

**The Second Report of the Housing
Improvement Task Force**

**Stewardship and Responsibility: A
Policy Framework for Private Housing in
Scotland**

City of Edinburgh Council Response

June 2003

Housing Improvement Task Force: Stewardship and Responsibility

Introduction

1. This is the response of the City of Edinburgh Council to the second report of the Scottish Executive's Housing Improvement Task Force. The Housing Improvement Task Force was established by the Scottish Executive in March 2001 to develop a policy framework to improve housing conditions in the private sector.
2. This response develops some of the arguments made in our response to the first report of the Housing Improvement Task Force in June 2002 and responds to some of the specific proposals put forward in the Task Force's second report. The response has been developed with input from Environment and Consumer Services, City Development, Legal Services and the Housing Services departments of the Council. Other departments have provided comment and advice on certain specific areas.
3. The second report of the Task Force, "Stewardship and Responsibility", sets out a significant number of policy proposals to improve the condition of private sector housing.
4. The report contains 151 detailed recommendations from the Housing Improvement Task Force to the Scottish Executive. We have not responded to all the proposals in detail but have tried to prioritise those we believe are most central for developing a framework to assist owners maintain their homes.
5. Our response to the Task Force's proposals is informed by the context of a dynamic private sector housing market in Edinburgh and our involvement, as a local authority, with it.

Private Sector Housing in Edinburgh

6. Edinburgh has one of the biggest private housing markets in Scotland. Four out of five households either live in their own home or rent privately. The private rented sector accounts for almost 11% of the housing stock in the city.
7. This creates a number of challenges:
 - Almost 60% of households live in flats with common repairs or maintenance obligations. The lack of effective maintenance arrangements, particularly in older property, is probably the biggest stumbling block to improving housing conditions in the private sector in Edinburgh.

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- The private rented sector has grown considerably in the past decade, fuelled by buy to let mortgages and the growth in households, particularly young student and professional households, who require this accommodation. There are a wide range of landlords and lettings agents with a wide variation in management standards and practices.
- Nearly four out of every five local authority tenements or blocks of flats have one or more owners, Nearly one third of these buildings now have a majority of owner occupiers.

The Council's role

8. We are committed to helping homeowners, private landlords and private tenants live in well maintained and well managed homes. The Council currently do this in a number of ways:
 - use of statutory repairs notices, through local bye-laws, to assist owners carry out essential and emergency common repairs and maintenance.
 - provision of housing grants to assist owners with improvements and adaptations to their homes.
 - the licensing of HMOs includes many properties in the private rented sector.
 - providing a property management and factoring service, through the Edinburgh Stair Partnership, for tenement owners.
 - the provision of advice and assistance to private sector landlords and tenants.
 - the provision of maintenance and repair services to owners in ex local authority, mixed-tenure buildings.
9. The Council's City Housing Strategy identifies a number of priorities for the Council's work in the private sector. These include:
 - support changes for a single survey.
 - encourage the physical accessibility of houses to be put on all house sale adverts.
 - develop and maintain an accommodation register of properties and explore link into choice based lettings.

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- develop a web based information tool to help people understand the importance of budgeting for long term house maintenance through a web based information tool.
- expand rent guarantee schemes to help people access private rented sector properties.
- promote Edinburgh Stair Partnership factoring service.
- examine ways to assist low income home owners with repairs through grants or equity loans.
- support changes to property law reform which ensure that owners maintain jointly owned tenements.
- implement HMO legislation to ensure standards are met in the private rented sector.
- with landlords and landlord agents develop a quality rating/accreditation scheme for the private rented sector.

We believe that the work already developed through our core services and the City Housing Strategy put us in a good position to develop a comprehensive private sector housing strategy within the framework of the local housing strategy as proposed in the report.

10. The report sets out a policy framework for private sector housing which will have major implications for the consumers, the industry and local authorities. It will require a range of policy initiatives, legislation, funding and effective co-ordination to take it forward. This will clearly require both time for legislation and resources to support specific policy initiatives.
11. As many of the proposals are closely inter-linked we recommend that **the Scottish Executive establish an implementation group to take forward the Housing Improvement Task Force proposals to assist in co-ordination and planning of the different policy initiatives. The group should involve the range of private sector interests and local authorities.**
12. The Scottish Executive is currently consulting on the framework for the introduction Private Sector Housing Grant. This grant will replace local authority non-HRA borrowing consent with a payment of grant from Communities Scotland to local authorities against outcome agreements.
13. However it is unclear if it is the Scottish Executive's intention to provide resources for all private sector initiatives through PSHG. **Further clarification on the role Private Sector Housing Grant will play in supporting the delivery of the framework set out by the HITF would be welcome.**
14. **We agree fully with the HITF's broad principle that the responsibility for the upkeep of houses in the private sector lies first and foremost**

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with their owners and there is a need for greater awareness and acceptance by owners of this responsibility.

15. The key themes in the report reflect the key areas that require change:
- Influencing the operation of the housing market.
 - Improving co-operation between owners.
 - Reshaping assistance to owners.
 - Modernising the operation of the private rented sector.
 - Modernising the role of local authorities.
16. We would also wish to commend the Task Force's open and consultative approach. This Council like many other organisations has been involved in the development of the Task Force's thinking in a number of different ways and contributed through seminars, previous consultation exercises and ad hoc meetings.

Chapter One: Quality Standards for Private Sector Housing in the 21st Century.

17. The HITF recommend the development of three key housing standards:
- updating the tolerable standard;
 - the introduction of the Scottish Housing Quality Standard;
 - Introducing a modernised repairing standard for landlords.
18. While we understand the reasoning behind each of the proposals for the development of three different standards we are concerned that this - along with the proposed Social Housing Standard - could lead to an overly complex and bureaucratic framework of housing standards which would be difficult to both understand and implement.

Updating the tolerable standard (paras 49-77)

19. We are broadly in agreement with recommendations 1-7 of the report and support the retention and extension of the tolerable standard and agree that it should remain a pass/fail standard. We agree that the Tolerable Standard should be extended to include thermal insulation and the safe supply, distribution and use of electrical power. However we would also wish to take this opportunity to emphasise the significant problems local authorities will face in identifying and assessing the extent of inadequate thermal insulation in particular.
20. However by leaving much of the detail of these extensions to the tolerable standard as well as existing areas (dampness, condensation and mould growth) to guidance, the development of policy is likely to vary across

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local authorities. These judgements regarding the scope of policy at a local level are likely to be driven, not least, by the availability of resources for improvement and repair grant funding to tackle these problems.

21. We recommend that, **given the importance of the proposed guidance to the implementation of the revised Tolerable Standard, it should be subject to a thorough process of consultation with local authorities and other partner bodies.** Clearly any changing the scope of BTS is likely to have an impact on the priorities of local authorities and RSLs own maintenance and repair programmes in their own stock.
22. It is difficult to make an accurate assessment of the impact of the proposed changes to the Tolerable Standard and the extended use of guidance, in terms of the number of properties affected and the resources which may be required to tackle these problems.
23. For example the proposed extension of the definition of “wholesome water supply” could lead to a substantial increase in houses defined as falling below the tolerable standard. The City of Edinburgh Council already provides around 500 grants per year to assist owners with the costs of replacing lead pipes.
24. **We recommend that a full assessment of the impact of the proposed changes to the Tolerable Standard following the publication of the 2002 Scottish House Condition Survey be carried out before the proposals are finalised.** This assessment should include an assessment of the financial resources required from owners and/or local authorities to bring houses up to the new tolerable standard.

Scottish Housing Quality Standard (paras 78-98)

25. We agree that the proposed Scottish Housing Quality Standard should not be a pass/fail standard or applied to any particular property in the private sector. It should primarily be a tool designed to assist the development of local housing strategies.
26. However there may be some limited application of elements of the proposed standard to specific properties. For example, we see some value in linking the content of the standard to inform the development of the single survey proposed in Chapter 3 of the report. This would create a consistent way of monitoring house condition over time in any given area.
27. We are broadly in agreement with the proposed content of the standard summarised in recommendation 9 of the report.

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28. We note that the HITF has decided not to include noise insulation – currently covered in Part H of Building Scotland regulations. We appreciate that this is a difficult area and the causes of noise disturbance often do not relate to the building itself. It is nevertheless a problem which public policy needs to tackle.
29. There are many different factors which have led to a greater awareness of noise disturbance and a higher level of noise complaints being made to local authorities. There is an impression that noise levels have generally increased; neighbours tolerance levels have become more sensitive; the increasing use of bare floorboards either for health or fashion reasons; and increasing numbers of young people living in flats, have all contributed to higher levels of general noise disturbance within tenemental property.
30. While it may not be appropriate to address noise issues within the Scottish Housing Quality Standard or the Tolerable Standard we **suggest that the Scottish Executive carry out an examination of the causes of noise disturbances and the possible remedies.**
31. We recommend that further consideration is given to identifying the extent to which the Scottish Housing Quality Standard should specify common parts in tenement buildings.
32. The proposed Standard will cover elements like common windows/roof lights, door entry systems and secure rear door access. It should clearly state that it includes common roofs and chimneys. It should also include secure access to the common parts of buildings. This would include main and back doors but also access to common roofs and roof spaces.
33. We also believe that the Scottish Executive should also include items such as adequate drainage and service risers in properties but particularly common properties like tenements.

The Repairing Standard for Private Landlords (paras 99-112)

34. We support the proposals for the modernised repairing standard for private landlords summarised in recommendations 13-18. **We recommend that the Scottish Executive consider including in the new standard provision for the repair and maintenance of safety features. (This should include the provision and maintenance of fire detection and prevention equipment as part of the standard).**
35. We particularly support the requirement on landlords to inspect property before the property is let and notify the new tenant of any work which requires to be carried out by the landlord.

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36. Given that households living in the private rented sector are predominantly young and mobile, universities and employers, particularly those who rely on importing employees from other parts of the country, are a major source of information for people living in the private rented sector. **Any publicity campaign about the modernised repairing standard for private landlords should be developed with the involvement of universities and employers.**
37. However we believe that ultimately landlords should be under an obligation not just to incorporate the revised standard into the written leases but to provide more “user friendly information” to tenants.
38. We recommend that **the Scottish Executive should produce a standard leaflet on landlord’s repairing obligations for tenants’** – which also includes information on tenants’ obligations to keep a property in good repair - and landlords should be obliged to provide this information when tenants begin a new tenancy.

Chapter Three: Improving the Operation of the Housing Market

39. We support the proposals for the introduction of the single survey and purchasers information pack contained in Chapter Three of the report.
40. These are important initiatives which should increase the awareness of both buyers and sellers, to the condition of property and the maintenance and repair obligations that may go with it. We believe this will, over time, help to focus the property market and house values on property condition and maintenance.
41. However we think that the philosophy behind the introduction of both initiatives needs to be articulated more clearly. While the thrust of media reporting and publicity has been about reducing the instances of multiple surveys the problem of multiple surveys is not particularly acute except in some areas like Edinburgh.
42. We believe that the main reason for introducing both initiatives is to provide buyers with better information on which to make their decision to purchase that the single survey and purchasers’ information pack should be developed.
43. There are practical difficulties and risks in moving towards a new system for buying and selling property. Importantly consumers would need to be convinced that any additional costs of the single survey and sellers’ information pack would be not be excessive. Other interests, including solicitors, lenders, surveyors and estate agents would need to be brought

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on board at a local level. Local authorities also have an important role in working with local partners to co-ordinate and monitor the impact of the single survey.

Single Survey (paras 128 – 170)

44. Notwithstanding our general support for the concept of the single survey we have a number of concerns which we believe need to be explored further by the Scottish Executive before piloting the proposed survey:
- Lenders may require a further valuation or survey to be carried out before making a lending decision depending on the information contained in the single survey. The danger is that if this became the rule rather than the exception then this would inevitably raise the costs of purchase for house buyers. Some further discussion needs to take place between lenders and the Scottish Executive to establish the circumstances in which a lender may require further valuation or survey to take place.
 - We are also concerned about the potential for increased costs through increased insurance premiums for surveyors which would almost inevitably be passed on to customers. However we recognise that these costs may be higher at the start of the scheme – particularly during the pilot phase – until there is enough volume in the system to reassure insurance brokers and premiums reduce.

Piloting the survey

45. We agree that the single survey should be piloted in a number of different areas. We look forward to the Scottish Executive producing further criteria for the pilot areas. **We believe Edinburgh would be an important area in which to run a pilot single survey.** We believe that there is likely to be general support from the industry to pilot the initiative in the city.
46. Edinburgh's housing market is generally regarded as a "hot" market where demand is high, supply low and prices high. However there are pockets of low demand and even negative equity within Edinburgh.
47. Piloting the single survey in Edinburgh would give the Scottish Executive and the industry an opportunity to test out the single survey in a "hot" market but with the opportunity of seeing how it works in smaller "micro" markets.
48. Another consideration would be to extend the pilot to the wider Lothians, Borders and Fife housing market area.

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49. We believe that there will be some drawbacks in introducing the pilot along a voluntary model but understand the need to market test the single survey. Despite the drawbacks in the current system there may be an element of consumers trusting the “devil they knew” rather than opting for a new scheme.
50. Both buyers and sellers, for example, may be, less willing to use the single survey because they are simply not familiar with the concept. We therefore recommend that the pilot for the single survey should run for 12 months rather than 6 to allow owners and markets to get used to the single survey.
51. We would also support the view that ultimately legislative measures may be required to introduce the single survey across Scotland in a consistent manner. However the Scottish Executive would need to develop some criteria for undertaking this exercise.
52. It may be less appropriate for, example, to introduce legislation if the pilots showed clear consumer resistance to the single survey. If, on the other hand, pilots showed that there was clear industry resistance but consumer demand for the single survey then legislation would be more important.
53. **We recommend that an assessment is undertaken of the potential market impacts of piloting the single survey before final decisions are made on the pilot areas.** If this is not possible it should certainly form part of the criteria for assessing the impact of the pilots.
54. House price inflation continues to increase in Edinburgh. In the third quarter of 2002 the average sale price in Edinburgh was 24 per cent higher than that of the same quarter in 2001. (£128,402).
55. This is reflected more generally across the wider Lothians area. While it would be difficult to extrapolate the impact of the single survey on house prices from wider economic factors it is important that this becomes a factor in any assessment of the pilots.

Purchaser's Information Pack (171-184)

56. We support the introduction of the Purchaser's Information Pack summarised in recommendations 34-39. In addition to the elements that are highlighted in recommendation 34 of the report we suggest that agents be encouraged to include information about local services including advice and information about property maintenance in purchaser's information packs.

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57. The pack must also include a plain English guide to the properties title conditions particularly those which state any common repairing or maintenance provisions. Where titles are silent the pack should contain information about the Tenement Management Scheme which will operate as a default provision.
58. We are unclear why the report seems to suggest that the Pack should be introduced as a pilot separately from the single survey. We recommend that the **Scottish Executive consider introducing both the purchasers' information pack and the single survey as a combined pilot in at least one area.**
59. Like the single survey pilots an assessment of the impact of the purchaser's information pack on the house purchase market should be made as part of the overall assessment of the pilot.
60. We further recommend that the impact of single surveys on blind bidding and low upset prices should form part of the assessment of the pilots.
61. Local authorities have an important interest in the development of the single survey and sellers' information packs. This interest is two fold – firstly that they should be used to promote a better understanding of property condition and maintenance among owners and prospective owners and secondly that the impact of the single survey in particular should be considered in its wider economic terms.
62. The promotion and development of single survey's and purchaser's information packs should be a key part of local authorities local housing strategies and guidance on local housing strategies should reflect this. Local authorities should ensure that the transition to the new system is undertaken in a way which benefits consumers and can be managed effectively by the industry in their local area.

Other initiatives in the home-buying and selling process

63. Lenders, surveyors and solicitors have an important role to play in making the "culture shift" for owners to make them more aware of the condition of their property and the need for owners to take more responsibility for maintenance.
64. The advice and information provided by these organisations tends to focus on the investment value of the property or, in the case of lenders, the ability of the borrower to payback the loan and on their legal or professional responsibilities.

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65. Lenders, solicitors, estate agents and surveyors should take a leading role in the provision of advice and information on property maintenance at the point of sale. They are in an important position to influence the behaviour of property buyers and could take a positive role in promoting good property maintenance.
66. One example would be that lenders, surveyors and solicitors should encourage property purchasers introduce property management arrangements in flats where none already exist and be provided with advice on how to do this.

Improving confidence in the building industry (paras 234 – 242)

67. We agree with the reports' recommendation that **the Scottish Executive should monitor the effectiveness of the Construction Licensing Executive**. We recommend that the Scottish Executive publish the conclusion of any monitoring at some future date. This should include some independent customer research and feedback on the effectiveness of the CLEs licensing scheme.
68. A lack of confidence in the construction industry is a major hurdle for owners to overcome. Poor customer service and concerns about the quality of work lie at the heart of most complaints about the construction industry. The Scottish Executive should ensure that customer service, complaints criteria and redress are addressed in any monitoring of the Construction Licensing Scheme.

Tax and benefits incentives (243-254)

69. We broadly agree with the proposals set out in recommendations 52 and 53. However we are disappointed that the HITF rejected the proposal to require owners to carry out 5 yearly inspections on properties.
70. While we can understand their limited value and the intrusiveness of such measures in solely owned property such a requirement would potentially assist in promote effective property management arrangements and greater awareness of property conditions in buildings in common ownership.
71. We have consistently promoted the development of owners associations, as corporate bodies, with responsibility for common repairs and maintenance in both new and existing property. A corollary of this would be the requirement on an association to carry out a regular property inspection.

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72. We recommend that **the Scottish Executive consider further the options for requiring owners in common buildings to carry out a regular survey of the common parts of their buildings.** Such a survey should include, in particular, health and safety issues and risks arising from the condition of the building for members of the public.
73. **Where a survey has not been carried out local authorities should be given powers to serve notice to require owners to carry out a survey of their building.** Where owners refuse to carry out such a survey the local authority could carry it out and charge owners for the costs involved.

Chapter Four: Facilitating Common Repairs and Maintenance

74. Nearly 3 out of 5 households in Edinburgh live in flats and the failure of owners, including occupiers, private and social landlords, to manage common repairs and maintenance is one of the most pressing housing problems facing the city.
75. Many buildings are well over a century old and the City of Edinburgh Council, following a spate of well publicised accidents caused by falling debris, has faced recent public calls for more action to be taken to ensure such buildings are better maintained.
76. Our key priorities for public policy in this area are to improve:
- decision making processes between owners.
 - cost allocation, payment and recovery.
 - the take up of professional property management services by owners.
 - the awareness owners of their responsibilities and of forthcoming legislation.
77. There is also a need to enhance the obligations on owners to undertake common repair and maintenance and not just concentrate on the rights of owners living in commonly owned property.
78. We appreciate this is a difficult area. Creating obligations on individuals which can only be implemented through some form of collective action is fraught with problems even if they belong to a corporate body. There is clearly the potential for some owners who wish to meet their obligations to be punished because of the inaction of those irresponsible owners who ignore such obligations.
79. However we believe that the choices facing public policy – in Edinburgh's case particularly – are stark. Effective property management exists only in newer developments and in a small number of older tenements. Yet

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nearly a quarter of the city's households live in pre-1919 tenemental property with no effective system of property management solely within owners own powers.

80. Either we develop more effective measures to oblige owners to maintain such buildings (and effective powers for responsible owners to pursue irresponsible owners) or public bodies need powers to take over the management of such buildings.
81. We have responded to the Scottish Executive's consultation paper on the draft Tenements Bill and attach that as an appendix to this response.

Changes to the Common Law Framework (paras 267-269)

82. We welcome the proposal that where title deeds are silent then the majority of owners should be able to agree to the appointment of a manager and to make decisions about common repairs and maintenance.

Owners Associations (paras 270-274)

83. Throughout the HITF process we have advocated the development of owners associations, preferably as some form of corporate body with a separate legal status, with responsibility for common repairs and maintenance and membership of which would be an obligation of ownership.
84. We disagree with the HITF's view that it would be impractical to try to legislate to require all existing owners to establish owners' associations.
85. Like the HITF we believe that some mechanism is necessary to assist owners come to collective community decisions on common repairs and maintenance. But we believe this is more important in existing property. It is after all a combination of poor property management and the deterioration of older property which causes the worst problems.
86. While we agree that it would be difficult to introduce owners' associations overnight we do believe that other alternatives could be examined. For example, owners associations could be phased in over a period of time say 10 years. In our response to the first report of the Housing Improvement Task Force we suggested that the HITF consider a dual approach of phasing in owners associations and a property management scheme over a period of time.
87. We recommend that **the Scottish Executive consider introducing owners associations for existing property – these should be formed**

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as corporate bodies and membership of these would be an obligation of flat ownership.

88. We welcome the encouragement given to local authorities to establish owners' associations in existing blocks of flats but believe that these should become an obligation of flat ownership by a certain point in the future.

Funding Communal Repairs - Apportionment of costs (paras 277 –280)

89. We believe that the apportionment of costs should be kept as simple as possible. While we understand the concern of the HITF about riding roughshod over existing titles we currently use equal share apportionment with statutory repairs notices and the Edinburgh Stair Partnership with little or no complaint from owners.
90. The apportionment of costs should be equally shared between flat owners whatever the size of the properties involved.

Recovering costs from owners (paras 281-282)

91. We consider that the lack of effective proposals to assist owners recover costs from other owners is a major weakness in the proposed policy framework. It is essential that responsible owners – preferably through an owners association – can take effective action against other owners who cannot or will not contribute towards the cost of repair and maintenance works.

Forced repossession (paras 284-285)

92. The HITF raises concerns about using forced repossessions to recover costs from owners who refuse to pay for scheme decisions. We agree with the view that such measures should only be considered in a relative handful of cases and suggest that they should be restrained by having recourse to a sheriff's discretion.
93. However such measures would give the majority of responsible owners and the property manager or factor an effective deterrent with which to encourage owners who can afford to contribute to meet their share of the costs of any work.
94. Land attachment orders would allow owners and their property managers to recover costs and ultimately to do this through the forced sale of an owners property. We welcome the proposal for the development of land attachment orders and look forward to the Scottish Executive taking forward this proposal with a view to legislation.

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95. Ultimately responsible owners should not be expected to subsidise owners who do not wish to contribute towards the costs of common repairs or maintenance. **Other means of recovery need to be developed by the Scottish Executive to help responsible owners and property managers recover costs, particularly smaller sums.**

Securing up front costs: reserve or sinking funds (paras 286 – 289)

96. We recognise the difficulties in introducing compulsory reserve or sinking funds. We agree with the recommendations that the Scottish Executive develop further advice and information on the creation of reserve and sinking funds. It is unlikely that many groups of owners would establish some form of sinking or reserve fund. The management of such funds is clearly problematic particularly among an ad hoc group of owners.
97. Most sinking funds will be relatively modest amounts of money held in reserve to deal with minor problems as they occur. A balance needs to be struck between ensuring that maintenance funds are managed properly and owners have confidence in their management and making any regulation of such funds overly cumbersome that it acts as a disincentive.
98. However we do believe that reserve or sinking funds are more likely to be developed within a framework of owners associations and/or through the increased use by owners of professional property managers. These would give property owners more comfort and confidence that their funds were being managed properly.

Local authority involvement (paras 290 – 291)

99. While we broadly welcome the proposal to have local authorities act as a backstop and cover the costs of owners who refuse to contribute we are concerned about the financial and resource implications this may have for local authorities.
100. The proposal aims to strike a balance between empowering owners to meet their responsibilities and minimising local authority involvement other than to merely cover the costs of non participating owners.
101. We have already argued that the scope for irresponsible owners to simply ignore majority decisions and refuse to meet the costs of repairs or the costs of a property manager are significant. We may find that responsible owners resort to the local authority as an alternative to recovering costs through the sheriff court.

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102. It is therefore difficult to assess the financial implications – particularly the up-front costs - which would be involved. Local authorities would need to meet the initial costs of this and they may be substantial. Additional revenue costs would be incurred to run such a scheme. Administration costs are likely to be significant and difficult to predict until the level of demand is assessed.
103. We recommend that this power should be tested in some way before being implemented more generally and further examination of the ways in which local authorities could recover costs is examined.

Encouraging owners to establish effective property management arrangements (paras 298 –299)

104. We strongly believe that in most cases the majority of owners want to take action to maintain and repair their tenements and take direct responsibility for the management of their building. It is the need to secure unanimous agreement which prevents owners themselves from exerting effective control over property management decisions.
105. Of the one hundred and twenty or so tenements which have approached Edinburgh Stair Partnership unanimous agreement among owners to employ ESP has been secured in 45 tenements. In the remaining tenements our view has been that, in most cases, agreement to appoint a property manager has been obstructed by a minority of owners who do not wish to contribute. The majority voting mechanism contained in the Tenement Management Scheme will be a substantial improvement over the provisions of the current common law and should assist owners and property managers secure agreement to employ professional property managers in their properties.
106. We welcome the HITF's recommendation that local authorities consider developing services similar to that provided by the Edinburgh Stair Partnership or encourage RSLs to do so. However we also believe that local authorities have a role in supporting and encouraging the commercial sector to take a more prominent role in providing property management services to existing older tenemental property.
107. A mixed economy of services including RSLs and commercial property managers as well as local authority provided property management services is needed. **Local authorities have an important role in promoting good quality property management services from across the commercial and RSL sector in their areas and encouraging owners to employ them.**

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108. It should be recognised that promoting professional property management services is only one side of the coin. Many commercial property managers and indeed RSLs are reluctant to get involved in property management and factoring particularly in older tenemental property.
109. The factors which contribute to this reluctance include the relatively small scale of most older tenements compared to newer modern developments, the inadequacy of title conditions (including difficulties in securing payments from owners) and the condition of many properties which have not been maintained properly. Yet it is exactly where these properties exhibit these problems that property management is needed.
110. We agree with the recommendation that a national accreditation scheme should be established. However this should not prevent local schemes being developed to help promote the industry at a more local level. It is clear that some form of quality assurance would benefit the industry and its reputation among consumers.
111. **We strongly support local authority powers to require owners to make arrangements for common property management outlined in paragraph 300.** We believe that the ability to serve such notices should be widely drawn and not solely tied to the serving of statutory notices. Local authorities should also be allowed to serve such notices where they have provided grant assistance or any other assistance under the proposals for the scheme of assistance.
112. Such a maintenance plan, where it involves a common repair, could require owners to create an owners' association, the appoint of a property manager and change title deeds if necessary to protect the long term future of the building.

Ensuring owners understand their responsibilities (paras 305-306)

113. Further advice and information is needed for owners but we need to think about this more creatively than simply developing more leaflets. While we agree that there is an important role for Homepoint local authorities must take a more dynamic role in promoting and publicising property management for tenement flats.

Identifying owners (paras 307 – 309)

114. We need to emphasise strongly the problem that owners who are either absent or not contactable cause for other joint owners and for the local authority as a body with statutory repairing obligations. They are often the single biggest cause of delays or work not being carried out at all.

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115. We welcome the proposal that all non-resident owners should be under a duty to inform their neighbours of the contact details of their main residence. However the report recognises that this would be difficult to police and while it has some value in creating and raising an expectation it will be of limited value in tackling those owners who do not wish to be contacted.
116. In our response to the first report of the Housing Improvement Task Force we recommended, for example, that it would be a requirement of any property owner to register their main residence on the Land Register when they purchase a property. Clearly this would not deal with people who move from residing in a property to renting the same property.

Chapter Five: Public Sector Intervention and Support at the Local Level

Strategic planning (paras 335-341)

117. The City of Edinburgh Council was one of the first local authorities in Scotland to publish a Local Housing Strategy. We welcome the proposals regarding strategic planning on private sector housing set out in recommendations 66-70 of the report.
118. **We agree with the proposal to amend the 2001 Act to include “promoting improvements in housing quality”. However we would also suggest that this could be improved by expanding this to include “promoting the maintenance and management of housing by property owners”.**
119. Guidance should be strengthened to include strategies for improving the maintenance and management of tenemental property and supporting the development of good quality private rented sectors. This should be in addition to further guidance on the proposed new duties outlined in the report.
120. It is also important to emphasis the need for local authorities to develop better consultative arrangements with the different interests in the private sector and involve them more closely in the strategic decision making framework.
121. We recommend that the Scottish Executive develop guidance with local authorities but more importantly, private sector interests, on how local authorities should engage with the private sector in a housing context.
122. It is clear that Private Sector Housing Grant will be the major source of funding to support the implementation of the policy framework for private sector housing.

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123. The Scottish Executive and Communities Scotland should ensure that the funding and planning implications of the policy framework set out in the Housing Improvement Task Force are taken into consideration when developing the framework for Private Sector Housing Grant.

Providing assistance to owners (paras 342 – 376)

124. Paragraphs 346 to 376 propose establishing a co-ordinated scheme of assistance which would cover the provision of grants, loans, practical assistance and other advice and information. We broadly welcome the extended scope which this will give local authorities to intervene in more flexible ways beyond merely being a provider of grants.
125. The report proposes that public assistance should normally be provided to assist bring a house up to a defined standard either the tolerable standard or Scottish Housing Quality Standard with some flexibility to allow for locally determined higher standards in Housing Renewal Areas or for providing assistance for adaptations.
126. We are concerned that this could restrict the provision of assistance. Different types of assistance may be more relevant for different types of work. In Edinburgh we may wish to provide assistance through loans, rather than grants say, to help owners with common repairs. Given the difficulties which face owners trying to organise common repairs and maintenance some form of assistance may act to encourage owners to take part.

General advice and guidance (paras 350-351)

127. We believe that local authorities should take a stronger role in providing advice and information to property owner in the private sector and that this should reflect the priorities set out in the local housing strategy. We welcome the report's proposal that Homepoint should develop additional information for private sector housing and has an important role in this area.
128. However it is important that the material produced is supported by communication and publicity strategies to ensure that property owners get the information they need in formats that make it accessible. It is also important to recognise the role that many other organisations play as sources of advice and information to private sector property owners. These include lenders, surveys, solicitors, contractors and builders.

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Practical assistance (paras 352 – 354)

129. The report proposes the introduction of schemes of assistance which would provide a range of practical services for people with particular needs. It is inevitable that such schemes, if for people from vulnerable groups, would be for households largely with low levels of income. Such schemes could be resource intensive if not developed without some rationale for which vulnerable groups would be served and the scope for such services.

Loans (paras 355-360)

130. Financial assistance provided by local authorities to improve private sector housing conditions has, to date, been largely provided through grants. We strongly believe that **loans need to take a much more prominent part in the range of options available to help owners pay for repairs and maintenance**. We believe that the increased use of equity loans for improvement or major repair work has substantial potential for unlocking resources particularly in Edinburgh.
131. The report suggests that local authorities take a leading role as a provider of loans to property owners for housing repair and improvement. However we think that there are potential problems with the provision of loans by local authorities which the Scottish Executive should take into account. It may be difficult, for example, to find sufficient resources to set up an initial loan fund. Any service providing loans is likely to be, or at least, should be subject to regulation which, if applied to local authorities, may be very resource intensive to establish.
132. Much clearer powers, created under 2001 Act secondary legislation, may provide a suitable framework to allow local authorities to provide loans. These should give local authorities powers to provide a range of different loan products in a wide range of circumstances. Loans, like other elements of scheme assistance, should be prioritised at a local level in line with local housing strategy priorities.
133. We also recommend that resources are made available specifically for subsidising large loan funds and the additional administrative costs which are likely to be incurred in managing such funds.
134. There are two further options. One is to encourage commercial providers to establish loan products, including equity products, for housing improvement and repair and for specific client groups that they may not otherwise have funded.

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135. We recommend that the Scottish Executive should further explore the potential for commercial lenders to provide appropriate financial products.
136. The second option is to establish an intermediary body at arms length from the local authority which would administer the provision of loan products and financial assistance to home-owners.
137. We recommend that local authorities, in partnership with commercial lenders, are empowered to establish and, where necessary fund, third party loan providers. This could be done through some form of trust for example. We think that there would be significant advantages to loans being provided through an intermediary rather than directly by the local authority itself.
138. We recommend that the Scottish Executive explore options for and provide further guidance to local authorities about establishing third party arms-length bodies to provide loans.
139. **However loans and other financial products are managed the Scottish Executive should bring forward proposals for loans as soon as is practically possible.** Ideally we believe that changes to the current regime of repair and improvement grants should have been delayed until a more comprehensive framework of financial assistance including loans was available for home-owners.
140. Means testing of grants means that some owners may have substantially less grant assistance than they would have had previously for certain types of works. A range of alternative financial products and loans need to be developed to meet these needs.

Conditions of assistance (paras 374 – 376)

141. The current conditions of assistance have proved to be difficult to implement and we believe that the scope for further conditions and their implementation need to be considered by the Scottish Executive. Setting conditions requires some form of policing which local authorities have not always found easy or straightforward to operate.
142. We agree that conditions should last for 10 years rather than 5. However conditions need to reflect market realities and, in Edinburgh at least, the substantial movement of property between owner occupation and private letting. Conditions should retain the flexibility to allow a house to move between residential ownership and letting within that period.
143. We recommend that **where grant or a loan is provided for a common repair or improvement then the owners should be obliged to**

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implement a common property management scheme or be required to appoint a property manager.

144. These conditions would be much stronger than simply requiring a property to be kept in good condition for a minimum period of time. The time period for which conditions should be set should be subject to a maximum period but local authorities should within that have discretion to set conditions for lesser periods.

Modernising local authority powers

Mandatory grants (paras 387-391)

145. We agree with the proposal to break the link between notices and mandatory grants. It should be clear that the form of assistance must be at the local authorities discretion and there is no implicit link to grants.
146. Where notices have to be served because owners have failed to maintain property loan assistance may be the maximum allowable. It may be the case that grants should only be given in cases where some form of improvement in line with public policy objectives e.g. adaptations for disabled access is required or sought.

BTS properties (paras 388-390)

147. We welcome the proposal that there should be enforcement options other than compulsory purchase for BTS properties. Powers for local authorities to recover expenditure should be wide and not restricted to charging orders.

Enforcing Improvements (paras 392-398)

148. We agree broadly that owners should not be forced to carry out additional improvements other than those necessary to meet the Tolerable Standard. However we suggest that owners are encouraged, in commonly owned properties, to use their majority voting powers to seek "incidental improvements" where the further improvements could be made to bring a facility up to a modern standard in line with the proposals in the draft Tenement Bill.

Addressing minor disrepair and maintenance issues (paras 399 – 404)

149. Paragraph 44 proposes that a single notice should be developed to cover serious disrepair and other repair related defects. It implies that a single notice should be developed which would replace the existing powers under the 1982 Act and the 1987 Act. This proposal does not appear in

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the report's recommendations however and we would suggest that the Scottish Executive further clarify its intentions.

150. A single statutory repairs notice may have some advantages but it would need to be drawn very widely to ensure it covered a wider range of situations. It would be an opportunity to address weaknesses in the current range of statutory notices available to local authorities.
151. It is essential that any new notice does not remove important local authority statutory powers without replacing them with something more effective.
152. The Scottish Executive should undertake further consultation on the proposal for a single repairs notice. It would be helpful if the HITF could clarify if this proposal is a formal recommendation of the HITF to the Scottish Executive.
153. We fully support the proposal to allow local authorities to serve a notice requiring owners to put in place and implement a maintenance plan. This would be an important new power and would go some way to address the need for more preventative measures which would complement powers to tackle repairs.
154. With respect to buildings in multiple ownership the local authority should have clear powers to appoint a property manager to implement the maintenance plan if it felt this was necessary.

Area based powers – Housing Renewal Areas (paras 407 – 427)

155. We welcome the proposal to replace Housing Action Areas with the expanded Housing Renewal Area definition set out in para 413 of the report. The definition should be drawn broadly enough to capture relatively small geographical areas as well as larger areas of poor housing condition or decline.
156. The HITF proposes that local authorities should have powers in Housing Renewal Areas to enforce improvements other than those required to bring a house up to the tolerable standard.
157. We recommend that the range of improvements required in a Housing Renewal Area should be at the discretion of the local authority. However it would be helpful if the proposed guidance on Housing Renewal Areas is developed to provide some direction as to what improvements would be deemed reasonable.

Other associated powers and issues – control orders (paras 428-432)

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158. The HITF proposes to extend the use of control orders beyond HMOs to properties in Housing Renewal Areas. The use of control orders is not straightforward. For example, the time limits on producing a schedule of works, currently set at 8 weeks, is too short and would not be practicable particularly in the context of wider area regeneration works.
159. We recommend that before extending the current control order provisions that the Scottish Executive review the operation and effectiveness of existing control order powers.

Chapter Six - Improving standards in the private rented sector

160. Edinburgh has the largest private rented sector in Scotland with about 11% of all properties let through private landlords and their agents. The sector plays a crucial role in the success of the local economy, providing accommodation for young single people and newly formed households and for those in further and higher education and in short term and temporary employment.
161. As a local authority we recognise the crucial role the sector plays in meeting housing and accommodation needs in the city. We want to work in partnership with landlords and letting agents to ensure that the private rented sector in Edinburgh provides good quality well-managed accommodation and continues to support the development of the local economy.
162. It is important to emphasise that the proposals throughout the report will affect private landlords as well as owner-occupiers.
163. On a wider strategic level the implementation of public policy needs to be developed in a way which supports the growth and development of the private rented sector while improving its management and the quality of accommodation available for customers.

Repair Problems – Strengthening the Rights of Private Tenants (452-471)

164. The biggest problem facing tenants wishing to force a landlord to undertake repairs is the threat of eviction.
165. We broadly welcome the HITFs proposal to create a Private Rented Housing Tribunal by extending the role of the Rent Assessment Committee. The aim of the Tribunal would be to offer tenants a forum through which they could enforce landlord's obligations under the modernised repairing standard with a lessened fear of eviction by their landlord.

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166. Tribunals would have powers to instruct landlords to carry out repairs, prevent them from reletting their property and reducing the amount of rent paid by the tenant until repairs are carried out. the introduction of a Repair Determination Notice and Reletting Restriction Orders.
167. However while broadly welcoming the proposal we believe that the Scottish Executive needs to examine further the range and scope of the functions of the tribunal and identify how they would link with existing forms of redress which tenants currently have recourse to.
168. Currently local authorities have some powers to carry out work under the statutory nuisance provisions of the Environmental Protection Act 1990. In practice local authorities already intervene directly where they are asked to do so by a private sector tenant.
169. We are concerned about the scope the proposed notice powers local authorities would be given to serve an order and carry out works identified in the Repairing Determination Notice issued by the tribunal. The use of these powers by the local authority would be requested where the tribunal process has not been successful in securing the repairs from the landlord.
170. This may require a local authority to undertake a wide range of works – (the modernised repairing standard is drawn widely) - and recharge the private landlord for undertaking these works. In theory the tribunal process should have resolved the majority of tenant/landlord disputes before the use or threatened use of local authority notice powers.
171. However we are concerned that if the tribunal system is not successful in resolving these disputes it will fall to the local authority to intervene in a wide range of matters. We are given some confidence that local authorities would only be required to intervene where there was a risk to the health, welfare or safety of the tenant. We suggest that the extent of the works required to be undertaken are restricted to those which would cause a risk to the health, welfare or safety of the tenant involved.
172. We believe that further clarity is required from the Scottish Executive on how the tribunal would work and in particular its link with local authorities existing powers and proposed new powers.
173. While we recognise the limited scope of the HITF we recommend that the Scottish Executive undertake a review of the short assured tenancy regime to see if any improvements can be made to protect tenants who wish to enforce the repairing obligations of their landlord. We recognise that this is a difficult and problematic area and a balance between the

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rights and responsibilities of both landlord and tenant need to be achieved.

Regulation and Accreditation (paras 476 – 515)

174. We agree with the analysis in paragraph 478 which sets out the broader considerations for the HITF in developing regulation and accreditation in the private rented sector.
175. **The development of regulation and accreditation need to be carried out in partnership between local authorities and the different interests in the private rented sector.** However we should not lose sight of the fact that the main purpose of regulation and accreditation is to improve services to consumers. The development of any system of regulation and accreditation therefore needs to reflect important consumer interests too and involve them as equal partners.
176. Clearly an effective framework of regulation and accreditation needs to make it more difficult for landlords with poor management practices and services to operate by setting apart good landlords within an accreditation scheme. Voluntary accreditation schemes are only likely to attract those landlords who have some commitment to improving practice and standards.
177. **We believe regulation is likely to be required to deal with those landlords who fail to join accreditation schemes willingly.** However it is important that intervention in the sector is justifiable and does not cause any unnecessary reduction in the accommodation provided by the sector.
178. We should also recognise that in some areas a significant part of the private rented sector is subject to licensing under the HMO licensing regime. This amounts to approximately one in six private rented sector properties in Edinburgh. While HMO licensing is about licensing a certain type of accommodation – (i.e. shared accommodation) - and not about tenure – it has had a major impact on the private rented sector in particular.
179. It is our view that HMO licensing has led to significant and positive improvements in the physical and safety standards of properties and improved tenancy management in the sector. The latter has included improving the provision of accurate tenancies and raising awareness of landlord and tenants responsibilities for behaviour which may affect their neighbours.

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National accreditation framework (paras 483 – 490)

180. **We support the proposals for the introduction of voluntary accreditation scheme within a national framework and Communities Scotland’s role in developing such a framework.** However we believe that the development of the national framework should be informed by the creation of an advisory group drawing on industry, consumer and local authority interest groups.
181. The HITF states that local authorities should not go ahead with the development of an accreditation scheme without industry backing. However it should also be recognised that the private rented sector is a fairly wide and disparate group with few landlords and letting agents belonging to industry bodies like SAL and ARLA. It will not always be easy for all local authorities to show that they have managed to secure industry backing on a broader level.
182. As part of the City Housing Strategy the Council will be working with SAL, ARLA and other interests to look at the different options for voluntary accreditation for the private rented sector in Edinburgh. We are of the view that a partnership approach involving the local authority, landlord and letting agent interests and consumer groups is the best framework for developing any accreditation scheme.
183. The report seems to imply that local authorities would take the leading role in administering an accreditation scheme. However we believe that other options, such as a local independent arms length accrediting body, need to be considered. Such a body would be independent of the local authority, consumer groups and importantly the industry itself.
184. No voluntary accreditation scheme can work without the co-operation of landlords themselves. It will need to be clear to them what benefits and incentives are available to them for joining the scheme. Much will be down to creating effective market incentives for such landlords to join. Equally schemes will have to be constructed in such a way as to keep any potential membership fees low.
185. We agree with the HITF view that incentives to join accreditation schemes are important. In the long term the development of the local Common Housing Register and Choice Based Lettings in Edinburgh could prove to have an important role to play in these. We are committed to looking at the options for including accredited private landlords within our framework for the Common Housing Register and Choice Based Lettings.
186. However some of the other incentives identified including the provision of small grants may be unrealistic. It is not clear what these grants may be

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used for. If properties were already part of the accreditation scheme they would meet physical property standards many of which will be required by law in any case. There are over 20,000 privately rented properties in Edinburgh, several thousand individual landlords and a significant number of letting agents. The ambition of any accreditation scheme would be to, over time, secure as many landlords and properties as possible in the scheme. This could amount to a substantial commitment of grant resources.

187. We do however think it would be important for local authorities to have powers to resource and fund arms length accreditation schemes. Clearly this would not be appropriate for all local authorities but where large private rented sectors exist this may be an alternative to local authorities administering schemes directly.
188. Accreditation schemes, administered by local authorities or arms length independent bodies, are likely to require funding particularly in the early stages of development. The Scottish Executive should provide additional funding for a range of pilot accreditation schemes in different authority areas. We welcome the Executive's commitment to provide funding specifically for local accreditation schemes and we look forward to working with the national lead agency in developing the national framework for these schemes.
189. The HITF proposes that local landlords and agents would be able to establish an accreditation scheme if the local authority failed to set up a scheme and there was local demand from the industry to establish one. While we support this approach it is important that landlords themselves are encouraged to work in partnership with both local authorities and consumer groups in developing such schemes if they proceed down this route.
190. Accreditation schemes should not be supported with funding if they do not comply with national standards and fail to secure support from local authorities, the industry and consumer groups.
191. We currently facilitate a local landlord forum. However we believe that forums are only part of the solution. With some thousands of landlords and letting agents operating in the city it is simply not possible for forums to include every landlord. Other means of communications and support need to be developed to ensure private rented sector landlords are aware of developments and have access to good practice.
192. Landlord forums should be broadly representative and local authorities should seek to develop their role in the strategic planning process. Such

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bodies may be quite different from forums directly involved in running accreditation schemes.

193. There has been some discussion about passporting landlords who are members of professional bodies or subject to other forms of regulation. While some flexibility could be developed any passporting or use of another “scheme” as a gateway to a local accreditation scheme should ensure that the basic elements of national standards set by the national accreditation framework are met within that scheme or the rules of the professional body.

HMO licensing scheme (paras 491 – 495)

194. We welcome the HITF’s view that licensing of HMOs should be retained. We believe that HMO licensing has led to significant improvements in both property and tenancy management standards in the private rented sector.
195. However the link between HMO licensing and the proposals to introduce voluntary accreditation schemes (and possibly registration, certification and discretionary licensing for the rest of the sector – which we broadly support), needs to be clarified. For example, compliance with HMO licensing could form a gateway into accreditation schemes for landlords with HMO properties.
196. We would welcome revised legislation to meet some of the weaknesses in the current HMO licensing legislation based on the Civic Government Act 1982. The HITF recognise that the current sanctions available to local authorities do not work particularly well.
197. We would particularly welcome more effective sanctions against landlords refusing to licence. These sanctions could include ones which were based on the civil rather than the criminal law. These could include restricting a landlords rent or transferring the management of properties to another (accredited) landlord or RSL and we have made representations to the Scottish Executive previously about this.
198. Clearly any new legislative framework for HMO licensing would need to draw on the framework of the Civic Government (Scotland) Act 1982 which we believe is beginning to work well for HMO licensing.
199. However we are concerned with the HITF recommendations for a national fee structure. The extent of HMOs varies widely across local authorities. Some local authorities have substantial numbers of HMOs to license while others have fewer. Local authorities vary widely in their approach to HMO licensing and the local authorities with more robust implementation

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regimes tend to charge higher fees while those local authorities who adopt a more laissez faire attitude to the HMO sector charge lower fees.

200. Any national fee structure would have to reflect the differences in the way local authorities operate the HMO licensing regime. It would have to allow local authorities to retain the ability to meet all the costs from the scheme from the license fee unless the Scottish Executive was willing to subsidise some aspects of the licensing regime.
201. We believe that HMO licensing should be retained for those elements of the sector which are currently licensed but that voluntary accreditation and registration, certification and discretionary licensing should be developed for other elements of the private rented sector to complement the existing scheme. Equally we think it is important that the sector is not subject to over regulation and the development of different regulatory regimes for different types of property should be developed with this in mind.

Registration, certification and discretionary licensing (paras 510 – 515)

202. We welcome the HITFs proposals that local authorities should have discretionary powers at a local level to introduce different forms of certification, registration and discretionary licensing where there was a good argument for doing so. We believe that accreditation schemes should be developed in parallel with effective regulation of the poorer quality end of the private rented sector.
203. We believe, even where accreditation schemes are relatively successful, there will remain a significant number of badly managed landlords with poor quality accommodation. Local authorities will need certification or licensing powers to deal with the bottom end of the market.
204. We propose that registration, certification and discretionary licensing should be considered where accreditation schemes have failed to work properly or have identified significant failures in the market e.g. landlords who refused to join the accreditation scheme.
205. Local authorities would have to be given powers to charge fees which would cover any registration, certification or licensing scheme they develop. An alternative would be for the Scottish Executive to meet all or part of the costs of a discretionary licensing scheme.
206. Whether regulatory schemes are developed to deal with specific areas or types of housing or across the whole of the sector, (excluding the HMO sub-sector already covered by the HMO mandatory licensing scheme), specific sanctions would need to be developed to ensure landlords subject

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to such schemes could not operate without certification, registration or licensing.

207. These sanctions would need to be punitive. In our response to the first report of the HITF we proposed that all private rented sector landlords should be required to have a licence to operate. We believe that such a scheme could apply to landlords at the lower end of the market where it could be shown that voluntary accreditation was working effectively.
208. We believe that in the development of any discretionary certification, registration or licensing scheme should include effective sanctions against private sector landlords who failed to meet the requirements of a scheme.
209. The Housing Improvement Task Force has dealt largely with the traditional private rented sector regulated by the assured and short assured tenancy regime. It has not addressed the management and quality problems which exist in accommodation like backpackers hostels and other forms of temporary accommodation which tends not to be regulated by tenancy agreements
210. This sector exists at the fringes of the traditional private rented sector but has grown in importance in recent years as a result of the need for accommodation for growing numbers of relatively transient, mobile young workers. We have grown increasingly concerned at the growth in the numbers of such establishments in recent years and the lack of regulation or control over the quality of accommodation, safety and standards of service provided by them.
211. The Scottish Executive should undertake further work on the role and nature of this type of accommodation and work with local authorities to develop some form of appropriate licensing or regulation for this type of accommodation.

CONTACT

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