

# **Tenements (Amendment) (Scotland) Bill – Business and Regulatory Impact Assessment**

**11 December 2025**

# Tenements (Amendment) (Scotland) Bill (“the Bill”) Business and Regulatory Impact Assessment

## Introduction

1.1 This BRIA is prepared in connection with the proposal for law reform made by the Scottish Law Commission (“the SLC”) in its Report on Tenement Law: compulsory owners’ associations (Scot Law Com No. 270) published on 11 December 2025. The draft Bill which accompanies that Report will, among other things, introduce compulsory owners’ associations for tenement properties. As a result, the vast majority of owners of tenement flats in Scotland will become members of an association with the owners of the other flats in the same building.<sup>1</sup> The function of the association will be to manage the tenement for the benefit of the members of the association.

## Background

1.2 In December 2017, the Scottish House Condition Survey findings revealed that 48% of dwellings in Scotland had critical disrepair, a figure which rose to 67% in pre-1919 housing stock.<sup>2</sup> Tenements make up around 37% of all housing stock in Scotland.<sup>3</sup> Addressing disrepair in these properties has been found to be particularly challenging due to legal, technical and cultural obstacles not present in the case of single dwellings.<sup>4</sup>

1.3 In March 2018, the Scottish Parliamentary Working Group on Maintenance of Tenement Scheme Property (“the Working Group”) was convened to explore solutions to these difficulties. The Working Group is composed of MSPs drawn from a number of political parties, alongside key stakeholders. The Working Group published its Final Recommendations Report in June 2019.<sup>5</sup> The Report contained three interconnected recommendations:

1. Tenement buildings should be subject to a **building condition inspection** every five years with a report prepared in light of that inspection.
2. An **owners’ association** in the form of an entity with legal personality should be established for every tenement building. The association should provide “...leadership, effective decision-making processes and the ability of groups to enter into contracts.”
3. A **building reserve fund**, to be administered by the owners’ association, should be established for every tenement building. Each owner should be required to contribute to the fund at a level set by statute in relation to repair risk as assessed under a statutory, points-based system.

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<sup>1</sup> Under the draft Bill, an owners’ association will not be established for a tenement which is subject to the Development Management Scheme under the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 (SSI 2009/729).

<sup>2</sup> Scottish Government, [Scottish House Condition Survey: 2016 Key Findings](#) (2017), 6.1 and Table 45.

<sup>3</sup> Scottish Government, [Scottish House Condition Survey: 2019 Key Findings](#) (2020), Tables 1 and 2.

<sup>4</sup> For a detailed analysis see D Robertson, [Why Flats Fall Down](#) (2019).

<sup>5</sup> Working Group on the Maintenance of Tenement Scheme Property, *Final Recommendations Report* (2019).

The Working Group's recommendations were broadly accepted by the Scottish Government (the SG).<sup>6</sup>

#### *Scottish Law Commission reference*

1.4 In January 2022, the Scottish Law Commission ("the SLC") received a reference from the then Cabinet Secretary for Social Justice, Housing and Local Government to carry out a project to look at the creation of compulsory owners' associations in tenement properties in Scotland.<sup>7</sup>

1.5 The reference asked the SLC:

"To review the law of the tenement in Scotland, including the Tenements (Scotland) Act 2004, and make recommendations for reform to implement recommendation 2 (establishing compulsory owners' associations) of the Final Recommendations Report dated 4 June 2019 of the Working Group on Maintenance of Tenement Scheme Property.

Your recommendations should include proposals on the establishment, formation and operation of compulsory owners' associations and the rights and responsibilities to be imposed on them, including, insofar as you consider appropriate and desirable, such rights and responsibilities in relation to recommendations 1 (building inspections) and 3 (establishment of building reserve funds) of the Report."

1.6 The letter notes that the SG will be taking forward work on decarbonising heating and energy use in homes in line with their commitment to achieving net zero emissions. The letter asks the SLC to keep in mind the feasibility of owners' associations being given power to carry out energy efficiency and heating improvements in tenement buildings as part of this work in future.

1.7 In January 2022 the SLC commenced a law reform project in response to this reference.

#### *Scottish Government work relating to disrepair and energy inefficiency in Scotland's buildings*

1.8 The SLC project forms one strand of the SG's larger programme of work in relation to disrepair and energy inefficiency in Scotland's buildings as outlined below.

#### *Housing to 2040*

1.9 Published in March 2021, the *Housing to 2040* strategy document<sup>8</sup> outlines SG's plans to take forward housing policy in the medium to long term. The central ambition is to achieve warm, safe, affordable and energy-efficient homes.<sup>9</sup> Of particular note are the proposed new

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<sup>6</sup> Scottish Government, [Tenement maintenance group: Scottish Government response](#) (2019, updated in 2021).

<sup>7</sup> This is a reference under section 3(1)(e) of the Law Commissions Act 1965. A copy of the reference letter is available at: [https://www.scotlawcom.gov.uk/index.php/download\\_file/view/2305/1687/](https://www.scotlawcom.gov.uk/index.php/download_file/view/2305/1687/).

<sup>8</sup> Scottish Government, *Housing to 2040* available at <https://www.gov.scot/publications/housing-2040-2/>.

<sup>9</sup> [Housing to 2040](#) p 8.

tenure-neutral housing standard,<sup>10</sup> which aim to ensure all Scottish housing meets the same standard, and the proposals on affordable warmth and zero emissions homes.<sup>11</sup>

### *Heat in Buildings work*

1.10 The SG have indicated an intention to introduce a Heat in Buildings Bill into Parliament by the end of 2025.<sup>12</sup> The detail of the Bill was not yet available as at the date on which this BRIA was finalised for publication.

1.11 As we discuss in Chapter 1 of our Report, any new statutory duties imposed in connection with new housing standards or by new Heat in Buildings legislation may have implications for owners' associations.<sup>13</sup>

### *Current Law*

1.12 The law applying to tenements is principally set out in the Tenements (Scotland) Act 2004. "Tenement" is defined to mean a building (or part of a building) composed of two or more related flats which are designed to be in separate ownership and are divided from each other horizontally.<sup>14</sup> This definition covers the classic Victorian sandstone tenement buildings found in the streets of Edinburgh and much of the West of Scotland, but also any other building made up of flats. The word "flat", as used in the 2004 Act, includes non-residential as well as residential properties.<sup>15</sup>

1.13 The main body of the 2004 Act covers roughly the following matters:

- Determination of tenement boundaries and ownership of certain parts of the tenement, including for example the roof and foundations (sections 1-3);
- Provision for a default set of rules in relation to management of the tenement – the Tenement Management Scheme (the TMS) (section 4 and Schedule 1);
- Rights of flat owners to apply to court for resolution of tenement disputes (sections 5 and 6);
- Where one part of the tenement building provides support or shelter to another part, the duty on the owner to maintain that part so as to continue to provide support or shelter (sections 7-10);
- Rules as to the date or time at which repair costs are due to be paid, how liability for costs is attributed where an owner transfers ownership of their flat to someone new, and connected matters (sections 11-16 and 24);
- Duties to provide access for repairs, obtain insurance, and allow service pipes to be installed (sections 17-19); and
- A process for dealing with abandoned tenements and demolition of tenements (sections 20-23); and
- Miscellaneous and general provisions (sections 25–34).

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<sup>10</sup> [Housing to 2040](#) Part 4A.

<sup>11</sup> [Housing to 2040](#) Part 3.

<sup>12</sup> See the statement by the Acting Minister for Climate Action: *Official Report*, Scottish Parliament, col 60 – 63 (3 April 2025), available at <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=16359>.

<sup>13</sup> See paras 1.11 to 1.23.

<sup>14</sup> 2004 Act s 26. Properties divided from one another vertically, such as semi-detached houses or terraces, are not tenements.

<sup>15</sup> 2004 Act s 29(1).

1.14 Under current law, the scheme for managing maintenance of a tenement building could, in principle, be set out entirely within the titles to the flats in the building. However, it is often the case that the provisions in the title deeds do not cover all matters required for the effective management of the tenement. Particularly in older tenement buildings, the scheme is likely to contain significant gaps, or there may be no scheme at all. In these cases, the TMS provides a set of default or fallback rules which owners can rely on.<sup>16</sup>

1.15 In some tenements, an alternative management scheme known as the Development Management Scheme (DMS) will be used.<sup>17</sup> It is, in principle, possible for the DMS to be adopted voluntarily for the management of individual tenements. However, it is more commonly used in large residential developments which might contain a mixture of tenements and single homes alongside other types of property. If a tenement is managed under the DMS, the TMS does not apply to it.<sup>18</sup>

*Reasons for the Working Group recommendation for the introduction of compulsory owners' associations*

1.16 The Working Group reviewed the law and practice relating to tenement maintenance and identified gaps and problems which may be an underlying cause of the poor state of repair of many tenement buildings. The Working Group's Final Recommendations Report noted that "owners' associations [will be] an essential element of tenement maintenance by providing leadership, effective decision-making processes and the ability of groups to enter into contracts."<sup>19</sup> The report included the following table which outlined the Working Group's view of the benefits that would flow from compulsory owners' associations by contrast to the informal groups which are sometimes formed under current law:

<b>Current owners' associations</b>	<b>Enhanced owners' associations</b>	<b>Impact of proposals</b>
No legal personality	Legal personality	Greater protection for owners who might otherwise be held individually responsible for the whole group's debts. Can enter into contracts as a legal person – at present, a building professional or contractor would contract with each individual owner.
	Annual meeting mechanism	Provisions prevent absent or apathetic owners holding up repairs.

<sup>16</sup> 2004 Act ss 4 and 4A

<sup>17</sup> Found in Schedule 1 of the Title Conditions (Scotland) Act (Development Management Scheme) Order 2009 ("the DMS Order").

<sup>18</sup> 2004 Act s 4(2).

<sup>19</sup> Working Group on the Maintenance of Tenement Scheme Property, *Final Recommendations Report* (2019) p. 6

Control exerted on an ad hoc basis	Control exerted over development of an annual repair plan and budget. Empowered manager with agreed delegation	One set of decision-making makes property management easier, more effective and more efficient. This should result in lower admin costs being paid by owners.
	Manager has power to pursue non-paying owners	Analysis of owners' stories suggests that fewer than 1 in 10 owners are willing to pursue other owners through the courts with the result that necessary repairs are not tackled, property conditions worsen, and social cohesion within the tenement is adversely affected.

### *The SLC project*

1.17 In response to the SG reference, the SLC commenced work on the Tenement law: compulsory owners association project. The SLC carried out detailed legal and other research, engaged with a wide range of stakeholders, and carried out a public consultation to determine the best approach to implementing the Working Group's recommendation in relation to owners' associations. The SLC Report on Tenement law: compulsory owners associations ("the Report") was published on 11 December 2025. The Report sets out the SLC's final recommendations for reform alongside the draft Tenements (Amendment) (Scotland) Bill.

## **Objective**

1.18 The passage and implementation of the Bill would give effect to the recommendations contained in the Report. The Bill contains changes to the 2004 Act in order to create a new type of legal person and body corporate known as a tenement owners' association ("association"). The Bill will automatically establish an association for tenements in Scotland except those to which the DMS applies.<sup>20</sup> The association will manage the tenement for the benefit of its members. Approximately 800,000–900,000 individual tenement properties in Scotland will be impacted.<sup>21</sup>

1.19 The Bill sets out the basis on which the associations will operate. It imposes four key duties on the association.<sup>22</sup> Those duties are: to appoint a manager for the association; to hold annual general meetings; to approve a budget in respect of association costs for each financial year; and to apply to have certain information noted on the property registers in respect of the tenement. The duties imposed on the association, the association manager and flat owners

<sup>20</sup> See footnote 1 above.

<sup>21</sup> [Scottish house condition survey: 2019 key findings - gov.scot](#) records that there are 902,000 tenements/other flats. [Scotland's Census 2022 - Housing | Scotland's Census](#) records that there are 813,000 tenements/purpose built flats.

<sup>22</sup> Tenements which have two or three flats, and tenements in which all the flats are owned by a single owner, are not required to comply with all of these duties.

aim to encourage forward planning and ongoing maintenance of the tenement. Provision is made for enforcement of these duties via the appointment of a remedial manager.

1.20 The Bill provides that tenement disputes will be dealt with principally by the Housing and Property Chamber of the First-tier Tribunal for Scotland (“the First-tier Tribunal”).

1.21 The Bill provides default rules for the operation of the association (“the default rules”). These rules will initially apply only where no alternative rules have been created in the title conditions of each individual flat. The default rules deal with aspects of how the association will function. They include, for example, provision about association decision making, meetings of the association, the allocation of votes among members and the setting of the annual budget.

1.22 As mentioned, associations will be required to have certain information noted on the Land Register (or the Register of Sasines). This will include the name and address of the association and the address of each flat in the tenement building. Having this information on the public record will help third parties to understand who runs the association and which properties are included within the building.

1.23 The Bill provides that, for a transitional period of 20 years, existing title conditions on relevant matters should regulate the operation of the association, with the default rules only applying where the title conditions are silent or incomplete. Once the transitional period has ended, those title conditions which are contrary to the default rules will cease to have effect, and will be supplanted by the default rules. The only exception to this is where members agree and implement alternative rules to govern their association in accordance with the process set out in the Bill. Over the course of time the rules applicable to associations will become more standardised and therefore more widely understood and accessible.

#### *Rationale for government intervention*

1.24 As set out above, the SG reference asked the SLC to make recommendations for reform in order to establish compulsory owners’ associations, further to the Working Group’s Final Recommendations Report. The Bill responds to this reference and would contribute to the overarching SG policy should they wish to implement the Working Group’s second recommendation.

## **Options**

### **Option 1 – Do nothing**

1.25 The Bill would not be introduced and the 2004 Act would remain in its current form.

### **Option 2 – Introduce the Bill**

1.26 The Bill would be introduced. If implemented, the changes to the law listed under “Objective” above would crystallise. Associations would be automatically created for all relevant tenements and would become the means by which tenement owners work together to manage the repair and maintenance of their building. The Working Group’s recommendation in relation to owners’ associations would be met.

## **Sectors/ Groups affected**

### **Sectors, groups and individuals affected**

1.27 If introduced, the Bill will have widespread impact on both businesses and individuals in all parts of Scotland. Affected stakeholders include:

- Private individuals who own flats in tenements;
- Tenants of flats in tenements;
- Communities where tenement buildings are located;
- Local authorities, as owners of tenement flats and as the Bill will introduce new rights and duties on them;
- Housing Associations and Registered Social Landlords as the owner of flats in tenements;
- Businesses who own or rent premises in tenement buildings;
- Businesses involved in the construction of tenement buildings;
- Businesses involved in the maintenance and repair of tenement buildings. For example roofers, builders, architects and property repair specialists;
- Property management companies;
- Property factoring companies;
- Legal professionals – solicitors, advocates, judges and tribunal members;
- The Registers of Scotland;
- The Scottish Courts and Tribunal Service; and
- Third sector/charitable organisations that provide support and advice to individuals and businesses.

## **Engagement approach**

1.28 The SLC carried out extensive engagement and information gathering activities during the project. This research informed decision-making at every stage of the policy development process. The SLC engaged, formally and informally, with a wide range of stakeholders from the outset. Engagement activities included scoping meetings (in one-to-one and roundtable formats), online information sessions and webinars, and a public consultation. The SLC ensured opportunities for engagement and participation were accessible and inclusive by tailoring the format and means of communication to stakeholders' needs.

## **SG engagement/ engagement with wider Public Sector**

### **SG engagement**

1.29 The Tenement law: compulsory owners' association project is part of the SLC's Eleventh Programme of Law Reform, a five-year programme running from 2023 to 2027 which was discussed with SG officials before being submitted and approved by the SG and laid before the Scottish Parliament in May 2022.

1.30 The SLC met with members of the Net Zero Team and the Housing Standards and Quality Team at the outset of the project. Thereafter regular meetings with members of the



Housing Standards and Quality Team were held to keep them informed of progress and to understand relevant SG policy updates.

1.31 Over the course of the project, representatives from the SLC attended meetings of the Scottish Parliamentary Working Group on Tenement Maintenance. The Group has cross-party membership. Current members include legal academics and business sector representatives. This allowed progress updates to be provided and ensured the SLC was aware of related policy activity on recommendations one and three of the Working Group's Final Recommendations Report.

## **Wider Public Sector**

1.32 The SLC engaged with stakeholders from the wider public sector throughout the project.

1.33 During the scoping phase of the project, in 2022, a roundtable discussion was held online with officials from 11 local authorities in different geographical regions of Scotland. A scoping meeting was also held with a representative from the Association of Local Authority Chief Housing Officers (ALACHO). It helped identify the practice, experience and key legal issues arising from tenement maintenance, and the potential impact of any legal reform. In February 2024, local authority officials and ALACHO were invited to attend an online information session for stakeholders. Seven local authorities responded to the consultation, and this informed the recommendations in the Report.

1.34 The SLC gained specialist assistance from Registers of Scotland. With the assistance of Registers of Scotland, the SLC also undertook an empirical research exercise. By surveying approximately 350 title deeds for tenements in Scotland, the project team identified the types of arrangements currently in place for maintenance and improvement works in multi-owner properties. This helped the SLC to develop the provisional proposals for law reform which were consulted on. Registers of Scotland also submitted a response to the consultation. Advice from Registers of Scotland, during June to August 2025, also supported the drafting of provisions on applications for noting tenement identification information and on the creation and winding up of associations in the Bill.

## **Business / Third Sector engagement**

1.35 An Advisory Group of legal experts was established in 2022 to support the SLC on the project. The group included solicitors (from both law firms and in-house teams), legal academics and a retired sheriff. Members were also affiliated with the Law Society of Scotland's Property and Land Reform Subcommittee and the First-tier Tribunal. Engagement with the Advisory Group during the course of the project helped to develop and refine policy.

1.36 In Autumn 2022, the SLC held three webinars as part of an international comparative law series. Academics from a number of jurisdictions shared knowledge and experience. These insights helped the team develop the proposals for law reform. The webinars were freely available for anyone with an interest to attend.

1.37 Over the course of the project, the team also engaged with a wide range of stakeholders from sectors and groups most affected by reform. Scoping meetings were held with:

- Organisations from the property management sector;
- Sector representative bodies including the Royal Incorporation of Architects in Scotland, RICS, Scottish Federation of Housing Associations, and Tenement Action Group; and
- Charities and third sector organisations including Built Environment Forum Scotland, Energy Homes Alliance, Energy Savings Trust and Under One Roof;

Between April and July 2024, the SLC attended events hosted by a variety of stakeholders including Law Society of Scotland, Royal Faculty of Procurators in Glasgow, Built Environment Forum Scotland, Under One Roof, Scottish Federation of Housing Associations, and Scottish Housing Network. The SLC explained the provisional proposals for law reform and encouraged participation in the consultation process. Consultation responses were received from many business stakeholders.

## **Public consultation**

1.38 The Report and draft Bill have been heavily informed by public consultation.

1.39 In April 2024, the team published a Discussion Paper with provisional proposals for law reform. The paper asked 69 questions and sought consultees' views on those. Publication of the Discussion Paper was flagged to individuals and organisations identified as having a potential interest in the topic, including the judiciary, solicitors, academics and third-sector stakeholders. It was freely available for the public to access online. The Discussion Paper was published on the SLC website with links circulated on social media. Following publication of the Discussion Paper, the SLC delivered two webinars, summarising the reform proposals, in May 2024. These were free events and available to anyone with an interest in the project. A recording of a presentation given at the first webinar outlining the proposals in the Discussion Paper was made available on the SLC website. The consultation period ran from April 2024 to August 2024 and generated 60 responses.

## **Costs**

### **Option 1 – Do nothing**

1.40 The “do nothing” approach would incur no immediate implementation costs.

### **Option 2 – Introduce the Bill**

1.41 The introduction of the Bill would give rise to a period of adaptation for those directly affected. The SG will be required to raise the profile of the Bill and to educate and support tenement owners. Guidance would be required to supplement the Bill and help owners to appoint a manager and take forward the work of the association. Funding would be required to ensure that the SG communication and support are adequate.

1.42 Tenement owners will incur both initial setup costs and ongoing expenses related to the operation of the association. Legal advice may be necessary, particularly to understand

how individual title deeds interact with the association's default rules and how these may evolve over time. In cases where tenement buildings have suffered long-term neglect, the establishment of an association may prompt long-overdue maintenance. As a result, many owners could face substantial repair and maintenance costs in the early stages. Additional financial burdens may arise if other property owners within the tenement are untraceable or unwilling to contribute their share. This could lead to costly litigation and debt recovery efforts, which may still fail to recover the outstanding amounts. Many owners may not have sufficient funds readily available, potentially leading to further costs associated with financing. However, in the longer term, regular maintenance facilitated by the association could enhance property values and reduce the likelihood of unexpected emergency repairs caused by poor upkeep.

1.43 The Bill will impact businesses whose work involves tenement buildings such as builders, tradespeople dealing with repairs and maintenance, factors and property management firms. There will be a cost for those businesses for training and preparing for new ways of working. Initially, demand for property managers may be high and firms will require to invest in recruitment and training for their staff. It is likely that property management firms will incur costs in setting up systems to ensure that associations operate effectively and in line with their duties. However, in the long term stakeholders will benefit from a more consistent approach to tenement management and maintenance. The consistent approach and the introduction of industry wide processes and systems will, over time, reduce costs for owners and businesses.

1.44 The Bill will incur some retraining costs for the legal profession, including the judiciary and lawyers. The scheme does have some familiar elements, taken from the TMS. However, there are many new elements that the profession will need to understand, work with and advise on. As mentioned above the Bill provides that tenement disputes will be dealt with, principally, by the First-Tier Tribunal. Colleagues in the Scottish Courts and Tribunals Service anticipated that this change could potentially have significant impacts in relation to judicial resources in the First-Tier Tribunal (and potentially the Upper Tribunal), staff time and tribunal programming resources, and potential IT changes to tribunal case management systems.

1.45 Local authorities and housing associations will be impacted as owners of tenements. At the outset they will need to assess title deeds to determine the relevant rules for each association. This could be a lengthy and complex undertaking. During the initial phase managers must be appointed and initial actions agreed. Thereafter, there will be an ongoing requirement to engage with all associations in a meaningful way. They will need to invest in training and to develop processes to meet these obligations. While there is no obligation on them to do so, there may be an expectation that they will take on the role of manager, particularly where they are the majority owner in a tenement. There will be duties and costs associated with that role. There will therefore be significant costs associated with the initial set up of, and ongoing participation with, the associations. There may also be significant early outlays to fund proactive maintenance requirements.

1.46 The Bill will introduce a duty on local authorities to apply for the appointment of a remedial manager when an association is in breach of its key duties—even if the authority does not own property within the building. Local authorities will be required to fund and resource any associated proceedings in the First-tier Tribunal. Processes will need to be established to ensure that local authorities can meet this obligation effectively. In some cases,

local authorities may also be required to assume the role of remedial manager themselves, regardless of whether they are an owner within the tenement. This represents a new statutory responsibility that will require appropriate finance and resources. The Bill does provide the ability for local authorities to appoint a person to fulfil the role of remedial manager, and it will be able to recover costs from the association. It will also be able to charge a fee for the services it carries out as remedial manager, however there will be administrative costs and potentially significant challenges to successful recovery. Over time, potential benefits may include improved housing stock.

1.47 The SLC has engaged with local authorities regarding these proposals. Seven authorities responded to the consultation, expressing a range of views on the details. A common concern was the impact on resources. Glasgow City Council noted: “[w]here there are proposals to involve LAs then there will be cost and resource implications. Without additional funding from the SG we would think it unlikely that LAs would want a role to play.”

1.48 As mentioned above, the Bill creates new duties to register and update information held on the Land Register of Scotland (or the Register of Sasines, as appropriate). Primarily, each association must register tenement identification information, which contains details including the name and address of the association and the address of each flat in the tenement. This will create an additional administrative burden, with associated costs for the Registers of Scotland. However, Registers of Scotland will have the ability to charge a fee for applications for documents to be registered.

1.49 Charities who support tenants and home owners may see a spike in individuals seeking support and advice in the initial years. There will be a cost in training and making staff available to respond appropriately.

## **Benefits**

### **Option 1 – Do nothing**

1.50 Generally Option 1 would not result in any additional benefits. The 2004 Act would not be amended and Associations would not be introduced.

### **Option 2 – Introduce the Bill**

1.51 Option 2 would introduce a framework which would implement the Working Group’s second recommendation. Associations would become established in tenement buildings, with clear duties and rules on how they should operate. Over time owners and contractors would become more familiar with duties, processes and requirements of associations. This may help to drive a cultural change which sees more owners proactively manage their tenement building as the Working Group envisaged. Over time, proactive maintenance would lead to tenement buildings that are safer and better suited to their purpose. In the long term, owners would have more predictable costs and clearer channels to engage with co-owners.

1.52 Tenants and communities affected by poorly maintained and unsafe tenement buildings may benefit from clearer pathways to seek remedial action. Contractors may also gain greater clarity regarding liability for work carried out on tenement properties. This

increased transparency may support associations in successfully engaging the necessary tradespeople to carry out essential repairs and maintenance.

1.53 Where there is a dispute, for example between co-owners, or between a contractor and owners, clear and consistent rules will assist parties to resolve disputes. Where legal action is necessary, the new provisions transferring jurisdiction to the First-tier Tribunal will help to ensure the dispute is dealt with in a more accessible and cost effective way.

1.54 Over time title conditions within tenement buildings will become more standardised, as existing title conditions are phased out. This should make it easier for owners to understand the arrangements for managing their tenement. It should also make it easier for those advising those owners on their rights and liabilities. This will enhance the cultural shift towards recognising and using associations to ensure tenement buildings are properly maintained.

## **Climate change/ Circular Economy**

1.55 The reference letter asked the SLC to keep in mind the feasibility of associations being given power to carry out energy efficiency improvements in tenement buildings as part of SG work in future. Environmental-type improvements to tenement buildings might include the installation of communal heating systems or solar panels. SG's ongoing work in relation to the Heat in Buildings Bill may introduce obligations on flat owners in this respect. The draft Bill accompanying the SLC Report is structured in such a way that it should be possible to provide for additional duties such as these without excessive disruption to the associations' fundamental structure.

## **Competition Assessment**

1.56 We do not anticipate that the Bill, if passed by the Scottish Parliament, would have any impact on competition within Scotland.

## **Consumer Duty**

1.57 In terms of section 21 of the Consumer Scotland Act 2020, there is a duty on public authorities, when making decisions of a strategic nature, to have regard to the impact of those decisions on consumers in Scotland. We do not anticipate that the Bill, if passed by the Scottish Parliament, would have any negative impact on consumers within Scotland. There may be an impact on the way in which owners of tenements obtain services for the maintenance of their building. While shaping the policy for the Bill, the impact on owners has been continually assessed. Testing the policy against the consumer principles<sup>23</sup> of access, choice, safety, information, fairness, representation and redress – we consider that there may be improvements in these areas for consumers if the Bill is introduced.

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<sup>23</sup> Consumer Scotland "How to meet the consumer duty - guidance for public authorities" pages 10-11 [how-to-meet-the-consumer-duty-guidance-for-public-authorities.pdf](#).

## **Enforcement/ compliance**

1.58 Generally the Bill does not require public enforcement. Associations will be created automatically. We anticipate that SG will promote compliance and awareness with appropriate communication and by ensuring that guidance is available. Any disputes concerning the provisions of the Bill would be resolved by litigation or other dispute resolution processes between the affected parties.

1.59 As discussed above, local authorities will have a role in ensuring that associations operate appropriately. The Bill provides that where the association is in breach of its duties, an application can be made for a remedial manager to be appointed. The Bill provides that the local authority should be the remedial manager where no suitable alternative is available. In addition, the local authority will have a duty to make an application to appoint a remedial manager where it becomes aware that a tenement within its area is in breach of certain of its key duties. In order to comply with these duties we anticipate that local authorities will require additional funding to ensure set-up costs, adequate training and staffing.

1.60 The Bill introduces a new offence relating to an individual making a false statement within the registered tenement identification notice. There may be resource implications associated with this for the Registers of Scotland, the Crown Office and Procurator Fiscal Service and the court system. However it is anticipated that this offence will be committed infrequently, if at all.

## **Legal Aid**

1.61 Any change to the law may be such that parties seeking to rely on it require professional advice. If the Bill is introduced there may be a marked increase in maintenance activity in the initial years. Given the potential costs involved, the variable appetite to instruct maintenance work and the likelihood of owners who do not wish to engage with the process at all, we can expect an increase in disagreements and resultant legal challenges. This will likely have an impact with an increased demand for legal aid in the short to medium term.

1.62 In the medium to long term the SLC does not anticipate that the proposed reforms would result in significant additional demand for legal aid. By introducing a clearer and more consistent approach, and with supporting guidance being produced by SG, the Bill could be expected to reduce the need for reliance on legal advice.

## **Digital impact**

1.63 The Bill has taken account of the potential benefits and efficiencies for associations and members through the use of electronic communication. Under the Bill, information to be given to members should be via the contact details they provided, which could include any form of electronic communication. Where members have not provided contact details it will be possible to send information by email if the member has used email in connection with the association in the preceding year. General meetings of an association can be attended in person or online. The manager of the association must take reasonable steps to ensure that a person who wishes to do so, can attend a meeting online.

## **Recommendations/ preferred options**

### **Option 1 – Do nothing**

1.64 There will be no additional cost or benefits.

### **Option 2 – Introduce the Bill**

1.65 The Bill has been drafted in response to the Cabinet Secretary’s reference to the SLC. Should it be SG policy to implement the Working Group’s second recommendation, the Bill would meet that objective. The scheme’s design aims to maximise benefits for owners, businesses and other stakeholders, while minimising costs and disruption.

## **Post implementation review**

1.66 In accordance with section 3(1) of the Law Commissions Act 1965, the SLC has a duty to “keep under review” the laws with which it is concerned, and will endeavour to stay informed of the Bill’s reception by the legal profession and wider business community.

## **Declaration**

I have read the Business and Regulatory Impact Assessment and I am satisfied that it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and that these have been taken into account when making the policy decision. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

I am also satisfied that officials have considered the impact on consumers as required by the [Consumer Scotland Act 2020](#) in completion of the Consumer Duty section of this BRIA.

Signed:

Date: 11 December 2025