

# **The First Report of the Housing Improvement Task Force**

## **Issues in Improving Quality in Private Housing**

**City of Edinburgh Council  
Response to the Stage One Report**

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## 1. Background

### 1.1 Our response

1. This is the response of the City of Edinburgh Council to the first report of the Housing Improvement Task Force. Our response focuses principally on the policy options which, we believe, should be considered by the Task Force during Stage Two of its work.
2. The first report of the Housing Improvement Task Force, "Issues in Improving Quality in Private Housing," was published on 14 March 2002 for consultation. The report set out the problems in private sector housing in Scotland and the Scottish Executive sought responses to the report by 14 June 2002.
3. We have deliberately set out a range of policy options for further consideration by the Task Force. We will continue to work with the Task Force to develop solutions to the problems in the private sector. We recognise the difficulty of the task in putting together an effective framework which reflects both consumer and industry perspectives. There is no single solution to the complex problems identified in the Task Force's report and the Task Force will have to evaluate the costs and benefits of a range of different policy options.
4. We have structured the response around four key themes:
  - helping homeowners **organise common property maintenance, repair and improvement.**
  - helping homeowners **finance property maintenance and repair and improvement.**
  - **modernising the buying and selling process** for consumers.
  - **supporting landlords and tenants** in the private rented sector.
5. Our response is based on our:
  - **belief that owners are primarily responsible for the maintenance, repair and improvement of their properties.**
  - **commitment to the private housing market in Edinburgh and to supporting homeowners, private landlords and private tenants** live in well maintained and well managed homes.
  - **experience of delivering services** to homeowners, private landlords and private tenants.
6. Our response has been informed by a wide-ranging consultation within the Council, including a seminar held with colleagues from a range of different

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departments and disciplines who have an involvement with private sector housing.

### 1.2 Our priorities

7. In this response we comment on, and put forward policy options for, a range of different problems in private sector housing. Many of these problems reflect our knowledge of, and experience in, working with the private housing market in Edinburgh. However we believe that many of the options we put forward would be equally applicable elsewhere in Scotland.
8. We do, however, wish to propose a number of policy options which we would wish the Task Force to give particular consideration to. These are:

#### **Helping homeowners organise common property maintenance, repair and improvement**

- **introducing a framework for establishing owner's associations to give homeowners a vehicle for organising the common maintenance and repair of their property.** These owners associations could be known as "communities", as they would represent the "community of owners" with an interest in the common maintenance and repair of their buildings.
- **placing a minimum set of responsibilities for owners associations for the common maintenance and repair of their property** including carrying out regular property inspections, a schedule of planned maintenance and costs and the completion of a property log book to show when repairs and maintenance have been carried out.
- **providing local authorities with discretionary powers to assume the responsibilities of an owners associations** and appoint an accredited property manager to undertake the common maintenance and repair on behalf of the owners association. Such a sanction should only be used as a last resort and our response outlines the different measures that could be put in place to support owners associations meet their responsibilities.

**Helping homeowners finance property maintenance, repair and improvement**

- providing local authorities with the powers and resources to establish **alternative means of funding maintenance, repairs and improvements for homeowners either themselves or through an arms length body to provide low interest loans, equity/property appreciation loans and flexible tenure schemes.**

**Supporting landlords and tenants in the private rented sector**

- **requiring all landlords to have a “licence to operate” and certify that their properties meet a set of minimum standards of repair and safety.** Self-certification could be policed by a local authority, or another “third party” body, which would be responsible for implementing an accreditation scheme for private landlords.
- **establishing an accreditation scheme for property letting agencies and larger private sector landlords** which would focus on raising the quality and standards of tenancy and property management in the private rented sector.
- **provide local authorities with effective powers to remove or suspend such licences in certain prescribed circumstances.**

### 1.3 The Private Housing Market in Edinburgh

9. It is worth briefly outlining some of the key factors of Edinburgh’s private housing market as we recognise that solutions which may apply in Edinburgh may not be the same for homeowners, private tenants and private landlords in other areas of Scotland.
10. Edinburgh has one of the biggest private housing markets in Scotland. **Four out of five households in Edinburgh own or rent their home from a private landlord.** The private rented sector is the biggest private rented market of any local authority area in Scotland. The private rented sector accounts for 11% of the housing market in Edinburgh (the share of Council owned stock by contrast is 14%).
11. The private rented sector provides housing opportunities to a wider range of different client groups – it is for example the main source of accommodation for the large student population and provides accommodation for people who cannot access homeownership or social housing.

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12. Edinburgh is one of the few areas of Scotland which is set to experience growth in both population and households. Household growth by 2010 is 50% higher than the national trend.
13. However house prices in Edinburgh are substantially higher than in other parts of Scotland. It is likely that costs in the private rented sector are substantially higher also. Access to the private housing market can be extremely difficult for many households.
14. While the Task Force's remit on access to the private housing market is largely limited to issues around delays and costs in the buying and selling process it is worth emphasising the difficulties which face consumers trying to gain access to either home ownership or private renting in Edinburgh.
15. This high demand for private sector housing and its limited supply has a knock on effect on the ability of the market to provide good quality accommodation. Market incentives to provide good quality, well maintained and well managed accommodation are severely weakened by the sheer scale of demand in the market for housing in Edinburgh. This has, and will continue to have, a considerable impact on recruitment across all sectors of the economy.
16. Common property maintenance is a particular problem in Edinburgh. Over 60% of residential property is provided by flatted accommodation. The average in Scotland is nearer 40% of accommodation. There are around 5,500 tenements in Edinburgh which were built before 1919 and serious repair problems are increasingly evident in this stock. Unlike some other areas of Scotland, Edinburgh has no tradition of factoring tenement property.
17. A stock condition survey carried out in 1996 by the City of Edinburgh Council identified that around one in ten of the pre-1919 tenement properties required immediate work to be carried out to protect the fabric and stability of the buildings.
18. Edinburgh has no history of factoring or property maintenance unlike other areas of Scotland. As a direct result of a lack of maintenance by property owners, the Council serves a significant number of repairs notices. In the year 2001/2002 the Council received 6129 calls for assistance from property-owners. This resulted in 550 major repairs contracts and over 5000 emergency works being carried out by the Council itself. The majority of these notices are served for common repair in residential properties.

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### 1.4 Problems in the Private Housing Market

19. There are a number of specific problems in the private housing market which seriously inhibit its ability to deliver well maintained and well managed homes. These include:

#### Decision Making Among Communities of Owners

- the **lack of an effective administrative or legal means for common property management** by which owners can organise and take decisions on the maintenance, repair and improvement of common (“community”) property, such as tenement flats.
- the **lack of confidence in the property management and building and associated trade industries** among property owners.

#### Financing Repairs and Improvements

- the **absence of alternative funding mechanisms** for property owners who need to carry out repairs or improvements but cannot afford to from their own resources, do not qualify for improvement and repair grants or who have difficulties accessing the commercial lending market.
- the **continued need to provide resources for improvement and repair grants to low income and low capital property owners** – particularly those who live in areas of low demand and/or in ex-council owned property. This problem is exacerbated by the high proportion of tenemental properties and non-traditionally built houses.

#### Home Ownership Market

- the **failure of the current property market, particularly the buying and selling process, to promote the proper maintenance and repair of buildings.**
- the **failure of the property market to provide access to affordable accommodation for home-ownership.**

#### Private Rented Sector

- the **failure of the private rented market and peer pressure alone to raise standards both in property condition and tenancy management** throughout the private rented sector.
- the **lack of an effective means enforcement within the current licensing regime for HMOs limits the ability of local authorities to take effective**

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**action against landlords evading licensing and providing poor quality property.**

## 2. General Principles

20. We have set out a framework of general principles which we believe should guide the development of policy on private sector housing. It is a framework based principally on people rather than property needs:

- **property owners, both homeowners and private landlords have the primary responsibility for organising and funding the maintenance, repair and improvement of their property.**
- where the responsibility for common maintenance, repair and improvement is shared between owners **property ownership should carry with it collective responsibilities as well as individual rights.**
- **public policy should focus on prevention** and therefore prioritise the effective implementation of property maintenance. It should owners to maintain their property and not let it fall into serious disrepair.
- **public policy should seek to empower consumers, both homeowners and tenants**, in their relationships with public authorities property managers and private landlords. It should ensure that consumers have an effective choice of good quality services in an efficiently regulated market.
- **local authorities should primarily have a strategic and enabling role in the private housing market.** They should work with consumers and the private housing industry to ensure that the right conditions are created for an efficiently regulated local market where consumers are protected and have a wide choice of good quality landlords and property managers to meet their needs.
- local authorities also have a role in **providing direct services like property management and funding where the market fails to provide these services adequately.**
- where property owners have failed to act **local authorities should have effective powers to carry out essential repairs to dangerous buildings to protect public safety.**
- **financial assistance provided by public resources should be targeted at achieving local social and economic objectives in line with the aims of local housing strategies.**

### 3. Helping homeowners organise common maintenance, repairs and improvements

#### 3.1 Defining the problem

##### **What prevents owners from organising effective common property maintenance, repair and improvement?**

21. In this section we deal primarily with some of the problems and policy options which apply to the organisation of common repairs and maintenance. Flats constitute over 60% of residential property in Edinburgh and the maintenance, repair and improvement of this stock is a major concern in the city.
22. The maintenance, repair and improvement problems affecting common property are different from those associated with individually held property in that they require effective mechanisms to allow different owners to act corporately and reach a collective agreement about their property.

##### **Solutions to the maintenance, repair and improvement of common property need to acknowledge the different nature of the problems associated with flats and common property.**

23. A large proportion of Edinburgh's, and indeed Scotland's, housing stock is commonly owned, ageing and in poor and deteriorating condition. **There are neither effective arrangements for owners to organise collectively common maintenance and repairs nor adequate financial incentives for them to do so.**
24. Where a local authority has traditionally been the landlord, owners of ex-council stock understandably wish to be more directly involved in negotiating the maintenance, repair and improvement of their homes and the costs associated with these activities.
25. More specifically:
  - most property owners and in particular those that live in older tenemental properties have **no effective mechanism or forum for making decisions** about the maintenance and repair of their property and through which they can bind all owners to decisions made.
  - there is **no effective mechanism to secure the contribution of all owners** to the costs of common maintenance and repair.

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- **one or two owners can prevent important repair works from being carried out** and by doing so allow the condition of the building to deteriorate further.
- except through the intervention of local authorities there are **no effective mechanisms to allow owners to agree the organisation and costs for mutual repairs which fall on adjoining buildings** e.g. a row of tenement flats.
- owners who do not wish to cooperate with maintenance, repair and improvement works simply don't. There are **enormous problems in identifying non-resident owners, particularly private landlords**, and securing their agreement to repair works and subsequent contribution to the cost of works.
- there is **no effective consumer protection** against poor quality work from property managers or the building industry. Owners are understandably nervous about employing property management services, builders and associated trades, to maintain and repair their property.
- there is **no effective protection for the property management and construction industry** against non-payment of costs or against the delays caused by a minority of owners who refuse to co-operate. Property managers and construction industry professionals are therefore often reluctant to get involved in common maintenance, repair and improvement. This seriously affects the ability of consumers to exercise choice.
- because individual owners have no effective mechanisms for making and enforcing maintenance and repairs on other owners, the City of Edinburgh Council, often has to use its own repair notice powers to assume the responsibility for carrying out repairs to the commonly held parts of their properties on their behalf.
- many **local authority powers to enforce maintenance and repair work are limited** because they attract mandatory grant. Owners who do not maintain their building are therefore perversely rewarded for not maintaining their building. (The City of Edinburgh Council is different in that it can use byelaws which are not tied to statutory grant provision and which allow the Council to undertake the repair work itself).
- importantly **local authorities have no effective powers to enforce preventative maintenance or to ensure that maintenance takes place after repair work has been carried out.**

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26. If no effective remedies are found to these problems more commonly held properties will fall into serious disrepair with an ever greater risk of them causing a danger to the health and safety of occupants and the public more generally.
27. If effective remedies are not introduced now it is likely that in the future substantial demands will be made for state intervention and funding to solve these problems.

### **3.2 Solving the problem**

#### **What can be done to encourage owners to organise common property maintenance, repair and improvement?**

28. The aim of public policy should be to establish a framework which clearly places the primary responsibility for common property maintenance, repair and improvement with the property owners involved.
29. Homeowners should have an effective and enforceable means for organising, making decisions about, and meeting the costs of, the maintenance, repair and improvement of the common parts of their property.
30. This should be backed up by a system where national and local government, in their different strategic and enabling roles, support homeowners meet their responsibilities and ensure that the property management and construction industry provide good quality services to homeowners.
31. Local authorities should set and administer a policy framework for common property maintenance and have a range of powers at their disposal to ensure that common property maintenance and repair is carried out.
32. Local authorities should maintain a register of property managers, set standards and provide funding to support industry initiatives. This could be extended to a formal accreditation scheme for property management services. Local authorities should provide direct services to homeowners where the private market has failed to meet consumer need and demand. (Edinburgh's Stair Partnership is a good example of this. The Stair Partnership was created by the City of Edinburgh Council to provide a property management service to traditional tenement property owners because the commercial property management services were not meeting the need for such services in Edinburgh).

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### 3.3 Policy Options

33. The following sets out a range of policy options which we believe would help support homeowners carry out effective common property maintenance, repair and improvement and which should be considered by the Housing Improvement Task Force.

#### **Owner's Associations - organising maintenance, repairs and improvements**

**34. The common maintenance, repair and improvement of properties, where there are six or more properties in separate ownership, should be governed by an Owner's Association.**

35. An owners association would be a body corporate and membership would include all owners of property within the building or group of buildings to which the association applied. Membership of such an owner's association would be an obligation of property ownership.
36. Owner's Associations, are already proposed to a limited extent for new developments under the Develop Management Scheme in the Title Conditions Bill. Currently these proposals would apply only to new developments and developers would be free to alter the scheme as they saw fit.
37. Arguments have been made to extend the scope of the Development Management Scheme to make owners associations compulsory in new developments and to place a minimum framework of maintenance responsibilities on property owners. We believe these improvements should be made and should also be applied to existing property as well as new residential developments.
38. Under the proposals for the draft Tenement (Scotland) Bill existing tenements would be governed by a Tenement Management Scheme which would allow for majority decision making for common repairs. However this management scheme would only be put in place where the existing title deeds were silent on the issue of organising common repairs. For example, they would not replace arrangements in Title Deeds which allowed only for unanimous decisions.
39. Both Bills also lack effective rights for those owners who wish to properly maintain their building to make other more reluctant owners meet their responsibilities for organising and contributing towards the cost of property maintenance.
40. Both these pieces of proposed legislation are an opportunity to put in place a more comprehensive and effective framework for owners to

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- maintain and repair their common property. However, as we have shown above, the current proposals for both draft Bills are flawed and require amendment.
41. Arguments against using these draft Bills to protect the rights of responsible owners and impose a more comprehensive scheme for common property maintenance are based largely on the perceived impact on individual property rights and possible legal challenges on ECHR principles.
  42. However there is a strong policy argument that sensible proposals which improve common property maintenance would be a major strengthening of individual responsibilities, collective rights and the wider public interest. Where this was done sensitively the only individual rights which would be impinged upon would be the “rights” of irresponsible homeowners to block important maintenance and repair work.
  43. This policy argument for extending the nature and scope of Development Management Schemes seems to fit clearly within the ECHR principles which allow for consideration of the public and community interest.
  44. Other arguments have been made against the creation of owner’s associations which suggest that not all owners will take an active part in the running of the association and such associations would rapidly fall into disuse as a result.
  45. However these arguments miss an important point – an owners association would continue to operate because it has a clear purpose of property management and maintenance - backed by legislation. Owners associations, created as an obligation of property ownership, already operate within new residential developments. Many owners do not take any active part in the decision making of these bodies but they continue to function. This arrangement should be extended beyond some new residential developments to all property with six or more owners. The association would exist whether or not the owners took any action to establish its constitution.
  46. Many owners simply want a mechanism by which they can take collective decisions about common maintenance and repair work and bind other owners to them.
  47. We believe that the different elements of this potential framework are already set out in both the draft Title Conditions (Scotland) Bill and the draft Tenement (Scotland) Bill. These proposed pieces of legislation could be amended or brought together to establish an effective system which

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gives homeowners both rights and responsibilities to have the common parts of their buildings properly maintained and repaired.

### **48. An Owner's Association should be known as a "Community".**

49. Owner's Associations represent the "community of owners" who have an interest in the common maintenance of the property. The Title Conditions Bill already introduces the concept of a "community burden". Community burdens are those burdens which apply to a number of units and which can be enforced by all the units to which the burden applies. Burdens which regulate the maintenance, management or use of common facilities, such as a roof, a stairwell, a common access road or a boundary wall, could all be community burdens. In this case the "community" applies as the collective term for the units affected by a community burden.

50. We believe that the development of such owners associations or "communities" could encourage better neighbour relations and community responsibility and help provide a collective voice for consumers in many other respects. They would, for example, enable local authorities and other statutory bodies to consult more meaningfully with constituents regarding public services, planning decisions and other aspects of community life for which the public bodies are responsible.

### **51. Owner's Associations should have the option of joining together to apply common property management and maintenance schemes across adjoining blocks.**

52. This would allow, for example, a number of tenement blocks to join together to form one owner's association. Many repair problems are created because maintenance of parts of buildings, which adjoin each other, is not adequately carried out. Encouraging owner's associations to join together and organise the maintenance cover of a number of adjoining flatted blocks would be an effective response to this problem.

53. Such an arrangement would also be an opportunity for owners associations to keep property management costs down.

### **54. Owner's Associations would be responsible for common property maintenance and undertaking a minimum set of basic maintenance tasks.**

55. These activities should include as a minimum:

- a **regular property condition inspection**, say at least every three years;
- a **schedule of planned maintenance and costs**;

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- the **completion of a property log book** to show when repairs and maintenance works are carried out.
  - securing **comprehensive common buildings insurance** for the block.
56. This information should be made available to potential buyers. We believe that this would create a major financial incentive for owners to ensure repair work is carried out.
57. The Scottish Executive should provide guidance to owners associations about the minimum standards common property should meet. These standards could be set against national priorities but local authorities may have a role in supplementing these with locally developed priorities. These standards could include:
- **minimum safety standards** for fire and other aspects of physical condition;
  - **security standards** like the installation of entry phones and back court lighting;
  - **energy efficiency measures** such as loft and cavity wall insulation;
  - **improved physical access** such as ramps and support handles on entry doors.

Setting these and other standards could provide a role for the proposed Housing Quality Index.

**58. Owner's Associations would have the option of employing an accredited professional property manager to manage the common maintenance responsibilities of the association or manage these responsibilities themselves.**

59. Owners associations may wish to seek the services of a professional property manager and engage them in the management and maintenance of their property. In parts of Scotland there are already a range of property management services which could take on this role. However in other parts, like Edinburgh, the market for residential property management services is relatively limited.
60. It is important that the market for professional property management is developed in a measured and responsible manner. If public policy is to seek to encourage owners to take greater responsibility for the common maintenance and repair of their buildings then it is likely that consumers will look to professional property managers to provide services to them. It is essential that there are effective mechanisms which regulate the relationship between consumers and the property management industry

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**61. A pre-court arbitration process should be developed to resolve disputes between owners within an Owner's Association.**

62. Disputes regarding responsibilities and decisions based on title conditions already happen. An effective form of independent arbitration should be set up outside the court system. Individual property owners would be required to submit their dispute to an arbitration process before resorting to the courts to resolve disagreements.

63. An arbitration process could be run locally through the local authority or perhaps nationally, either based on the lands tribunal or some other form of body. Whoever was responsible for managing the arbitration service would need to ensure that disputes were dealt with quickly and fairly.

**64. Owner's Associations should have the power to seek to recover an individual owner's share of the costs of any agreed management, maintenance and repair.**

65. Where an owner refused to contribute to the property management costs of the owner's association, the association should be empowered to recover these costs from the owner concerned. Ultimately this could be done by applying a charging order against the future sale of the property.

66. Such a charge should cover the costs outstanding to the owners association. These costs would include the cost of any repairs, administrative or legal expense caused to the owners association, or property manager, as a result of pursuing the recovery of repair costs.

**67. Non-resident property owners should be required to register their permanent address on a publicly available register.**

68. This would enable owners associations and the local authority to inform them of maintenance, repairs or improvements that were needed to the common parts of the building.

69. One of the most time consuming and difficult tasks for owners, property managers and local authorities is contacting non-resident property owners to inform them of maintenance and repairs that require to be carried out, seeking their agreement for work and recovering the costs of any work agreed to.

70. Information regarding the permanent address of non-resident landlords should be required to be held in a publicly available register. The requirement could be to have non-resident owners and landlords to register their permanent address on a property register held by the local

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authority or alternatively with the Register of Sasines. Non-resident owners would be required to notify the register of any change to their permanent address.

### **71. Owner's Associations should be registered with the local authority.**

72. Owner's Associations should be registered by the local authority to allow local authorities to identify which associations which did not have an effective management scheme in place and where there is likely to be a failure to carry out effective property management.
73. A registration scheme would need to be resourced either from a fee charged to Owner's Associations or from additional resources provided to local authorities by central government or a combination of both.

### **Local authority powers on common property maintenance**

### **74. Local authorities should have powers to inspect buildings and verify that property management schemes are being acted on.**

75. These powers would allow local authorities to verify any information contained in property log-books, inspection reports and maintenance schedules. For example if the maintenance schedule allowed for annual clearing of guttering then the local authority could easily check that this work was being carried out and if not require the Owner's Association to carry out this work.
76. Local authorities should use these powers sparingly and were they have reason to believe that the property was at risk of serious disrepair as a result of a lack of inadequate maintenance. Where a local authority were satisfied that an owners association or a property manager was not carrying out its maintenance responsibilities they would inform the Owner's Association or a property manager employed by them of their concerns and put before them a set of recommendations. This could include the identification of maintenance and repair works.

### **77. Local authorities should have discretionary powers to assume the property management and maintenance responsibilities of an Owner's Association.**

78. Where the Owner's Association had failed to act on its responsibilities to maintain their property and there was a serious risk of disrepair local authorities could have discretionary powers to impose a common property management scheme and appoint a property manager to manage the maintenance and repair of the property.

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79. In these circumstances a local authority could directly employ an agent, for example an accredited professional property manager or registered social landlord (RSL), to carry out the property management for the building concerned. To establish a clear separation of their enabling and providing roles local authorities should only provide the default property management service where no accredited property management services already exist in the local housing market.
80. As the contracting body local authorities would have to bear the costs of employing a property manager and of carrying out any repair works which were identified from a property inspection. However these costs would ultimately be charged against the owners concerned and be recovered by placing a charge against the property which would be recovered at the point of sale. Such charges should carry a substantial administrative fee to act as an incentive to owners to carry out the work themselves.
81. Such a sanction would be a major incentive for owners – potential property sellers - to undertake regular maintenance. When owners come to sell their property the fact that expensive charges are in place against the property is likely to dissuade potential buyers to buy into such a property because of the costs and management difficulties involved
82. It is envisaged that these powers would be used rarely if at all but would be an effective sanction against the inaction of those property-owners who failed to maintain their property.

### Regulation of property management

**83. Property managers should be subject to an efficient system of regulation or accreditation.**

84. If public policy places greater responsibility on homeowners to maintain and repair their property then consumers of property management services should expect that their interests will be protected by an efficient system of regulation or accreditation which holds the property management services accountable.
85. The property management services for which regulation could apply include managing the finances of Owner's Associations, carrying out inspections and identifying and carrying out necessary maintenance work. Consumers need to be confident in the knowledge that organisations who provide these services work to the high standards, can be trusted and can be held to account if they abuse their position of power.
86. The options for developing an efficient and robust framework of regulation for property management services could include:

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- **Extend Communities Scotland regulatory role** to professional private sector property managers. (Communities Scotland is already responsible for the regulation of local authority and RSL factoring services).
  - **Allow local authorities to establish a register of property managers** and regulate them against a framework of nationally set standards and guidelines. However local authorities would have to establish a degree of transparency between themselves as a regulatory authority and as a service provider where they provide factoring services to homeowners.
  - **Establish a national industry led accreditation scheme** which would regulate the industry against national standards but would incorporate an independent public adjudication service which would investigate consumer complaints and take action against a property manager they felt to be at fault.
87. Regulation should accredit property managers against a set of minimum standards and consumers need to know that poorly performing property managers would lose their accreditation if they did not meet the regulatory requirements, or were guilty of a serious breach of trust or professional conduct.
88. Conversely the property management industry needs to be protected against consumers who refuse to pay for work carried out or fail to pay their contribution to the provision of property management services.
89. Substantial growth is required in the property management industry to establish an effective market for such services to meet the need and demand for property management. The industry itself will not grow to meet the need for professional property management services without effective guarantees that agreements on repairs can be reached and that costs can be recovered from owners. We believe that the creation of a framework within which Owner's Associations are responsible for property maintenance helps create such a framework.
90. Establishing a clear relationship between the property manager and the Owner's Association and effective procedures for Owners Association to recover the costs from individual members would help protect the property management industry from these problems.
91. Property managers would seek to reimburse their costs from the Owner's Association and should be able to pursue individual owners on behalf of the Association. They could ensure that a charge is placed against the property of an owner who did not contribute to agreed property management, maintenance and repair costs.

**Powers of repair notice and links to funding**

**92. Local authorities statutory powers to serve repairs notices should be separated from mandatory entitlement to grant and other financial benefits which accrue from the serving of a notice such as saving on VAT.**

93. Currently owners are rewarded for failing to maintain their property and allowing it to fall into disrepair as most statutory notice powers attract mandatory grant funding. (This is not the case in Edinburgh where local byelaws are used to serve repairs notices which do not attract mandatory grant).

94. Local authorities should only have to resort to repairs notices as a last resort where owners have failed to maintain their property and there is serious disrepair or a danger to public safety. Removing the link to mandatory grant and to the benefits of removing VAT from the costs of work carried out by local authorities would encourage owners to organise the works themselves. This depends a great deal on effective new mechanisms being in place for owners to organise common maintenance and repair work themselves.

95. Local authorities should be able to apply additional substantial administrative charges to the costs of organising any works for owners who had failed to maintain their property. This would act as a further encouragement to owners to organise maintenance and repairs themselves.

**96. Local authority powers should be extended to include serving notices of certain additional improvement works on buildings in common ownership.**

97. Through their local housing strategies local authorities will be responsible for implementing national and local priorities in housing. There is an argument that local authorities need more effective means of implementing these priorities across the private housing market. Local authorities should have a wider range of discretionary powers to require improvements to buildings where there is a wider public interest in having these improvement works carried out.

98. Local authorities should be able to seek improvements to privately owned property to:

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- **improve community safety** by installing door-entry phones, fireproof flat doors, and back court lighting;
  - **improve energy efficiency** by installing loft and cavity wall insulation;
  - **improve physical access** by installing ramps and support handles on entry doors.
  - **improving the long term maintenance of the building** by installing higher quality roof coverings.
99. Such powers would need to be used carefully and some test of proportionality would have to be applied. The cost of the improvement would need to be weighed against the benefit to the owners, to any association to which they belonged, and to the wider community.
100. If such powers were to be developed and implemented by local authorities there is a clear argument that they should, unlike repairs notices, attract some form of grant assistance.
- 101. Any new system of property management for common maintenance and repair would need to be phased in over a period of time.**
102. There are, for example, around 5,500 pre-1919 tenements in Edinburgh alone. Establishing owners associations and property management schemes for these and other tenements would require a number of important conditions to be in place. These would include:
- a regulated market of accredited professional property managers.
  - guidance, advice and information for property owners and property managers on establishing owners associations and carrying out property maintenance.
  - systems for local authorities to exercise their statutory powers and any regulatory functions conferred upon them.
103. The phasing in of any new system could be based on a number of different factors:
- the identification of “at risk” properties through an authority wide property condition survey.
  - a review of properties recently served with repairs notices.
  - identifying properties at risk on the basis of their age.
104. However a target date should be set by which time all commonly owned properties are subject to a property management scheme administered by owners associations. Such a target date should be set nationally but with the option of allowing local authorities to vary it locally. The scale of this task should not be underestimated.

## 4. Helping homeowners finance property maintenance, repair and improvement

### 4.1 Defining the problem

#### What prevents owner from funding property maintenance, repair and improvement?

105. Property owners fail to place a high priority on investing their own resources in property maintenance and repair. Property values tend to be dictated by location and the prevailing market demand rather than the actual condition the property is in.
106. Property owners who have a responsibility for common repairs face major problems in securing agreement and then collecting the contributions of individual owners towards the repair costs.
107. The availability of both publicly resourced grant funding and commercial loans to owners for maintenance, repair and improvement is limited by the resources available or by the limited range of commercial loan products on the market.
108. More specifically:
  - **funding options for owners are limited.** Grant funding from local authorities is increasingly limited against the extent of repair and improvement work which is required in the private housing market. Commercial lenders are reluctant to develop the financial products such as loans for owners to maintain and repair their homes.
  - A significant number of **households face major difficulties securing finance from commercial lenders** for maintenance, repair or improvement. These include households:
    - in insecure or low paid employment;
    - with no or limited savings
    - with large and/or multiple debts
    - which have little free equity in their properties.
  - There is **no effective way for owners who have responsibility for common maintenance and repairs to manage funds on a collective basis.**

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- **Some commercial lenders are cautious about lending to owners of certain types of property** particularly Right to Buy and non traditionally built properties.
  - **Low interest and equity release products are viewed as being administratively cumbersome and financially insignificant** by many commercial lenders.
  - Individual **equity release loans tend to be available only for a limited number of capital-rich but income-poor households**, particularly the elderly living in high value housing.
  - Traditionally, publicly funded grants have been used to fund repairs and improvement works. However **publicly funded grants have been reduced in recent years and have never, nor are ever likely, to match the need for finance for property maintenance, repair and necessary improvements** in the private sector.
  - **Few local authorities have developed alternative financing methods** for supporting owners to fund the maintenance, repair and improvement of their properties.
109. Increasingly substantial sums of capital are committed by home-buyers to securing property. In a high demand market like Edinburgh potential buyers bid substantially over the valuation price in order to secure a property. This leads to a great deal of capital being tied up in (usually temporary) negative equity that could otherwise be contributing to property maintenance.
110. There is substantial danger that when the property market slows down many owners could find themselves with negative equity and will have even less scope for using the value in their property to fund, through the extension of mortgages for example, repair and improvements to their homes.
111. Major shortfalls in funding for private sector maintenance, repairs and improvements will continue to exist unless alternative sources of funding and an effective way to manage funds for owners with common maintenance obligations can be developed.

## **4.2 Solving the problem**

### **What would encourage owners to fund property maintenance, repair and improvement?**

112. The aim of public policy should be to establish a framework to encourage owners to fund the costs of maintaining, repairing and improving the buildings themselves.
113. Homeowners should have a choice of funding solutions to meet their responsibilities to maintain, repair and improve their property. This is particularly important for owners who have responsibilities for common maintenance and repairs but equally applies to all owners of individual homes.
114. A framework needs to be set in place to ensure that owners who have common maintenance and repair responsibilities have an effective way to manage funds collectively. Property managers and construction firms need to have some confidence that costs can be recouped when undertaking common maintenance and repair work.
115. Public policy should, as far as possible, encourage the commercial lending market to provide affordable loans which meet the financial circumstances of owners and the need for funding to maintain their homes.
116. However public policy should also recognise that the commercial market is unlikely to cater for all the financial needs of all groups. Public resources should be used to develop funding solutions to meet the needs of owners that are not met by the commercial market. Provision should be made for public resources to be targeted on owners who do not have the financial resources to meet maintenance and repair costs and who do not have access to the loan products provided by commercial lending organisations.
117. Local authorities need to have the flexibility to target available public resources against a range of different national and local priorities. This could include targeting resources to:
  - those most in financial need;
  - those who would benefit most for health, social or economic reasons;
  - meet wider social and economic objectives identified through local housing strategies
  - support the regeneration of areas of deprivation.

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118. Public resources should, as far as possible, be used to lever in additional private sector resources. For example, they could be used to establish low interest and equity loan funds which could be recycled in revolving loan funds for future private sector maintenance and repair needs.
119. Alternative sources of funding need to be developed in partnerships between local authorities, commercial lenders and other organisations. These partnerships should develop new loan products to meet the different needs of many households who simply cannot secure loan finance for the maintenance, repair and improvement of their home.

### 4.3 Policy Options

120. Section 3 of this response proposed a range of policy options to encourage owners to organise effective common property maintenance, repair and improvement. This section sets out a range of policy options which would help owners fund property maintenance, repair. Some of these options apply specifically to common maintenance and repair but others apply equally to individual property that requires maintenance, repair or improvement.

#### Funding options for common property maintenance

**121. Owners associations should have clearly accountable mechanisms to manage maintenance funds on behalf of the “community of owners” that belongs to the association.**

122. The lack of an effective mechanism for organising finance among a group of owners to pay for common property repairs or improvements is a major stumbling block to carrying out effective maintenance.
123. Owners become frustrated at trying and often failing to collect individual contributions from other owners and property managers and contractors regularly demand money in advance of works because they fear not getting paid.
124. The development of Owner’s Associations for common property maintenance provide a possible solution to these organisational and financial management difficulties. We believe the proposals for owners associations contained in the Title Conditions Bill and amended as we have suggested in Section 3 of this response would provide a more effective way of collectively managing funds for property maintenance.

**125. Owner’s Associations should be able to collect and manage service charges to pay for the ongoing maintenance and costs of property management.**

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124. Owners associations will have to pay the costs of a property manager if they choose to employ one. Property managers may manage these or other funds on behalf of the owners association. However the management of the funds of an owners association should be subject to regulation and careful scrutiny to protect the financial interests of all of the owners involved.

**125. Owners associations should be able to establish and manage sinking funds for major repair and possibly improvements.**

126. These could be paid for in a number of different ways. For example:

- all owners making a one-off payment when they buy a property. This payment could be recoverable when they come to sell the property.
- all owners making a monthly or annual contribution to the sinking fund which would not be recoverable.

127. Either option or a combination of both could provide a substantial reserve fund for funding major repairs or improvements. Owner's Associations should be free to identify what they want to spend this resource on and the level at which they wish to set the minimum reserve fund amount.

**128. Owner's Associations should be able to borrow against their income stream.**

129. Where owners pay a regular service charge for the maintenance of their property they could, for example, opt to pay an additional amount over and above this to pay for a major improvement or repair loan. The bigger the Owner's Association the greater would be its ability to borrow from the commercial sector against its income stream.

### The funding role of local authorities

**130. Local authorities should be able to provide grants to owners associations to establish sinking funds.**

131. Resources should be made available to allow local authorities to provide seedcorn funding for Owner's Associations to establish sinking funds only where properly constituted and functioning Associations were in place. Local authorities could set conditions on the use of the sinking fund.

132. If the establishment of Owner's Associations was not to be conferred in statute by the ownership or property then providing funding to establish

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sinking funds could be used as a major incentive to establish these associations and ensure they implement effective property management schemes.

**133. Local authorities should be able to target resources through improvement and repair grants against priorities set out in its local housing strategy.**

134. Local authorities should have the flexibility to target their grant provision against priorities set out in the local housing strategy and against property standards identified in any future Housing Quality Index.

135. Decisions about targeting grant resources need to be made against the needs of individuals and what they require from their property, the wider needs of the community and other health, social and economic factors which would be identified in the local housing strategy.

136. Grant provision is necessary to help meet the needs of those who have no resources of their own or who cannot access the financial products available in the market. Indeed there are good policy arguments for increasing the level of public resources available for targeted grants and to help develop new financial products such as low interest and equity loans where the commercial market has so far failed to provide them.

137. A condition of any improvement or repair grant should be the establishment of a programme of maintenance – either for an individual house or more importantly for properties with common maintenance obligations.

**138. Improvement grants could be made mandatory when notices are served for certain defined works.**

139. This would be justified if local authorities were to be given discretionary powers to serve improvement notices for works identified in the local housing strategy. Grants should be made mandatory against improvement orders where such orders were aimed to improve property in the wider public interest. Elsewhere we have suggested that such works could include for example improving community safety and security and for improving access for disabled people.

**140. Local authorities should have the resources and powers to provide low interest and equity loans to those who cannot secure finance from the commercial sector.**

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141. Local authorities ability to provide low interest loans to homeowners for maintenance and repair is limited by restrictions on local authorities providing services which compete with the commercial sector.
142. However local authorities should, in partnership work with the commercial lending and voluntary sectors, develop funding packages for those who do not receive publicly funded individual improvement and repair grants and cannot access the traditional commercial lending market.
143. Resources should be made available to local authorities to borrow loan capital from the commercial sector in order to establish loan funds for the provision of affordable loans to owners for property maintenance, repair and improvement work. These funds could be administered by arms length bodies or voluntary agencies and could be sold on by them to individual owners. Loan funds could be to establish different forms of loan product for individual owners. For example:
  - low interest loans;
  - equity release;
  - flexible tenure.
144. To be effective all of these loans funds would require some form of publicly resourced capital subsidy to subsidise the cost of loans and to resource the additional administrative costs which come with providing such loans. However it should be recognised that public resources could lever in substantial amounts of private sector funding for owners.
145. **Establish low interest loans** – a local authority should be able to subsidise the interest payments on a large loan secured from a commercial lender or inject some capital into the loan fund to reduce the monthly interest and capital payments for owners.
146. A large loan secured from a commercial lender could then be paid out in smaller loans to individual owners or to owners associations for common repair and improvement works.
147. Low interest loans may suit those who have little equity in their homes, cannot access or afford traditional capital and interest repayment loans but have enough income to be able to afford to pay a reduced cost loan.
148. **Establish equity/property appreciation loans** – a local authority should have effective powers to guarantee to pay the interest on a long-term loan and secure its return on taking an equity share of the property to which the loan is made.

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149. Loans would be made against the equity of the property. For example if a £5,000 loan was required against a property worth £50,000 then the loan fund would take a 10% equity stake in the property. If the property value had risen to £60,000 at the point of sale then the loan fund would receive £6,000.
150. The loan would be paid back when the property was sold – the rise in property value and equity stake would secure a payment of capital and in lieu of interest on the loan.
151. Both low interest and equity loans could be administered by the authority itself or through an intermediary like an RSL or a non-profit making trust. Local authorities may have to provide guarantees in order to secure loans raised by such bodies from commercial lenders.
152. Revenue subsidy is also likely to be required to support the running costs of either an authority administered loan scheme or that run by an intermediary. Commercial lenders are unwilling to provide these loan products to the target client groups – those with low incomes, few savings, multiple debts and low property values because of the costs involved in administering these products.
- 153. A flexible tenure scheme should be established for the purpose of helping owners pay the costs of repair and improvements.**
154. A funded flexible tenure scheme would allow owners to sell their property to a landlord and the owner become a tenant of the landlord. Such a scheme would help those who could not take advantage of commercially available loans or subsidised low interest or equity loans.
155. The experience of existing flexible tenure schemes suggest there are substantial costs attached to them and these would require to be funded.
156. Communities Scotland is currently developing a national flexible tenure scheme to assist those in mortgage difficulties. This scheme could be expanded to allow for flexible tenure where owners could not afford to meet the costs of repair or improvement work.

## 5. Modernising the buying and selling process

### 5.1 Defining the problem

157. **Why do homebuyers and sellers fail to consider the condition and property arrangements of a property an important factor in assessing the value of a property?**
158. A significant amount of property is bought and sold with neither the buyer or seller having sufficient knowledge of the condition of the property or the maintenance arrangements put in place for it.
159. The buying and selling process fails to provide incentives to property owners to maintain their property in good condition. The process does not serve to provide potential buyers with any major incentive to find out about the condition of the property before they buy.
160. There is little consumer protection in the system for those who buy a property and who subsequently find the property to be in poor condition.
161. More specifically:
- **Lenders only require a valuation survey** for potential buyers to secure a mortgage on the property they wish to buy.
  - **The property survey system is very inefficient for consumers.** It is up to the buyer to pay for an additional property inspection report but these can be very expensive especially when a buyer may be faced with paying for multiple surveys.
  - **The current system of multiple surveys and blind bidding discourages potential purchaser from obtaining information about the condition and maintenance arrangements for the property.**
  - **Sellers are protected from selling badly maintained property** by “caveat emptor” where the buyer is expected to take all the risks.
  - **Overall property values are based largely on location and prevailing demand for property rather than on its condition.** A house in very good condition in an area of council housing is likely to be substantially less expensive than a flat in poor condition with no common maintenance arrangement in the city centre.
  - **Many property owners are simply not aware of their obligations to common property repair and maintenance.**

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- **Many title deeds do not include provision for common property maintenance** or if they do the deeds and conditions are very old and not appropriate for modern property management.
- In areas **where demand outstrips supply buyers are encouraged to secure property by committing their own capital resources** to bidding well in excess of the property value. This is especially true of Edinburgh.
- **Where demand outstrips supply buyers are encouraged to move quickly to make bids on properties**, arguably without being given an opportunity to consider the full implications of their actions.

### 5.2 Solving the problem

**What can be done to encourage homebuyers and sellers to consider the condition and maintenance arrangements when placing a value on property?**

162. The aim of public policy should be to ensure that both buyers and sellers are aware of the condition of the property that they are buying and that buyers consider the implications of buying poorly maintained property. Clear information needs to be available to owners on their obligations for property maintenance particularly in flats.
163. The process of buying a house should encourage a prospective purchaser to obtain the maximum amount of information available about the property. House sellers should be required to provide more information to prospective purchaser about the condition of their property and the arrangements for maintaining it.

### 5.3 Policy options

#### Providing better information to homebuyers

**164. Sellers should provide an information pack which includes details of the condition and management arrangements of the property.**

165. Sellers information packs which detail the property condition and management arrangements were first proposed in the form of sellers surveys in the Scottish Green Paper on Housing in February 1999. Since then a number of industry initiatives have been developed and the DLTR in England is progressing proposals for a sellers information pack to be introduced in the house-buying process in England.

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166. In Scotland there has been substantial resistance to the idea of introducing seller surveys from both the industry and some consumer groups. However the issue of introducing sellers surveys has been presented as a response to the problem of buyers having to secure multiple surveys in property hotspots and as an alternative to the current survey process where buyers are responsible for surveying property they wish to buy.
167. Seller's information packs should be considered separately from the issue of multiple surveys. They should be seen clearly as a response to the need to provide more information to potential buyers about the condition of property.
168. Seller's information packs should include the following:
- property condition report;
  - title deeds – in plain English;
  - planning consents;
  - details of planned repairs or improvements;
  - any common property maintenance arrangements including any property maintenance logs and the established costs of property management.
169. If a block of flats is maintained by an Owner's Association then details of the operation of the association should be included in the information pack.

**170. Sellers should provide a set of title deeds written in plain English to prospective purchasers.**

171. Most potential buyers will have no idea of the common property obligations or other conditions attached to a title before they make an offer on a property. Even after they have secured the sale many owners are still not aware of what responsibilities they have under their title deeds. Title deeds tend to have been written either or both a long time ago and in impenetrable legal language.

172. It is essential that potential buyers have a clear understanding of the maintenance and repair obligations and responsibilities of the property they own. A copy of the maintenance and repair responsibilities contained in the title deeds of a property should be provided by sellers to potential buyers in plain English.

**173. Sellers should provide a copy of a house condition report to all prospective purchasers.**

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174. When preparing to sell a property a house seller should be obliged to commission a house condition report from a surveyor and make this available to potential buyers. Such a survey should provide an estimated cost of outstanding maintenance and repair works that require to be carried out on the building.
175. Mortgage lenders will require a valuation survey for the purpose of lending a mortgage to a potential purchaser. However a property inspection report provided by the seller will help alert the potential buyer to the condition of the property and ensure that they are better informed as to whether or not to go ahead with a survey and valuation of their own.

### Improving the homebuying process for consumers

**176. A minimum notice period of two weeks should be set for a closing date for offers.**

177. If the house seller is inviting bids from a number of interested potential buyers a minimum period of time should be set aside for potential buyers to consider the information they have about the property and to reach a decision about going ahead to place an offer. This would in effect be a cooling off period and allow consumers in the system more time to make sensible decisions based on good quality information.

**178. An auction system should be introduced to replace blind bidding in the house sale process.**

179. Blind bidding in a property where demand far exceeds supply encourages potential buyers to make inflated bids to secure the property they wish to buy. Buyers have no idea who they are bidding against or to which level the other buyers are willing to bid. This encourages potential buyers to invest substantial sums of their own capital above the valuation of the property to secure the property they want.
180. The blind bidding system is a major contributor to house-price inflation in a market where demand for property is high.

## 6. Supporting landlords and tenants in the private rented sector

### 6.1 Defining the problem

#### Why are standards across the private rented sector inconsistent?

181. The quality of management and property in the private rented sector varies widely. There are many well-managed landlords and good quality properties but equally there are still too many landlords who are inexperienced in property management and provide poor quality management and property.
182. The private rented sector is an important source of accommodation for many people. In Edinburgh the private rented sector accounts for around 11% of the stock compared with council housing which accounts for 14%. It is a complex system with many different relationships between landlord and tenant. In addition to those that are clearly set out in law there are many “tenants” who have fairly informal relationships with their “landlord”.
183. The sector caters for a wide range of client groups, from those that are wealthy and mobile to those who are benefit dependant or have low incomes, cannot gain access to the social rented sector and have little choice about where they live. In reality consumers with low incomes and little choice in the market have little protection against landlords who fail to meet their responsibilities.
184. More specifically:
  - Property letting agents vary in quality and there is **no effective industry standard or accreditation for landlords.**
  - **Many landlords let one or two properties and are inexperienced in property management.** The growth of buy to let mortgages and the investment potential of property in Edinburgh has encouraged this growth.
  - **Landlords are generally hostile to the current HMO licensing regime.** Landlords complain of high costs, delays in processing and the implementation of inconsistent and inflexible conditions.
  - Landlords often articulate a perception that their **ability to recover costs from tenants who damage their property and who fail to pay rent is inhibited by the current short assured tenancy regime.**

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- **Tenants have little effective protection against illegal eviction** and harassment by landlords.
- **Tenants face difficulties in securing repairs to their property** and have deposits returned at the end of their tenancy.
- **Tenants on benefits often find themselves excluded from the market** by many landlords.
- **Tenants are often unaware of their responsibilities to their neighbours**, particularly when they live in shared buildings like tenements.
- **Market forces and peer pressure have largely failed to deliver significant improvements** in the condition and quality of private sector landlords.

### 6.2 Solving the problem

**How do we encourage private sector landlords to improve the quality of their accommodation and management and encourage tenants to appreciate their responsibilities to their landlords and neighbours?**

185. The aim of public policy should be to establish a framework which encourages the delivery of good quality accommodation and management in the private rented sector. Private sector landlords should be subject to a framework of regulation which ensures that they provide good quality management and property to their tenants.
186. There is an argument for a two tier system of regulation and accreditation for the private rented sector. Property letting agencies should be accredited against a national framework of management standards. Both letting agents and individual landlords should be required to obtain a licence to operate to allow them to operate as private landlords. Individual landlords with one or two properties should be encouraged to employ the services of an accredited professional property letting agent.
187. Any framework of regulation will need an effective enforcement regime to protect good quality private sector landlords and to ensure those landlords who try to evade regulation are not allowed to operate as landlords.
188. Tenants need to be aware of their rights as consumers but also of their responsibilities to their landlords and neighbours. They need further protection from harassment and bad practice of poor quality private landlords.

### 6.3 Policy options

#### Regulating the private rented market

**189. An effective framework of regulation should be developed in partnership with the private rented sector which promotes good quality management and accommodation.**

190. In creating a new regulatory regime for the private rented sector one option would be to extend the current HMO licensing scheme under the Civic Government (Scotland) Act 1982. This requires local authorities to apply licensing to properties with three or more unrelated residents. Though the implementation of the HMO licensing regime is at an early stage scheme it is currently under review by the Scottish Executive and is subject to an inquiry by the Scottish Parliament Social Justice Committee.
191. The option of widening the HMO licensing scheme to cover more of the private rented sector should be considered following the completion of the different reviews and inquiries currently underway and alongside a range of different options.
192. Many good quality private landlords would welcome a system of effective and efficient regulation which would drive up management and accommodation standards and where necessary drive out bad landlords who give the industry a bad name.
193. The original consultation paper on HMO licensing suggested that the Executive may consider implementing an alternative form of regulation for the private rented sector at a later date. This would cover the private rented sector more fully and allow local authorities to adopt a risk assessment approach to regulating private landlords thus allowing them to concentrate on the most problematic landlords.
194. In practice it is difficult to see how a regulatory regime could be managed nationally by Communities Scotland or another national agency. Landlords and letting agents tend to operate locally though some do operate across local authority boundaries. It would be sensible to set benchmark standards nationally but these should be interpreted with some flexibility at a local level.
195. It would seem sensible for the implementation of any regulatory regime to be implemented at a local level by local authorities. Local authorities, through their local housing strategy and other planning functions, should have the knowledge about local market to allow them to implement any regulatory framework sensitively and to meet local circumstances.

**196. *It is essential that any system of regulation or accreditation should have the confidence and support of the industry.***

**197. Property letting agents and individual landlords should require a “licence to operate”.**

198. Private sector landlords should require some form of licence to operate their business. Providing accommodation to people is a very responsible business and one which requires landlords to be aware of their responsibility for the safety and security of their tenants. Landlords are also have a degree of responsibility for ensuring that their tenants are aware of their responsibilities to neighbours.

199. A “licence to operate” would be based on a series of minimum national standards governing the quality of management and property let by landlords. A licence to operate could be granted to private sector landlords by a local authority applying the national standards. A licence to operate could be removed if a landlord did not meet the minimum standards set nationally or if there were concerns about the safety and security of the tenants themselves.

**200. A “licence to operate” should require landlords to meet certain minimum national standards.**

201. To secure a “licence to operate” a landlord or letting agent would be required to meet a range of nationally set minimum standards for management and property.

202. The property standards would include all the legal obligations that landlords have under health and safety legislation etc. and should broadly meet the standards currently sought through HMO licensing.

202. The management standards could include the provision of:

- a **complaints procedure** and provision of information on independent sources of advice.
- a lease based on a **model tenancy agreement**.
- a procedure for dealing with **emergency repairs**.

**203. Additional management and property standards should be set locally in consultation with private sector landlords.**

204. Additional standards could be set which aim to raise standards in the private rented sector locally. These standards could relate to both the

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management and physical condition of private rented property in the local area. For example enhanced standards could include:

### **Management standards:**

- advice to tenants on dealing with neighbours;
- procedures for dealing with tenant requests for additional services.

### **Property condition standards:**

- an agreed minimum standard for the condition of property let.
- enhanced physical access to the property;
- provision of energy efficiency measures to reduce fuel bills;
- provision of door entry systems.

205. It is essential that any system of regulation and accreditation has the confidence of the private rented industry. These locally set standards should be set with the agreement of private landlords and consumer groups locally.

**206. Monitoring and regulation of management and accommodation standards should be implemented by local authorities.**

207. Because of the nature of the private rented market local authorities are probably best placed to implement any regulatory regime. They would be responsible for ensuring national standards are met and landlords are operating legally. However given the large number of properties in the private rented sector it would not be feasible for local authorities to carry out inspections of all the individual properties in the private rented sector as is the case with the current HMO licensing regime.

208. The responsibility for ensuring that each individual property meets minimum standards lies primarily with the private landlord or letting agent not with the regulatory body. The responsibility of the regulatory body should be to ensure that systems are in place to encourage landlords to meet these standards and where necessary to enforce them.

209. There is a case that the property of small landlords may need to be inspected more rigorously than that provided by a property letting agency. Property letting agencies provide services to both landlords and tenants. They should have effective management procedures in place to ensure that landlords meet standards and their legal obligations. Letting agencies have more incentive, knowledge and experience to improve their procedures and standards.

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210. However individual landlords with a small number of properties are often relatively inexperienced in managing property and are likely to require a more robust mechanism to ensure that they meet minimum standards of management and property condition.
211. Different regulatory procedures could and should apply to property letting agents and individual landlords with just one or two properties. We outline how this could be implemented below.

### Letting agents and larger individual landlords

**212. An accreditation regime could be implemented for property letting agents and larger landlords which requires them to meet the national and locally agreed standards for the management and condition of their property.**

213. A letting agent would be defined as an agency which provides services to property owners who wish to rent their property and provides services to tenants who let property from them. A letting agent could also be an individual landlord with more than a minimum number of properties – for example, ten properties.
214. A letting agent's "licence to operate" would apply to the agent rather than the agent's properties. However letting agents should be required to produce a certificate for each property they manage showing that they had met all the legal and minimum standards set by the regulatory body.
215. Local authorities should have powers to inspect the properties of any letting agent and have a programme of spot checks and inspections to ensure compliance with this regime.
216. This would allow local authorities to undertake risk assessments and target letting agents on the basis of their performance in meeting standards or as a response to tenants complaints.

### Individual landlords

217. Individual landlords would not be part of the accreditation regime but would be expected to meet the minimum national standards, have a "licence to operate" and meet, where possible, the locally agreed standards. Individual landlords should be encouraged to seek to employ the services of accredited professional property managers.
218. Local authorities would be expected to inspect the properties of individual landlords with say fewer than ten properties. This would be a more costly

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exercise and the costs of obtaining a “licence to operate” should be proportionally higher for an individual small landlord with a small number of properties than a larger letting agent with more properties.

### Regulation – local authority role

**219. Local authorities should have powers to remove or suspend a letting agent or landlord’s “licence to operate” where they were concerned that standards were not being met and there was a risk to the safety and security of the tenants now or in the future.**

220. Local authorities would have to show they had reasonable cause to remove a licence to operate. A local authority would have to prove that their action was proportionate and that serious harm to the safety and well being of the tenant was or is likely to occur. Landlords should have a right of appeal against the removal of a “licence to operate”.

**221. A local authority should have powers to arrest the earnings of a landlord who operated without a licence.**

222. Where a landlord was operating without a valid “licence to operate” or continued to operate after a licence had been suspended or withdrawn a local authority needs a range of effective sanctions to employ against the landlord to ensure they comply. By arresting the earnings of a landlord the local authority could effectively prevent a landlord from profiting from operating without a valid licence.

**223. A local authority should have powers to appoint an accredited letting agent or RSL to manage the property of a landlord who continued to operate without a “licence to occupy”.**

224. Appointing an alternative management agency or registered social landlord to manage the property of a landlord or letting agency which operated without a valid licence would provide a complementary sanction to arresting the earnings of the landlord.

225. A local authority should be empowered to recover the rental stream of the landlord to contribute to the costs of appointing an alternative management agency to manage the property and for any works which required to be undertaken to bring the properties of the landlord up to the minimum standard.

**226. A local authority should have powers to place a charge on a property where they had appointed a letting agent or RSL to manage the property under any control order powers.**

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227. Local authorities should have power to place a charging order against the property to cover the costs of any repair work carried out, the administrative costs to the authority of implementing such a control order and a management fee to the letting agent or RSL appointed to manage the property.

**228. The cost of regulation should be borne fairly across landlords and should reward the provision of good quality services by private landlords.**

229. A landlord who performed well, provided good quality services and did not require intensive inspection regimes should see a reduction in their costs to regulation. Alternatively landlords who performed badly or operated without a licence would require to pay the costs of the intervention of a local authority or other regulatory body. Any regulatory scheme need to be flexible enough to reflect the different levels of regulation required for different types of landlord.

### Rights and responsibilities of landlords and tenants

**230. Tenants should be protected against any form of harassment by their landlord, not just harassment which leads directly to them leaving the property.**

231. Existing powers only allow for the prosecution of a landlord where the tenant was harassed out of their home. Such prosecutions are a criminal act and the responsibility of the police and procurator fiscal to pursue. The problem with existing powers is that they are difficult to enforce and generally only available once the damage has been done – i.e. a tenant has been forced to leave the property.

**232. Landlords should have more effective rights to recover lost rent and the costs of any damage to their property.**

233. Many landlords feel they have little protection against a tenant who deliberately fails to pay their rent or causes substantial damage to their property. We believe that on the whole the short assured tenancy works relatively well.

234. The Housing Improvement Task Force should investigate the extent of this problem and alternative means of allowing landlords to pursue tenants for lost rent or damage to property.

## 7. Summary of policy options

### Helping homeowners organise common property maintenance, repair and improvement

#### Owner's Associations

- The common maintenance, repair and improvement of properties where there are six or more properties in separate ownership, should be governed by an Owners Association. **(paragraph 34)**
- An Owner's Association should be known as a "Community". **(paragraph 48)**
- Owner's Associations would have the option of joining together to apply common property management and maintenance schemes across adjoining blocks. **(paragraph 51)**
- Owner's Associations would be responsible for common property maintenance and undertaking a minimum set of basic maintenance tasks. These should include:
  - a regular property condition inspection, say at least every three years;
  - a schedule of planned maintenance and costs;
  - the completion of a property log book to show when repairs and maintenance works are carried out.
  - securing comprehensive common buildings insurance for the block. **(paragraphs 54&55)**
- Owners associations would have the option of employing an accredited professional property manager to manage the maintenance responsibilities of the association or to manage these responsibilities themselves. **(paragraph 58)**
- A pre-court arbitration process should be developed to resolve disputes between owners within an Owner's Association. **(paragraph 61)**
- Owner's Associations would have the power to seek to recover an individual owner's share of the costs of any agreed management, maintenance and repair. **(paragraph 64)**
- Non-resident property owners should be required to register their permanent address on a publicly available register. **(paragraph 65)**

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- Owner's Associations should be registered with the local authority. **(paragraph 71)**

### **Local authority powers on common property maintenance**

- Local authorities should have powers to inspect buildings and verify that property management schemes are being acted on. **(paragraph 74)**
- Local authorities should have discretionary powers to assume the property management and maintenance responsibilities of an Owner's Association. **(paragraph 77)**

### **Regulation of property management**

- Property managers should be subject to an efficient and robust system of regulation or accreditation. **(paragraph 83)**

### **Powers of repairs notices and links to grants**

- Local authorities statutory powers to serve repairs notices should be separated from mandatory entitlement to grant and other financial benefits which accrue from the serving of a notice such as saving on VAT. **(paragraph 92)**
- Local authorities' powers should be extended to include serving notices of certain additional improvement works on buildings in common ownership. These could include:
  - improve community safety by installing door-entry phones and back court lighting;
  - improve energy efficiency by installing loft and cavity wall insulation;
  - improve physical access by installing ramps and support handles on entry doors.
  - improving the long term maintenance of the building by installing higher quality roof coverings. **(paragraphs 96 & 98)**
- Any new system of property management would need to be phased in over a period of time. **(paragraph 101)**

**Helping homeowners finance property maintenance, repair and improvement**

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### **Funding options for common property maintenance**

- Owners associations should have clearly accountable mechanisms to manage maintenance funds on behalf of the “community of owners” that belongs to the association. **(paragraph 121)**
- Owner’s Associations should be able to collect and manage service charges to pay for the ongoing maintenance and costs of property management. **(paragraph 125)**
- Owner’s Associations should be able to establish and manage sinking funds for major repair and possibly improvements. **(paragraph 125)**
- Owner’s Associations should be able to borrow against their income stream. **(paragraph 128)**

### **The funding role of local authorities**

- Local authorities should be able to provide grants to owners associations to establish sinking funds. **(paragraph 130)**
- Local authorities should be able to target resources through improvement and repair grants against priorities set out in its local housing strategy. **(paragraph 133)**
- Improvement grants could be made mandatory when notices are served for certain defined works. **(paragraph 138)**
- Local authorities should have powers to provide low interest and equity loans to those who cannot access finance from the commercial sector. These should include:
  - low interest repayment loans
  - equity/property appreciation loans **(paragraphs 140, 145 & 148)**
- A flexible tenure scheme should be established for the purpose of helping owners pay the costs of repair and improvements. **(paragraph 153)**

## **Modernising the buying and selling process for consumers**

### **Providing better information to homebuyers**

- Sellers should provide an information pack which includes details of the condition and management arrangements of the property. **(paragraph 164)**

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- Sellers should provide a set of title deeds written in plain English to prospective purchasers. **(paragraph 170)**
- Sellers should provide a copy of a house condition report to all prospective purchasers. **(paragraph 173)**

### **Improving the homebuying process for consumers**

- A minimum notice period of two weeks should be set for a closing date for offers. **(paragraph 176)**
- An auction system should be introduced to replace blind bidding in the house sale process. **(paragraph 178)**

## **Supporting landlords and tenants in the private rented sector**

### **Regulating the private rented market**

- An effective framework of regulation should be developed in partnership with the private rented sector which promotes good quality management and accommodation. **(paragraph 189)**
- Property letting agents and individual landlords should require a “licence to operate”. **(paragraph 197)**
- A “licence to operate” should require landlords to meet certain minimum standards. Landlords should be required to have in place:
  - a complaints procedure and provide information on independent sources of advice.
  - a lease based on a model tenancy agreement.
  - a procedure for dealing with emergency repairs.**(paragraphs 200 & 202)**
- Additional management and accommodation standards should be set locally in consultation with private sector landlords. **(paragraphs 203)**
- Monitoring and regulation of management and accommodation standards should be implemented at a local level by local authorities. **(paragraph 206)**
- An accreditation regime could be implemented for letting agents which would require such agents to meet the national and locally agreed standards.**(paragraph 212)**

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### Regulation – local authority role

- Local authorities should have powers to remove or suspend a letting agent or landlord's "licence to operate" where they were concerned that standards were not being met and unlikely to be improved upon in the future. **(paragraph 219)**
- A local authority should have powers to arrest the earnings of a landlord who operated without a licence. **(paragraph 221)**
- A local authority should have powers to appoint an accredited letting agent or RSL to manage the property of a landlord who continued to operate without a licence to occupy. **(paragraph 223)**
- A local authority should have powers to place a charge on a property where they had appointed a letting agent or RSL to manage the property under any control order powers. **(paragraph 226)**
- The cost of regulation should be borne fairly across landlords and should reward the provision of good quality services by private landlords. **(paragraph 228)**

### Rights and responsibilities of landlords and tenants

- Tenants should be protected against any form of harassment by their landlord not just harassment which led to them leaving the property. **(paragraph 230)**
- Landlords should have more effective rights to recover lost rent and the costs of any damage to their property. **(paragraph 232)**

If you have any questions regarding this response or require further information please contact Michael Thain, Private Sector Strategy Manager, at Private Sector Services, Housing Department, City of Edinburgh Council, 23 Waterloo Place, Edinburgh, EH1 3BH. Tel: 0131 529 7257 or by email at: [michael.thain@edinburgh.gov.uk](mailto:michael.thain@edinburgh.gov.uk)