

DRAFT
Implementing Local Authority Powers and Duties in
Parts I and II of the Housing (Scotland) Act 2006:
Guidance for local authorities

Partial Regulatory Impact Assessment

1. Title of Proposal

- 1.1. This partial RIA relates to the consultation “Implementing the Housing (Scotland) Act 2006: Guidance for local authorities”. The consultation presents a draft suite of guidance, part statutory, part non-statutory, on the local authority powers and duties in Parts I & II of the Act and on draft regulations to be made in that connection.
- 1.2. This partial RIA follows on from an initial RIA of the Housing (Scotland) Bill, completed in 2005. There is a separate RIA on the implementation of Part III of the Act.

2. Purpose and Intended Effect

The primary legislation

- 2.1. The local authority powers and duties in Parts I & II of the 2006 Act aim to address concerns over condition and suitability in private sector housing. The evidence which led to those concerns is summarised in section 2.3 below.
- 2.2. There are four main strands to the local authority powers and duties created by the 2006 Act for this purpose:
- an enhanced duty for the local authority to plan strategically for the use of those powers in order to improve housing in its area;
 - modernised and extended powers for local authorities to enforce repair and maintenance in the private sector, coupled with an extension to the tolerable standard (minimum acceptable standards of housing conditions) to cover the basic provision of thermal insulation and safe electrical wiring;
 - a substantially wider range of options for assisting owners to carry out their repair and maintenance responsibilities, including information and advice, practical assistance and financial assistance, with mandatory grant for works required by a statutory notice replaced by mandatory assistance; and
 - a clearer identification and separation of the powers that relate to works to adapt houses to suit disabled occupants.

Objective of the guidance and regulations

- 2.3. There are in principle many ways in which the powers in the Act could be used, separately or in combination, by local authorities. The Act gives the Scottish Ministers powers to make statutory guidance, directions and regulations for various aspects of the relevant provision in the Act and Ministers also have the general option to provide advisory guidance.
- 2.4. In deciding to make the guidance and regulations, Ministers have sought to ensure that the main themes in the policy approach behind the legislative framework are carried through into the way local authorities implement the powers and duties. But their aim has been to do this in a way that is helpful to local authorities and does not constrain their freedom of decision and action unnecessarily.
- 2.5. The intended effect of the draft guidance and regulations is in summary that:
- local authorities will have a common body of material to support their implementation of their powers and duties;
 - where consistency between authorities is important, statutory guidance or regulations will ensure that this is the case;
 - owners' own responsibility for arranging and funding repairs and maintenance will be emphasised, with assistance being given where necessary to support that responsibility rather than remove it; and
 - the distinct situation of disabled occupants requiring house adaptations to make effective use of their homes will be recognised by a separate approach.
- 2.6. During the course of preparing this draft guidance the Scottish Government has published its Concordat with local government and its Government Economic Strategy, which includes the Scottish Government's Purpose. The draft guidance has been reviewed to take account of the new relationship with local government and the Single Outcome Agreement approach and of the implications of the Purpose. The intention is that the draft guidance and the accompanying regulations should align with and support the new relationship while being driven by the Scottish Government's Purpose. The way it does this is explained in chapter 1 of volume 1 of the draft guidance.

Background

- 2.7. Housing is a basic need and suitable housing is a vital factor in strong, healthy communities. There has been a significant tenure shift in the period since 1979 . Owner occupation accounts for 64% of Scotland's housing, compared with 39% in 1979. Taken with the private rented sector, over 70% of housing in Scotland is now privately owned, and the percentage in the private sector is still growing.
- 2.8. While most private houses in Scotland are maintained in good condition this is not always the case. Around 33% of Scotland's 1.64 million private sector houses require urgent repairs. This means that too many private owners are not doing what they should to maintain and repair their houses. The result is large numbers of run-down houses and under-investment in

maintaining the fabric of the nation's homes. Around 90,000 owners report that their homes require major or minor adaptation to help them live independently. Growth in the private sector, an ageing housing stock and an increase in the proportion of older owner occupiers is likely to intensify problems of housing quality and suitability.

Is housing disrepair getting worse?

- 2.9. The total cost of outstanding repairs in private sector housing is in the region of £5bn, based on the Scottish House Condition Survey sample in 2002. It is difficult to establish whether this total is changing significantly in real terms. Comparison with previous surveys is affected by the long lifecycle of some housing elements, the different samples used and the methodological changes that have taken place since 1996.
- 2.10. Within the overall picture there are variations. The cities have high numbers of tenements a century or more old that are at the core of the community and its character, and many of them have major problems of disrepair. Rural cottages are too often crumbling for lack of investment. Some types of system-built non-traditional houses have significant problems. Owners' incomes vary widely; house condition problems tend to be worse in low-income areas and in let property. So there is a great variety of situations needing a range of solutions.
- Disrepair is worst in pre-1919 houses, 48% of which require urgent repairs, and in private rented housing, 46% of which requires urgent repairs
 - Tenements, where multiple ownership complicates repair work, have the worst record – around 36% of the 400,000 homes in tenements of all ages are in critical disrepair.
- 2.11. Poor housing can be a symptom of and a factor in community problems. Identifying and acting on housing issues can help prevent, halt or reverse community decline. Housing conditions should therefore be seen in a community context, particularly in their impact on people who are vulnerable, whether through age, disability, illness, low income, language difficulties or other reasons.
- 2.12. Ministers set up the Housing Improvement Task Force (HITF) in December 2000 with a remit to consider concerns about housing quality in the private sector and the house buying and selling process and recommend how they should be addressed. Its final report¹ identified five key themes in its recommendations for the improvement of private sector housing conditions, in addition to the basic principle of the owner's primary responsibility for repair and maintenance. These were:
- influencing the operation of the housing market, particularly the buying and selling process (the Regulatory Impact Assessment for Part III of the Act is available at

¹ Stewardship and Responsibility: A Policy Framework for Private Sector Housing in Scotland, in March 2003

<http://www.scotland.gov.uk/Topics/Housing/Housing/16193/BuyingSelling/Home-Report/ria>

- improving co-operation among owners on communal repairs and maintenance
 - reshaping assistance to owners to provide alternatives to grant;
 - modernising the operation of the private rented sector, so that landlords carry out more repairs and maintenance; and
 - modernising the role of local authorities to improve their ability to encourage and, if necessary, require owners to carry out works.
- 2.13. The subsequent Housing (Scotland) Act 2006 embedded these themes and addressed a number of further areas where action is necessary. These include:
- introducing powers for local authorities to deal with housing disrepair that is not yet serious but through a lack of maintenance could become serious;
 - updated powers for local authorities to deal with housing disrepair on an area basis, replacing Housing Action Areas with Housing Renewal Areas;
 - extending the Tolerable Standard to cover thermal insulation and safe electrical wiring;
 - scope to take a different approach to adaptations to help disabled people including greater use of grant; and
 - the use of lending through third parties as an alternative to grant, reflecting the owner's primary responsibility.

Rationale for government intervention

- 2.14. The primary responsibility for house maintenance and repair lies with the owner. But many owners either find it difficult to carry out that responsibility or choose not to. The condition of existing private housing in Scotland is a matter of concern to government because of its effect on individuals, communities and the future of the housing stock as a vital part of the country's infrastructure.
- 2.15. Overall, there is a case for government intervention to require owners to take action where it is in the broader public interest that they should do so. There is also a case for government intervention to assist owners take action where there are practical or financial barriers to their doing so without help.
- 2.16. The proposals behind the legislation, carried through into the draft guidance, are based on making enforcement and assistance more effective than in the past. The intervention is intended to be better tuned to the practical circumstances in individual cases and more likely to achieve preventative action that avoids problems developing into substantial and expensive failures.

- 2.17. The legislation gives local authorities, as the lead in delivering the policy locally, wide discretion in their use of powers. This is qualified by powers for Ministers to make regulations and directions and to provide guidance which, in the case of the assistance powers (and certain aspects only of enforcement powers), is statutory. A local authority must by law have regard to statutory guidance.
- 2.18. The draft guidance aims to retain local authority flexibility as much as possible, generally making recommendations that should help local authorities to exercise their powers in a consistent and coherent way. Where appropriate, the guidance is clear on the intention to achieve consistency of approach across the country where this is important. In particular, the approach to adaptations for disabled people and the supporting regulations ensure consistency in a policy area which has strong connections with wider Scottish Government policy.
- 2.19. The proposals in the draft guidance for the provision of lending give strong encouragement to local authorities to make use of the proposed National Lending Unit and Lending Advisory Service. This is because there are economies of scale in this approach and because there are substantial costs and risks for individual local authorities in ensuring that locally provided lending services meet financial services regulatory standards.

3. Consultation

- 3.1. In preparation for the Housing Bill, the public consultation Maintaining Houses - Preserving Homes took place from July to October 2004. This paper stressed again the underlying principle of individual responsibility. Following the lines set out by the Task Force, it set out three main methods of encouraging this responsibility: local authority intervention, support where it is needed and the provision of better information to house buyers (addressed in the Regulatory Impact Assessment for the Home Report).
- 3.2. During the Committee Stage (Stage 2) of the Housing (Scotland) Bill, written and oral evidence was received from a range of local authorities and national bodies, including those covering housing, lending, consumer and energy efficiency interests. There was general widespread support for the aims of the Bill, although particular reservations were expressed by bodies representing disabled people and those representing private landlords. A number of these concerns were subsequently addressed through amendments to the Bill, for example in relation to grants for adaptations to the homes of disabled people. There was general support for the principles of the Bill from MSPs across all parties.
- 3.3. An advisory group was established to advise us on the overall suite of guidance. The group's membership reflected the range of public, voluntary and private sector bodies with an interest in the new powers. We set up an expert group of practitioners to help us develop the guidance on the tolerable standard. The guidance on the Scheme of Assistance was

considered by a Lead Local Authority Working Group which comprised representatives of five local authorities. Finally, a working group was established to consider the future of the test of resources for grant applicants. This group, which included representatives from organisations working with and for disabled people, considered the relevance of applying a test of resources both to applicants for repair and improvement grants and applicants for adaptations grants.

- 3.4. The 12-week public consultation on the draft guidance, due in Spring 2008, will be complemented by a series of regional events which will feature workshop sessions on specific aspects of the guidance. These will take place in the first half of May in Inverness, Dundee, Glasgow and Edinburgh. Further events may be arranged with particular stakeholders or interest groups.

4. Benefits and Costs

- 4.1. The draft guidance contains several strands corresponding to the main themes in the relevant legislation in the 2006 Act, as read with the work of the Housing Improvement Task Force. Each of these is dealt with separately in the following six sections of this RIA. In each case the main options that could have been pursued are identified. The relative benefits and costs of those options are then assessed, followed by a statement of the sector and groups likely to be affected.

5. Strategic Approach

Current Situation

- 5.1. The extent to which local authorities currently set out their strategic approach to tackling problems in private sector housing varies significantly, as evidenced, for example, by the varying degrees to which private housing features in current local housing strategies produced by each local authority. The need to implement the 2006 Act calls for a more proactive approach to setting out a local authority's strategy in relation to private sector housing, albeit with significant scope for local setting of priorities, in accordance with the Concordat between central and local government. No previous Scottish Government guidance has addressed in detail the issue of private sector housing strategy.

Options

- 5.2. No guidance
- 5.3. Guidance as proposed with transitional period: this is the preferred option
- 5.4. Stronger guidance and set date for introduction

Benefits

Option 1 - No guidance

- 5.5. If there were no guidance on preparing and delivering the local authority's strategy for improving private sector housing, the authority would have freedom to do this in the way and at the time that it wished to do so, subject to the duties to plan strategically in section 10 of the Act, the effect of the repeal of existing powers and other constraints such as its Single Outcome Agreement.
- 5.6. Without guidance on preparing and delivering the local authority's strategy for improving private sector housing there would be duplication of effort between local authorities on preparations that are common to all authorities. Action on private housing would be likely to have a lower profile in local corporate priorities, threatening the achievement of national outcomes. Without a definite implementation date or transitional period, implementation could be staggered over an extended period and possibly not happen at all in some areas.

Option 2 - Guidance as proposed with transitional period: this is the preferred option

- 5.7. The guidance on the strategic approach as proposed should avoid the time and cost involved for each authority to go through the common process of preliminary thinking and preparation that has been undertaken by the Scottish Government with CoSLA representatives and others. The proposal for a transitional period should allow each authority to time local introduction of the new approach according to the pace of its own preparations as dictated by local capacity and organisational constraints. By setting a period rather than an open-ended transition, the proposal should avoid undue and unfair variation of approach across the country.
- 5.8. However, a transitional period allows introduction at different times in different authorities, within that period. That needs handling carefully at local and national level to avoid confusion for the public.

Option 3 - Stronger guidance and set date for introduction

- 5.9. Stronger guidance, backed up if necessary by regulations or directions and coupled to a particular start date, would ensure a more consistent pace and timing for the change to the new approach across the country.
- 5.10. Stronger guidance would reduce the local authority's sense of ownership and, as a consequence, its ability to generate local strategies and solutions that suit local circumstances. It runs counter to wider policies on the relationship between national and local government, as embodied in the Concordat between the Scottish Government and local government. A single implementation date would mean that many authorities would require to implement the new approach either before they were ready or later than they would otherwise wish to do.

Costs

- 5.11. There are no direct cost implications of choosing one option above another, other than the costs associated with the consultation exercise.

Sectors and groups affected

- 5.12. The timing, flexibility and consistency of local preparation and delivery will strongly affect local authorities. It will also affect others including delivery partners, advice agencies needing to know what the position is, and house owners themselves.

6. Tolerable Standard

Current Situation

- 6.1. The tolerable standard is a statutory indicator of housing quality. It represents the minimum acceptable standard that anyone should expect of the house they occupy, covering elements such as dampness, stability and the presence of amenities. Local authorities have a duty to deal with housing which does not meet the standard and can take enforcement action to ensure owners take action (see section 7 - Enforcement). The 2006 Act adds two new criteria – electrical installation and thermal insulation - and gives Ministers the power to publish statutory guidance to help local authorities work with the tolerable standard.

Options

- 6.2. Do nothing (i.e. do not produce statutory guidance).
- 6.3. Statutory guidance as proposed in consultation, reflecting accepted practice plus basic, simple insulation standard: this is the preferred option.
- 6.4. Statutory guidance with a tightening of approach, plus higher insulation standard.

Benefits

Option 1 - Do nothing (i.e. do not produce statutory guidance)

- 6.5. There would be no cost to local authorities of doing nothing. Authorities would continue to have the freedom to interpret the tolerable standard locally. This flexibility would also apply to the interpretation of the new elements of electrical installations and thermal insulation.
- 6.6. If we do not provide guidance, there is a risk of continued inconsistency in how local authorities interpret the tolerable standard. This could mean that authorities might deal with owners in significantly different ways across the country. It would also make it more difficult to get a nationally consistent view of house condition which is accurate at a local level.
- 6.7. Local authorities may be uncomfortable in applying the new elements of the tolerable standard without central guidance. As a result, they could focus

more on the existing elements. This would not be consistent with the policy intention of extending the tolerable standard.

- 6.8. Local authorities are likely to be more open to challenge from owners if they interpret and apply the tolerable standard themselves without the opportunity to follow central guidance.

Option 2 - Statutory guidance as proposed in consultation, reflecting accepted practice plus basic, simple insulation standard: this is the preferred option

- 6.9. Local authorities must have regard to statutory guidance. So this option should lead to greater consistency in the application of the tolerable standard, particularly if the guidance draws on current approaches. This will lead to more effective identification of the poorest housing across Scotland. And, if authorities follow this guidance, there should be less scope for challenging their decisions than if they were interpreting and applying the tolerable standard themselves.
- 6.10. A basic, simple insulation standard would be relatively straightforward for local authority officers to work with. It would reflect the intention that the tolerable standard is a minimum condemnatory standard rather than an aspirational one.
- 6.11. We estimate that around 90,000 additional houses could fail the tolerable standard with the introduction of the basic thermal insulation requirement. Depending on how local authorities prioritise action on houses that fail to meet the tolerable standard, this new element could put pressure on the capacity of the insulation industry in terms of resources to deal with these houses.
- 6.12. The trade off with adopting a basic thermal insulation approach in guidance is that it cannot cover all the types of problems associated with thermal insulation. This means that local authorities may not be able to use the tolerable standard as the basis for identifying and taking action to deal with some houses.
- 6.13. As with option 1, local authorities will be open to challenge if they interpret and apply the tolerable standard in a way that does not follow the approach set out in guidance.

Option 3 - Statutory guidance with a tightening of approach, plus higher insulation standard

- 6.14. As with option 2, there would be greater consistency in the application of the elements of the tolerable standard, as local authorities must have regard to the statutory guidance. With the backing of the stricter criteria set out in the guidance, local authorities would be able to force higher standards for housing, and therefore better living conditions.
- 6.15. A higher standard for thermal insulation would support other national initiatives to improve energy efficiency.

- 6.16. If the guidance raises the threshold a house must achieve to meet the tolerable standard, there is likely to be a greater number of houses which will be sub-tolerable. Depending on how local authorities prioritise action, this is likely to put pressure on the building industry in terms of capacity to undertake the work, and local authorities may have difficulties with rehousing residents to enable the work to be undertaken. They will also be faced with greater challenges in using limited resources to prioritise action on the worst housing.
- 6.17. There is a risk that an increase in the threshold to meet the tolerable standard might take it beyond the intention of the standard. It is intended to be a minimum condemnatory standard, and greatly increasing it may blur the distinction between it and the Scottish Housing Quality Standard. Owners may be more likely to challenge decisions in this situation, and local authorities may then be more likely to disregard the statutory guidance.

Costs

- 6.18. There are no direct cost implications of choosing one option above another, other than the costs associated with the consultation exercise. But, depending on how local authorities prioritise action on houses that fail to meet the tolerable standard, options 2 and 3 could lead to pressure on the capacity of the building and insulation industry to deal with these houses.

Sectors and groups affected

- 6.19. The guidance on the tolerable standard will have a particular effect on:
- local authorities - it will influence the approach individual authorities take;
 - house owners - local authorities' decisions will have a direct effect on individual owners; and
 - the building industry - the scale of local authority action could be influenced by the industry's capacity to carry out the work.

7. Enforcement

Current Situation

- 7.1. The Act introduces a modernised set of powers through which local authorities can require owners to take action to deal with poor quality private housing, both on individual houses and on an area basis. These replace existing powers (set out in the Housing (Scotland) Act 1987) and go further by allowing authorities to intervene at an earlier stage to prevent houses falling into disrepair.

Options

- 7.2. Do nothing: local authorities use powers as they understand them with no central guidance.

- 7.3. Non-statutory guidance, as proposed in consultation, as a working tool and good practice: this is the preferred option
- 7.4. Non-statutory guidance (as option 2) enhanced with specific expectations about scale of enforcement activity.

Benefits

Option 1 - Do nothing: local authorities use powers as they understand them with no central guidance

- 7.5. In all cases responsibility for interpreting the legislation lies with each local authority. If there is no central guidance offered, authorities will retain full flexibility in how they use the powers, provided they are satisfied that this is within the scope of the Act.
- 7.6. There may be more inconsistency in how local authorities apply the new legislation. Although they do not have to have regard to any guidance, the only available information on how to use the powers would be the Act and Explanatory Notes themselves. Authorities may not initially be aware of small changes between previous and new powers.
- 7.7. Where authorities are unfamiliar with the powers, such as the new maintenance powers, they may be less likely to use them if there is no supporting guidance.

Option 2 - Non-statutory guidance as proposed in consultation, as a working tool and good practice: this is the preferred option

- 7.8. The guidance would be non-statutory, so local authorities would not have to follow it. However, it would assist local authorities in a practical way, by providing an overview of the detail of the Act, and identifying issues which the local authority might want to consider. It would also be a route to suggest good practice.
- 7.9. Authorities, and individual staff, have different experiences of working with the powers which the Act replaces or introduces. This option would help towards consistency in how local authorities apply the legislation by providing an overview of the basic principles in the Act which each authority can then take forward as appropriate.
- 7.10. There is a risk that local authorities rely exclusively on the guidance rather than the legislation, despite clarification that it is up to each local authority to interpret the legislation. Good practice examples will necessarily be a little abstract initially, until the new powers are in force and local authorities have had the chance to use them.

Option 3 - Non-statutory guidance (as option 2) enhanced with specific expectations about scale of enforcement activity

- 7.11. The benefits would be the same as under option 2. In addition, the specific expectations about scale of enforcement are likely to drive action by local authorities to improve standards. This supports the implementation of the powers by increasing the likely use of them.

- 7.12. Although any guidance would be non-statutory, local authorities may feel they are expected to follow it in terms of the scale of enforcement. This would mean a loss of local flexibility in terms of how the local authority uses the new powers, and the expectations may be unrealistic in individual local authority areas.
- 7.13. This could also take away an element of the local authority's ownership of using the powers in the Act, if there is a public statement of the expected scale of enforcement.

Costs

- 7.14. There are no direct cost implications of choosing one option above another, other than the costs associated with the consultation exercise.

Sectors and groups affected

- 7.15. The guidance on the enforcement powers will have a particular effect on:
- local authorities - as with the tolerable standard, the guidance will influence the approach individual authorities take;
 - house owners - local authorities' decisions to take statutory action will have a direct effect on individual owners;
 - the building industry - the scale of local authority action flowing from the use of statutory powers could be influenced by the industry's capacity to carry out the work;
 - community groups and Registered Social Landlords, where involved - this is most likely where an authority uses its area-based powers (Housing Renewal Areas).

8. Non-Financial Assistance

Current Situation

- 8.1. The availability of information, advice and practical assistance for home owners seeking to repair, improve or adapt their home currently varies significantly between local authorities. Support and practical assistance for older people through Care and Repair schemes is well developed across Scotland, but advice and support to owners in general is less well developed. Assistance in some areas is limited to those owners qualifying for grant and limits assistance to specific types and numbers of owners. The guidance suggests that a more proactive approach to supporting owners will be necessary if greater numbers of owners are to be assisted with carrying out repairs, improvements and adaptations. No previous Scottish Government guidance has specifically addressed the issue of non-financial assistance for owners.

Options

- 8.2. No guidance: local authorities use powers as they wish
- 8.3. Statutory guidance as proposed: this is the preferred option
- 8.4. Specified service arrangements required.

Benefits

Option 1 - No guidance: local authorities use powers as they wish

- 8.5. Local authorities would have a system that would allow them to maximise their local discretion. Non financial assistance could be tailored even more closely to meet local needs or preferences.
- 8.6. Not distributing guidance to local authorities could cause them to continue operating within the framework of their current approach (which is heavily grant focussed) to provision of non-financial assistance in relation to the private sector housing stock in their area, rather than to enhance the provision of information, advice and practical assistance as proposed in the guidance. There could be a failure to promote key messages such as the onus placed on individuals as homeowners to take responsibility for the repair and maintenance of their home. There is the potential for significant inconsistency in approach between local authorities, leading to possible accusations of a postcode lottery.
- 8.7. It would be much more difficult to monitor and evaluate the effectiveness of the legislation without aspects of commonality across all councils.
- 8.8. Significant improvements are possible on the basis of greater consistency between councils at service delivery level. Without guidance, local authorities may be less likely to maximise use of the resources available to them in their local area, for example Care and Repair and other voluntary sector bodies.

Option 2 - Statutory guidance as proposed: this is the preferred option

- 8.9. Under this option, local authorities are:
 - encouraged to use a one-stop shop approach to front their Scheme of Assistance,
 - expected to provide Care and Repair type services;
 - expected to consider practical help to resolve common ownership problems;
 - expected to reach out to wider group of owners.
- 8.10. There would be greater consistency of approach across Scotland and less risk of individual authorities misinterpreting the intentions of the legislation. Local authority members and officials would be clear about what was expected of them and the type of service they would be expected to deliver. All local authorities would work within a consistent but broad framework and would have discretion over the precise nature of their services. The provision of guidance may enhance the prospect of some local authorities working together and sharing resources to develop new services, increasing the opportunities for innovation and joint working. This would also be consistent with the public sector reform agenda and best value principles,

delivering customer-centred, joined up public services. In addition, the guidance emphasises to local authorities the wider resources they have available to them within and outwith their area. For example, it encourages authorities to think about how they may be able to free up staff capacity by using external bodies such as voluntary organisations.

Option 3 - Specified service arrangements required

- 8.11. In essence, this would be a centrally designed service, delivered and operating at a local level. As a result the opportunity for inconsistency of approach across Scotland would significantly diminish. Local authorities would be clear about what was expected of them in terms of delivery and results. It would ensure a clarity and consistency to the service being delivered. Central government would more easily be able to collect returns from local authorities to evaluate and monitor the effectiveness of the service.
- 8.12. A specified service arrangement would leave very little autonomy for local authorities to take their own view of shaping the Scheme of Assistance service to the needs of the local area and the authority's internal operations and structures. This could result in local authorities taking less ownership of the Scheme of Assistance, seeing it as very much imposed from above. It would also be inconsistent with the new relationship between central and local government.

Costs

Option 1 - No guidance: local authorities use powers as they wish

- 8.13. There are no direct cost implications of exercising this option although it is expected this route would lead to such wide variation in services it would probably lead to an increased aggregate cost of delivery across all authorities.

Option 2 - Statutory guidance as proposed: this is the preferred option

- 8.14. Local authorities will be required to deliver the Scheme of Assistance, although the guidance is not prescriptive on the type and amount of information, advice and practical assistance which should be made available. Authorities will need to ensure they have the resources available to assist those groups and individuals covered in the section 72 statement.
- 8.15. The nature of the organisations that may have a key role in helping deliver the Scheme of Assistance, for example charitable organisations such as Care and Repair, means that they normally operate on the basis of finite resources. Therefore additional activity through delivery of the Scheme of Assistance may lead to capacity issues in these organisations. With increased demand for their services, there may be a drain on their resources which could potentially limit the effectiveness of the delivery of the Scheme of Assistance. In outsourcing any aspects of the delivery of the Scheme of Assistance, local authorities will have an increased responsibility to have structured processes in place to ensure external partners deliver to agreed

outcomes at an agreed price. Statutory guidance is intended to help guide councils in managing and reducing their (unit) costs of delivery.

Option 3 - Specified service arrangements required

8.16. Although likely to offer the cheapest route to delivery, a highly prescriptive approach could leave the Scottish Government open to arguments from local authorities that the Scheme of Assistance is not adequately adaptive to local need.

Sectors and groups affected

8.17. The guidance on non-financial assistance will have a particular effect on:

- local authorities - the guidance will influence the approach local authorities take in deciding what level and type of non-financial assistance to provide to owners;
- house owners - effective information and advice provision will be essential for owners in helping them to overcome barriers to carrying out work;
- advice agencies - the role of voluntary organisations which provide housing-related advice services could be affected – directly or indirectly – by the approach their local authority takes to provision of non-financial assistance;
- Care and Repair schemes - potentially Care and Repair schemes have a significant role to play in the delivery of the Scheme of Assistance;
- building industry – potentially, owners' easier access to advice about carrying out work could lead to greater demand for tradespeople.

9. Financial Assistance with Repairs and Improvements

Current Situation

9.1. Currently, most applicants for financial assistance with repairs and improvements either receive grant covering a proportion of the cost of the work or receive nothing at all. The guidance sets out the need for a greater range of options to be available, whilst indicating that grant may remain an important tool to tackle certain problems. In particular, the guidance sets out a framework in which lending options can be more widely available, including potential options for owners on low incomes. The guidance and proposed regulations propose to remove the current statutory test of resources for assessing entitlement to grant, in favour of a wider assessment of owners' income and other circumstances such as capacity to use savings or equity in the property.

Options

9.2. No guidance: local authorities use available powers

- 9.3. Issue guidance urging non-financial before financial assistance, loan before grant; allow local priority categories; leave local authorities to develop lending options
- 9.4. Issue guidance as proposed, urging non-financial before financial assistance, loan before grant; allow local priority categories; make last-resort lending available centrally: this is the preferred option
- 9.5. Issue guidance requiring specific steps and means tests.

Benefits

Option 1 - No guidance: local authorities use available powers

- 9.6. Doing nothing beyond commencing the powers in the Act would give local authorities very considerable flexibility and autonomy in introducing their Scheme of Assistance. It would also benefit those owners who were able to secure grant for repairing and improving their home.
- 9.7. However, not to issue statutory guidance on the Scheme of Assistance would mean Ministers had far less scope for influencing the nature and speed of culture change within local authorities. Doing nothing would decrease the chances of local authorities starting to embrace the culture change Ministers wish to see, particularly in terms of lowering public expectations about the availability of grant for repairs and improvements. Whilst the Act severs the link between enforcement action and mandatory grant, it does not in itself discourage the continued wide scale provision of grant for repairs and improvements. Appropriate powers in the Act to diversify the range of assistance provided to owners need to be accompanied by a strong steer in the form of statutory guidance

Option 2 - Issue guidance urging non-financial before financial assistance, loan before grant; allow local priority categories; leave local authorities to develop lending options

- 9.8. The guidance sets out a framework in which local authorities decide their own priorities for assistance – including financial assistance – with repairs and improvements, so it does not necessarily herald immediate change. It does, however, seek to set out a framework for financial assistance in which grant should no longer be the main presumption on the part of owners seeking help. A few local authorities have already taken steps to make available a wider range of financial assistance alternatives, but others may find it less easy to embrace culture change and the guidance seeks to address this. The use of a transitional period in which powers under the 1987 and 2006 Acts will run alongside each other is intended to allow local authorities time to prepare for the new regime and develop their Scheme of Assistance
- 9.9. As well as enabling Ministers to influence the culture change process, issuing guidance would mean that authorities themselves, in seeking to temper the expectations of owners, were able to point to the guidance as a clear message from Ministers about engineering a move away from grant

and towards broader forms of financial and non-financial assistance with repairs and improvements.

- 9.10. However, without a national lead being taken on making provision for new lending options to be made available to owners, the ability to move away from reliance on grant will be very limited, as local authorities are understandably reluctant to become direct lenders, not least because of the numerous legal and financial requirements which all lenders must meet. Local authorities must substantially meet the same rules and laws that apply to financial industry organisations – there are no short cuts to achieve direct delivery. Leaving local authorities to develop their own lending options is therefore highly unlikely to result in a broader range of lending options being available to owners across Scotland. In any event, the best chance of making new lending options widely available across Scotland is felt to be through a nationally co-ordinated approach to lending provision rather than a piecemeal approach in 32 areas

Option 3 - As proposed, issue guidance urging non-financial before financial assistance, loan before grant; allow local priority categories; make last-resort lending available centrally: this is the preferred option

- 9.11. This option has the additional – and crucial – advantage that in making a national lending facility available, the Scottish Government enables local authorities to avoid the costs and risks of delivering lending. Such an approach also means that the availability of a lending facility is on a sufficient scale to realise long-term economies for the Scottish Government, local authorities and borrowers alike.

Option 4 - Issue guidance requiring specific steps and means tests

- 9.12. Such an approach would bring greater clarity for, and consistency across, local authorities at the cost of local freedom, and would provide Ministers with a significant ability to influence the direction of travel of local authorities in introducing their Schemes of Assistance. However, this approach goes against the grain of current trends to allow local authorities greater freedom in coming to decisions about how resources are spent locally

- 9.13. Whilst regulations are to be used to require certain types of assistance in relation to provision of adaptations, local authorities should have freedom to decide the nature and pace of a move away from a presumption of grant for repairs and improvements. The removal of a prescribed test of resources for calculating grant entitlement is an important step in encouraging a move away from seeing grant as the main option for funding repairs and improvements; the test is designed to assess only an owner's income, not their wider circumstances such as ability to fund works through using equity in the property

Costs

Option 1 - No guidance: local authorities use available powers

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- 9.14. An absence of statutory guidance and a consequent failure to move away from wide scale availability of grant for repairs and improvements could have a negative impact on a local authority's ability to meet its legal obligations to provide grants for adaptations for disabled owners. It may also affect the resources authorities make available for developing advice and other new services under their Scheme of Assistance

Option 2 - Issue guidance urging non-financial before financial assistance, loan before grant; allow local priority categories; leave local authorities to develop lending options

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- 9.15. This approach helps steer local authorities away from reliance on grant but brings significant costs and risks of delivering a lending service which meets regulatory standards. Costs of delivering lending would be incurred by most or all local authorities, resulting in potentially wasteful duplication of effort without any advantages for owners in terms of a greater choice of products

Option 3 - As proposed, issue guidance urging non-financial before financial assistance, loan before grant; allow local priority categories; make last-resort lending available centrally: this is the preferred option

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- 9.16. This option removes the duplicatory costs and risks of 32 local authorities seeking to deliver lending directly, creating the economies of scale of a national lending facility and thereby maximising funds available to local authorities

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- 9.17. In terms of costs to owners, if local authorities base their Scheme of Assistance on the guidance, the great majority of owners should have options open to them rather than being faced with no way of making the necessary repairs or improvements if, as is often the case with the existing framework, no grant is available. It is not intended that any owner should find themselves making regular loan repayments they cannot afford. Owners on low incomes but with equity in the property may be offered a loan which requires no regular repayments and instead is not repaid until the property is sold.

Option 4 - Issue guidance requiring specific steps and means tests

- 9.18. Although the financial consequences of such an option may be that Ministers exert more direct influence over the spending of local authority resources, the consequent lack of scope for local discretion puts this option at odds with the new relationship between central and local government.

Sectors and groups affected

- 9.19. The guidance on financial assistance with repairs and improvements will have a particular effect on:

- local authorities - the guidance seeks to influence the circumstances in which different types of financial assistance are given for repair and improvement work;
- house owners - over time, owners seeking financial assistance with repairs and improvements are less likely to receive substantial grant and more likely to be offered a wider range of options such as making use of any equity in the property;
- building industry - in areas where grant funded work has reduced recently, the Scheme of Assistance will give owners genuine alternatives to grant which enable them to proceed with the work;
- lending industry - the measures proposed in the guidance should have only a minor impact on lenders, as they relate largely to creating products not currently provided by the lending industry. The collapse in the subprime lending market has also meant that the risk of inadvertently competing with the financial services industry is significantly reduced.

10. Financial Assistance with Adaptations

Current Situation

- 10.1. The provision of new standard amenities (bathroom and sanitation facilities) for disabled people, and work to enable access to existing standard amenities for disabled people, are currently subject to mandatory grant, subject to a £20,000 limit on the cost of works which can be approved without Ministerial consent. Grant is set at a minimum of 50% of the approved expense, with a test of resources assessing eligibility for further grant beyond this level. The guidance and proposed regulations widen the scope of mandatory grant to include most structural adaptations, increase the minimum percentage grant to 80%, removing the need for a complex test of resources to assess entitlement beyond the minimum level.

Options

- 10.2. No separate approach to financial assistance for adaptations
 10.3. Guidance on ministerial priorities
 10.4. As proposed, regulate for grant for adaptations: this is the preferred option.

Benefits

Option 1 - No separate approach to financial assistance for adaptations

- 10.5. Local authorities' flexibility to target resources as they wish would be maximised if there were no separate approach to financial assistance for adaptations.
- 10.6. However, avoiding a separate approach would not achieve the objective of seeing greater emphasis placed by local authorities on the provision of adaptations for disabled owners. It would lead to a continuation of the

current position whereby there are significant variations across local authorities in the amount and nature of financial assistance available to disabled owners who need to carry out adaptations to their homes. Currently, adaptations which involve the provision of (or facilitating access to) “standard amenities” – these are washing and sanitary facilities – attract mandatory grant. But a range of other adaptations, such as enabling access to the property, do not attract mandatory grant and the availability of grant for these adaptations varies considerably across local authority areas in Scotland.

- 10.7. The lack of a separate approach to adaptations provision would, in most if not all local authority areas, lead to a lower level of provision than would be the case with a separate approach.
- 10.8. The provision of financial assistance with adaptations is part of a local authority’s overall approach to assistance under a range of housing, community care and disability legislation. A lower level of provision increases the chances of a challenge from an individual that the failure to meet their need with financial assistance breaches legislation.
- 10.9. A lower level of provision also has an obvious detrimental impact on the quality of life of disabled people awaiting adaptations, and on those who care for them.

Option 2 - Guidance on ministerial priorities

- 10.10. The importance which Ministers attach to enabling older and disabled people to live independently has been highlighted in various official communications with local authorities in recent years, for example in correspondence to local authorities from Communities Scotland in October 2005 on PSHG allocations for the period 2006-07 to 2007-08. Additional funding for adaptations has been a feature of PSHG in each of the three years to 2007-08. This appears to have helped some authorities clear their backlog of adaptations applications, but unmet need still exists in a number of other local authority areas, suggesting a significant degree of inconsistency of approach to financial assistance.
- 10.11. Additionally, pro rata spending on adaptations in Scotland lags behind that in England, where a greater range of adaptations attract mandatory grant.
- 10.12. Issuing guidance highlighting adaptations as a ministerial priority can help draw attention to this area of activity whilst retaining broad scope for local decision making on the spending of resources in the light of competing priorities. But it would be unlikely to bring about increased emphasis on adaptations, as evidenced by the limited impact of past messages from ministers that adaptations are a key national priority.

Option 3 - As proposed, regulate for grant for adaptations: this is the preferred option

- 10.13. Regulating to specify that certain adaptations will newly qualify for mandatory grant is the likeliest way in which greater consistency can be

achieved across Scotland in the levels of financial assistance available to disabled owners needing to adapt their homes.

- 10.14. Regulating for the minimum amount of assistance which should be provided by way of grant achieves the additional goal of speeding up the process of applying for grant for adaptations, as it should remove the need for local authorities to make a detailed assessment of the applicant's financial circumstances prior to determining grant entitlement.
- 10.15. Regulating on additional adaptations which will attract mandatory grant, and the minimum level of grant to which applicants will be entitled, provide a framework for financial assistance which is clear and straightforward to both local authorities and to disabled owners. At the same time, an element of flexibility within that overall framework remains, as each local authority, taking account of the resources it has available, needs to decide what levels of need attract what degrees of priority for assistance. This is likely to be informed by the authority's overall community care priorities, which should benefit from input from housing colleagues on the resources available through PSHG.

Costs

Option 1 - No separate approach to financial assistance for adaptations

- 10.16. The lower levels of adaptations provision which would be likely to result from no separate approach could have a knock-on cost for other services provided or otherwise funded by the local authority, for example where the lack of a downstairs bedroom means care assistance is needed to help a disabled person climb the stairs.

Option 2 - Guidance on ministerial priorities

- 10.17. As above under (10.3.1)

Option 3 - As proposed, regulate for grant for adaptations: this is the preferred option

- 10.18. The costs of providing financial assistance with adaptations require to be met by local authorities, from within PSHG, community care and any other resources they are able to invest in this area. In setting budgets for overall expenditure on private housing, and in particular for its PSHG, local authorities will need to take account of the likely need for increased expenditure on adaptations as compared with other areas of potential expenditure such as financial assistance with repairs and improvements.
- 10.19. This increase is expected to be fully manageable from within existing resources. Scotland-wide expenditure on grant for adaptations will rise as expenditure on grant for repairs and improvements falls in line with the increased availability of alternative funding options for individuals under the Scheme of Assistance. In 2006/07, local authorities spent around £20 million of their overall PSHG allocation of £90m on adaptations. The majority of the remainder was spent on grant for repairs and improvements. There is therefore obvious scope for a rebalancing here as grant for repairs and improvements becomes less common.

- 10.20. The regulations may impact more on those local authorities which, despite the availability of additional PSHG funding for adaptations in recent years (including 2007-08), still face a backlog of applications for grant. The regulations will also have a particular impact on those authorities currently according lower priority to works which do not currently attract mandatory grant but will do once the regulations come into force.
- 10.21. However, the existence of mandatory grant does not in itself represent an absolute legal right to such assistance, as this depends on the degree of priority the local authority attaches to the needs of each individual they assess. Within reason, the need to prioritise enables local authorities to create a relationship between levels of need and available resources.
- 10.22. By itself, widening the scope of mandatory grant may not lead to increased resource implications for all local authorities, as some indicate that in considering grant applications they currently make no distinction between applications for standard amenities and applications for other adaptations: their main criterion for deciding priority is the urgency of the need rather than type of adaptation needed.
- 10.23. The new availability of automatic high percentage grant for works covered by mandatory grant may generate demand from households who would not otherwise have made an application. However, under the current system where mandatory grant to a minimum of 50% of the approved expense is available towards the provision of standard amenities for a disabled person, the proportion of households applying for grant is only a very small proportion of the total number of households estimated by the Scottish House Condition Survey to require such assistance. This suggest that many households do not tend to approach the local authority for financial assistance: in some cases this may be due to lack of awareness of the assistance potentially available, whilst in other cases it may be because households have sufficient resources to fund the work themselves.
- 10.24. The likelihood of less resources being available for grant for repairs and improvements could be considered to be a “cost” to owners in general, but this is considered by Ministers to be reasonable and indeed desirable, as greater emphasis is placed on the need for owners to take responsibility for looking after their home. This is reflected in Ministers’ view that it is reasonable to expect owners facing repair and improvement costs to consider using a proportion of any equity in their property to fund works, whereas the need for adaptations in no way implies there has been neglect of the property by the owner.

Sectors and groups affected

- 10.25. The guidance on financial assistance with adaptations will have a particular effect on:
- local authorities - the regulations extending the scope of mandatory grant and setting minimum percentage entitlements for such grants will

have an impact on local authorities in particular on social work and housing departments.

- disabled homeowners and their carers - the regulations should have an extremely positive impact on disabled homeowners seeking financial assistance with the cost of adapting their home, and on their carers.

11. Small Firms Impact Test

- 11.1. The overall aim of the new approach is to increase activity to maintain and repair private sector houses. This should result in an overall increase in such works, and thus an increase in demand for that section of the construction industry that deals with maintenance and repairs. The trusted trader proposals that sit alongside the guidance should help reputable traders.
- 11.2. The proposals for greater use of lending in place of grant by facilitating access to commercial lending should increase the potential market for lenders of all sizes. The proposals for the provision of lending products through the National Lending Unit will operate only where the owner cannot access commercial lending at reasonable rates and so should not detract from the mainstream commercial market. The financial assistance proposals as a whole are geared to considerations of affordability and this should increase the market for professional financial advice, mainly for owners at the lower end of the income spectrum. The additional lending, where this is secured, will involve valuations being commissioned from valuers in the market.
- 11.3. Although in general the powers will be used for enforcement and assistance in relation to owner-occupiers, they will also affect landlords who own and let houses in the private sector, in their capacity as owners. Most private sector landlords own and let fewer than 5 properties and are small businesses whether or not they trade as a company. Private landlords are likely to find that, as a result of the new arrangements introduced by the 2006 Act and supported by the guidance, the local authority is more likely to expect action to deal with property disrepair. At present statutory action leads to a minimum of 50% grant. Under the new regime grant will be at the authority's discretion but would only be available to landlords if it was compliant with state aid rules. The cost of maintaining a let property to reasonable standards should normally be part of the business cost and therefore not supported with public money.

12. Legal Aid Impact Test

- 12.1. The proposals for implementing Parts I & II of the Housing (Scotland) Act 2006 are envisaged as having a minimal impact on the Scottish Legal Aid Fund.

13. “Test Run” of Business Forms

- 13.1. The proposals for implementing Parts I & II of the Housing (Scotland) Act 2006 do not include any new business forms.

14. Competition Assessment

- 14.1. The draft guidance is largely about actions by local authorities which are not commercial activities and which therefore do not give rise to competition issues. Advice and information activities are also often carried out by third sector organisations such as the Citizens Advice Bureaux. Regeneration activities may be carried out by registered social landlords and similar organisations. The guidance encourages partnership working where such opportunities arise.
- 14.2. The main potential area of competition is in lending for the cost of carrying out maintenance and repair. The guidance emphasises that where this happens the first options should be to facilitate access to the commercial market. Only if that market cannot provide at reasonable rates should the house owner have access to products provided by the National Lending Unit (or by the local authority if it chooses to establish a lending function). These arrangements are therefore not anti-competitive. The Scottish Government intends to monitor the situation with a view to encouraging an expansion of the commercial market if the National Lending Unit's activities demonstrate that there is suitable potential to do so.
- 14.3. Within the area of lending, the guidance suggests in volume 5 that local authorities consider referring appropriate cases to the local credit union, but subject to tendering arrangements that ensure that there is not a breach of competition or State Aid rules. The guidance also sets out how authorities might subsidise individual loans made by the National Lending Unit, but again indicates the criteria that have to be satisfied to ensure that such action is not anti-competitive.
- 14.4. If the proposal to establish a lending advisory service is confirmed after consultation it will be developed in a way that conforms to competition rules. This could be by tendering for members of a panel. Valuations for lending will need to be independent of the lender and will be commissioned in the normal way from providers in the market.

15. Enforcement, Sanctions and Monitoring

- 15.1. The enforcement powers in the 2006 Act and related sanctions are defined in the legislation. The guidance does not alter these but proposes how they should be implemented. The interpretation of the Tolerable Standard is

statutory guidance based on accepted professional practice. A minor aspect of the maintenance order provisions is also statutory guidance. Otherwise the guidance on enforcement is advisory and it is for the local authority to decide whether it wants to use the approach proposed.

- 15.2. The guidance on assistance does not directly involve any enforcement against owners, except in the event that conditions of grant and loan are breached. However, all of the guidance on assistance is statutory which means the local authority must have regard to it. A local authority could be challenged, for example by an aggrieved applicant, if it has departed from guidance for no apparent good reason. The regulations governing the provision of financial assistance for adaptations to help disabled people have the force of law and breach of the regulations can be challenged through the courts in the usual way.
- 15.3. Each local authority's strategic approach will be included in and subject to the processes that apply to the Local Housing Strategy. The authority's section 72 statement of criteria for assistance should be consistent with the LHS and will also, as a formal decision of the authority, be subject to local democratic accountability.
- 15.4. Although Ministers have powers to make directions about a local authority's use of the powers, the Scottish Government has no proposals to use them.
- 15.5. It is good practice to monitor and evaluate policies and processes so that they can be improved or adjusted to changing circumstances. It is proposed to do this at local and national level, supported by data collection, on a basis to be agreed with CoSLA. This is dealt with in chapter 3 of volume 1 of the draft guidance.