any dwelling or other buildings that require to be demolished because they do not meet the tolerable standard, are in a condition of disrepair such that they are best dealt with by demolition or they require to be demolished to meet some other objective of the action plan;
 - Any dwelling or buildings in the area that require to be repaired or improvement to meet the Tolerable Standard and the standards to be met by dwellings to be repaired or improved;
 - Any specific buildings that require to be improved to provide for the safety or security of the occupants, for the more cost effective long term maintenance of the building, or to improve the amenity or marketability of the building or meet some other specific objective of the action plan;
 - Any specific areas of derelict land, un-adopted open space, landscaping, roadways, footpaths or amenity areas that require improvement including street lighting;
 - Any buildings, dwellings or other land that require to be subject to a maintenance plan and the standards of maintenance to be achieved by that plan;
 - Any building, dwelling or other land to be acquired by CPO;
 - The resources to be deployed in achieving the action plan objectives;
 - The manner in which the “scheme of assistance” will be applied for the purposes of the action plan;
 - The time-scale for the implementation of the action plan.
- The draft resolution should remain open for objections for a period of not less than one month prior to being submitted, with details of any objections and proposed changes to the resolution to take account of those objections, for consideration by Scottish Ministers according to a process similar to that now in force in respect of the declaration of Housing Action Areas.
- The Scottish Executive should have the option of holding a hearing in public if they consider that appropriate prior to taking a view of the draft resolution. Ministers should have the option to reject or amend the draft resolution within a specified time period.
- After the response by The Scottish Executive a final resolution (as amended) should be adopted by the Local Authority, published and served on residents and interested parties together with a date for its coming into force.
- After the declaration of a renewal area there should be formal process for making alterations to the action plan or for agreeing an extension of time period of the

designation. This process should include an option for residents to apply to have the action plan altered or the designation closed where either may be considered appropriate in the light of progress or changes in circumstances.

Powers of local authorities in designated renewal areas

- The following powers should be available to local authorities within designated renewal areas:
 - To access any land or building for the purpose of survey, inspection or to carry out works (including works to an adjacent property) in pursuance of the objectives of the action plan;
 - To require specified repair defects to be corrected in any building;
 - To require specified improvement to meet the tolerable standard to be carried out to any dwelling;
 - To require that specific dwellings that do not meet the tolerable standard should be demolished;
 - To require the demolition of any building in a condition of disrepair such that they are best dealt with by demolition or they require to be demolished to meet some other objective of the action plan;
 - To require specified improvements to be carried out to any building where those improvements are required to provide for the safety or security of the occupants, for the more cost effective long term maintenance of the building, or to improve the amenity or marketability of the building or meet some other specific objective of the action plan;
 - To require specified improvements to be carried out in respect of any derelict land, un-adopted open space, landscaping, roadways, footpaths or amenity areas that require improvement including street lighting;
 - To establish the standards to be met by any land or building subject to a requirement to carry out works;
 - To acquire either voluntarily or by CPO any specified building or land;
 - To take control of any dwelling, land or building as if they were the owner where the owner fails to comply with any requirement made under the area designation, where the owner can not be identified or contacted or where to do so is in the best interests of any of the residents or occupants of the area and the most effective way of achieving the objectives of the action plan in respect of those properties, and where appropriate to subsequently CPO such properties. (Such a control order should operate in a similar manner to that provided for by Section 178, of the Housing (Scotland) Act 1987 (control orders for HMOs), should be subject to an appeal to the sheriff court and be effective against any successor in title);
 - To require the owners of any land or building to put in place and operate a maintenance plan for any land or building within the area under their control including garden ground associated with any dwelling or boundary fences, hedges and walls;
 - To put in place and implement a maintenance plan in respect of any land or building where the owner fails to comply with a requirement to do so;
 - To control the occupancy of dwellings in a condition of disrepair or failing the tolerable standard or carry out works or postpone the demolition of any dwellings in the same way as they may for existing Housing Action Areas and in the same way as proposed for properties subject to “suspensive” notices for individual properties;
 - To provide assistance (according to the agreed scheme of assistance) for any owner required to carry out works and to make conditions for that assistance in respect of future maintenance (such assistance should not to be mandatory to successors in title)

- To recover costs for any work carried out under default powers;
- To require, with the approval of the Lands Tribunal that the titles in respect of community burdens of any property within the area be amended to ensure that they make effective provision for the management of common or shared maintenance obligations.

Duties of a Local Authority in respect of designated renewal areas

- The Local Authority should be subject to a duty to:
 - take steps consult and inform residents of progress in respect of the action plan;
 - consult and inform owners or occupants of land or building subject to specific proposals within the action plan;
 - consult over any intention to apply to Scottish Ministers for a variation of the action plan or the time-scale for its completion;
 - ensure that suitable alternative housing opportunities are made available for any resident displaced as a direct result of the implementation of the action plan;
 - provide “assistance” to all owners within the area in accordance with the application of the “scheme of assistance” set out in the action plan;
 - certify compliance with any provision of the action plan in respect of any dwelling, building or land in respect of which works are required on application by the owner or other person having control of the property or land;
 - take all reasonable steps to ensure that the action plan is completed within the specified time period.

Appeals and guidance

- The arrangements set out in the Housing (Scotland) Act 1987 for appeals in respect of notices served on individual properties and accounts for works carried out under default powers (arising from both individual notices and in designated housing renewal areas) should apply to the revised powers set out in these recommendations. Similar rights of appeal should exist in respect of the proposed power to make and recover costs in respect of the proposed maintenance order.
- The Scottish Executive should make detailed guidance for the operation of statutory powers, including area based powers, by local authorities and in particular, issue material relating to best practice in consulting and involving owners and other residents and in respect of the standards to be met by houses subject to notices or enforcement action.

Other associated powers and issues

- The existing power of entry for survey and examination in Section 317(1)(a) of the 1987 Act should be extended to include power of entry and inspection in pursuance of both the revised area based powers and notices in respect of individual properties. The power should be extended to cover adjacent property where such access is necessary (for inspection or to carry out works) In addition on failure to comply, to include forcible entry, in line with these powers available in Section 102 of the Civic Government (Scotland) Act 1982.
- Section 319(2) of the 1987 Act should be amended to incorporate, as a last resort, a power to require the temporary removal of an owner/occupier to suitable alternative accommodation, to allow an authority to carry out works required under a notice

- There should be a new power to take control of any individual property not in a designated renewal area that is the subject of any other notice requiring works to be carried out where the owner can not be identified or contacted or the owner has failed to respond to the notice and taking control is, in the opinion of the authority, in the best interests of the occupiers of the property or the occupiers of adjacent property. Such a control order should operate in a similar manner to that provided for by section 178, of the Housing (Scotland) Act 1987 (control orders for HMOs) and should be effective against any successor in title. The control order should also give rise to a power of compulsory acquisition.
- Any enforcement action should carry with it the power to carry out any additional works discovered on site (that could not reasonably have been known about at the time the notice was served) and that are necessary to either return to building too, or ensure that it remains in, a reasonable state of repair having regard to its age character and location.
- The power to make a charging order should be amended to allow:
 - repayment on sale of the property without the need for the payment of an annuity, or the current 30 year time limit;
 - the calculation of the amount to be repaid as a % of the value of the property;
 - the calculation of the amount payable with or without or with a reduced rate of interest; and,
 - for the making of an order with the agreement of the owner, as a first charge, to provide financial assistance where work is carried out by the owner on a property that is the subject of a statutory repair notice, improvement, closing or demolition order or an order for the carrying out of works in a designated housing renewal area.
- Appropriate details of all properties subject individual and area based notices should be recorded in the building standards register. This should include any application for the notice to be determined and subsequent responses.