



# Housing(Scotland)Act 2001

Guidance on Tenant Participation



September 2002



# Housing(Scotland)Act Guidance on Tenant Participation

2001



## CONTENTS

	Paragraph
<b>PART 1 INTRODUCTION</b>	<b>1</b>
Purpose of Circular	1
Background	5
Key Principles for Good Tenant Participation	10
Codes of Practice on Tenant Participation	11
<b>PART 2 THE STATUTORY FRAMEWORK</b>	<b>14</b>
The New Legislation – Summary	14
Equal Opportunities	19
Role of the Regulator	22
The New Legislation: Implementation	25
<b>PART 3 TENANT PARTICIPATION STRATEGY</b>	<b>29</b>
Tenant Participation (section 53)	29
Preparation of the Strategy	35
Developing the Strategy Process	39
Obtaining and Taking Account of Views	43
Assessing the Resources Required	46
<b>PART 4 REGISTERED TENANTS ORGANISATIONS</b>	<b>50</b>
Background	50
Criteria for Registration of Tenant Organisations	52
Procedures for Registration	55
Information Requirements	61
Groups Which Do Not Wish to Register	66
Removal from the Register	67
Appeals	68

	<b>Paragraph</b>
<b>PART 5 CONSULTATION</b>	<b>69</b>
Consultation with Tenants and Registered Tenants Organisations	69
Proposals Subject to Consultation	70
Standards of Service	78
Change of Landlord or Owner	79
<b>PART 6 TENANT MANAGEMENT AGREEMENTS</b>	<b>80</b>
Background	80
Establishment of a Tenant Management Co-operative (TMC)	83
Scottish Ministers' Approval of a TMC as a Housing Co-operative	87
Application by TMC to landlord	90
Consideration of Application by Landlord	92
Scottish Ministers' Approval of Agreement Between a TMC and a landlord	102
Appeal Against Refusal of Landlord to Enter into an Agreement	105
Review	107
Termination of Agreements	108
<b>Annex A – Tenants Information Service (TIS) – Tenant Participation Healthcheck</b>	
<b>Annex B – Criteria for Registration of Tenant Organisations</b>	
– Tenant Federations	
– Mixed Groups	
– Removal from the Register	
– Appeals	
<b>Annex C – Application by Tenant Management Co-operative to Landlord</b>	
<b>Annex D – Further Reading</b>	



## PART 1: INTRODUCTION

1. The purpose of this circular is to provide guidance on the statutory framework for tenant participation which is provided for in Chapter 3 of Part 2 of the Housing (Scotland) Act 2001 ("the Act").
2. It covers the provisions in sections 53 to 56 of the Act relating to tenant participation, consultation with tenants and registered tenant organisations and tenant management agreements. Separate guidance on the right to a tenancy agreement and information in section 23 of the Act, is included in the guidance on the Scottish secure and short Scottish secure tenancy (SEDD Circular 6/2002) issued in August 2002.
3. These provisions came into force in line with the new Scottish secure tenancy on 30 September 2002. They are subject to regulation by Communities Scotland.
4. It is important to be clear that this guidance relates to the statutory provisions of the Housing (Scotland) Act 2001 in relation to tenant consultation and participation. This is not a general guide to tenant participation. There are many examples of good practice on wider participation issues. These are detailed in the bibliography attached at **Annex D** of this guidance.

### Background

5. The Executive's commitment to bringing about effective tenant participation in Scotland has its roots in the National Strategy for Tenant Participation drawn up by a Working Group on Tenant Participation set up by then Ministers in May 1998. The following organisations were represented on the Working Group:  
  
The Scottish Tenants Organisation; CoSLA; Scottish Homes; Scottish Federation of Housing Associations; Tenant Participation Advisory Service; Tenants Information Service; Tenant Information in Grampian, Highland and Rural Areas; Chartered Institute of Housing in Scotland; and Shelter.
6. The National Strategy for Tenant Participation "Partners in Participation", was published in April 1999, following extensive consultation. The strategy set out key principles for good tenant participation and committed tenants, social landlords and central government to a programme of action to achieve this. In the case of central government this included a commitment to involve tenants in discussions about housing policy at a national level and the need for the Scottish Executive to take forward the question of a statutory right to participation. The Tenants Information Service (TIS) was commissioned by the Executive to consider options and make recommendations on how a statutory right could be introduced in Scotland.
7. In carrying out their study, TIS consulted with a wide range of tenants' groups, tenants' federations, landlords and housing advice agencies. The study considered a range of options to introduce a statutory right to tenant participation and made recommendations on how such a right might be introduced.

8. TIS submitted their final report to the Scottish Executive on 24 June 2000. In July 2000, the Executive published its consultation paper on the Housing Bill, *Better Homes for Scotland's Communities – the Executive's Proposals for the Housing Bill*, which detailed the proposed new rights of consultation and information for tenants. It referred to the TIS study having been commissioned and indicated that its findings would inform what, if any, further legislative proposals might be required.
9. The provisions in the Act were informed by the TIS study as well the wider consultation on the Bill and the debate during its passage through Parliament. The TIS study has also been helpful in shaping this guidance.

### **Key Principles for Good Tenant Participation**

10. In implementing the new statutory provisions, landlords should ensure that the key principles of the National Strategy on Tenant Participation, "Partners in Participation" are applied. These have been endorsed by tenants' organisations, landlords, housing agencies and the Executive to promote a consensus about good tenant participation practice. The key principles as outlined in the Strategy are as follows:

*"Tenant participation requires a culture of mutual trust, respect and partnership between tenants, elected and committee/board members, and housing officers at all levels, working together towards a common goal of better housing conditions and housing services.*

*Tenant participation practice should be seen as a continuous process where information, ideas and power are shared, common understandings of problems are strived for and a consensus on solutions is worked out.*

*Good tenant participation allows all parties to contribute to the agenda. All participants require to have all the information needed to consider issues properly; that information requires to be clear, timely and accessible and to take account of equal opportunities concerns.*

*Processes of decision making should be open, clear, and accountable.*

*Adequate time should be given to tenant representatives to consider the issues properly. Tenants should have the opportunity to work out a common view in advance of meeting landlord's representatives.*

*Good tenant participation requires the landlord to recognise the independence of tenants' organisations.*

*Good working relationships evolve gradually and are flexible to adapt to local circumstances.*

*Tenants' organisations require adequate resources for organisation, training and support.*

*Tenant participation in rural areas must be tailored to suit the particular circumstances and needs of tenants in such communities.*

*Tenant participation must meet the requirements of the legislation surrounding equal opportunities. Good practice in participation removes barriers to effective participation arising from ethnicity, geographic location, special needs, language difficulties, learning difficulties, age, sexual orientation, or disability."*

## Codes of Practice on Tenant Participation

11. There are currently five codes of practice on aspects of tenant participation developed by the Tenant Participation Working Group. These are as follows:

Tenant participation at a Local Level.  
Tenant participation in Best Value.  
Tenant participation in Regeneration.  
Tenant participation in Stock Transfers.  
Tenant participation in Rural Areas.

12. These Codes describe how to apply the principles in the National Strategy for Tenant Participation, "Partners in Participation". It is important that landlords recognise that the new statutory rights do not replace the existing National Strategy or Codes of Practice. Rather, the new statutory framework underpins the National Strategy and landlords should ensure that they continue to apply the principles set out in the National Strategy and the related Codes of Practice in relation to their statutory duties under the new Act.

13. Copies of these Codes and the National Strategy, "Partners in Participation" are being issued in tandem with this guidance. Further copies can be obtained from Scottish Executive Development Department, Housing 2-3, 1G Victoria Quay, Edinburgh EH6 6QQ (Tel. 0131 244 2105). Copies can also be found on the Scottish Executive Website: <http://www.scotland.gov.uk>

## PART 2: THE STATUTORY FRAMEWORK

### The New Legislation – Summary

#### Section 53: Tenant participation

14. This section introduces new provisions requiring local authorities and registered social landlords (RSLs) to have tenant participation strategies in place as directed by Scottish Ministers. It also places a duty on them to maintain a register of tenants groups meeting certain criteria. *Subsection (4)* entitles Scottish Ministers to make an order setting out the criteria for registration or removal from the register and the procedures to be followed in relation to such registration and

removal. *Subsection (5)* provides a right of appeal for such groups in relation to registration and deregistration.

#### Section 54: Consultation with tenants and registered tenant organisations

15. This section introduces a new provision to enable both individual tenants and registered tenants groups to be consulted by the landlord on issues affecting them. *Subsection (1)* requires the landlord to have regard to representations by tenants or tenants groups, within a reasonable timescale. *Subsection (2)* sets out the relevant proposals to which this applies.

#### Sections 55 and 56: Tenant management agreements

16. Section 55 of the Act replaces the existing provisions of sections 22 and 22A of the 1987 Act and sets out arrangements for a tenant management co-operative to enter into an agreement with a local authority, a registered social landlord or a water or sewerage authority to manage the landlord's houses. Scottish Ministers must approve such management bodies and the terms of the agreement between the landlord and the co-operative. There is a right of appeal to Ministers in the case of an inability to agree terms or a refusal by the landlord to enter into an agreement.
17. This section defines the range of functions which a landlord may make subject to a tenant management agreement. *Subsections (4) and (5)* make clear that where a landlord is a local authority, the houses which are the subject of a tenant management agreement are still to be treated as the authority's houses for the purposes of the authority's Housing Revenue Account and related financial support from the Executive.
18. These provisions are discussed in detail below.

#### **Equal Opportunities**

19. Landlords should bear in mind the requirements under section 106 of the 2001 Act that:
  - (1) Scottish Ministers and local authorities must exercise their functions under the Act in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
  - (2) In providing housing accommodation and related services, registered social landlords must act in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunities requirements.
20. This requirement is reflected in the key principle detailed at paragraph 10 above - Tenant participation must meet the requirements of the legislation surrounding equal opportunities. Good practice in participation removes barriers to effective

participation arising from ethnicity, geographic location, special needs, language difficulties, learning difficulties, age, sexual orientation, or disability – and should be reflected in landlords’ tenant participation strategies and in the requirements for registration of tenants groups. See below.

21. Landlords should observe good practice in delivering equal opportunities for all participants and should ensure that they have a strategy which is wholly inclusive of their tenants. This should include, for example, those in supported and sheltered accommodation, newly housed and young tenants and tenants in temporary accommodation.

### **Role of the Regulator**

22. Communities Scotland has the role of regulating and inspecting social landlords on behalf of Scottish Ministers and this function will be carried out in line with national Performance Standards jointly published by Communities Scotland, CoSLA and SFHA. These Standards have been issued to all social sector landlords and can be viewed on Communities Scotland website. [http://www.communitiesscotland.gov.uk/communities/upload/perform\\_stands.pdf](http://www.communitiesscotland.gov.uk/communities/upload/perform_stands.pdf) Assessing landlords’ performance in relation to tenant participation will be a key feature of Communities Scotland regulation and inspection function.
23. All landlords inspected by Communities Scotland will be required to demonstrate that they are achieving the following Performance Standard:  
  
“We have published and are implementing a sound strategy for encouraging and supporting tenants, residents and service users to participate actively in all areas of our work. We support tenants who take an active interest in managing their homes.”
24. The inspection process will examine how well the landlord’s participation strategy is being implemented in practice. Guidance on the inspection process can be found on Communities Scotland website: <http://www.inspection.communitiesscotland.gov.uk/>

### **The New Legislation: Implementation**

25. The aim of the tenant participation sections of the Act is to create a statutory framework for tenant participation to take place. It does this by setting out a range of duties on landlords to: develop and implement a tenant participation strategy; set up arrangements for the registration of tenants groups; and to consult with tenants groups and individual tenants on a range of issues.
26. The duties in the Act should not be seen as an end in themselves, but rather as a baseline for developing ongoing work. We acknowledge that developing and maintaining good tenant participation strategies requires a high level of commitment, not least as this is not a one-off activity, but an ongoing management responsibility which will become more refined as experience and practice develops.

27. The duties on landlords to register tenants groups, prepare tenant participation strategies and consult on service levels should be seen as mutually reinforcing. The aim is to develop a platform on which successful and meaningful tenant participation can be built.
28. Meaningful participation requires the landlord to engage with tenants from agenda setting at the start of the process right through to decision making. Final decisions will, of course, always rest with the landlord, but tenants need to be empowered to influence decisions and, in particular, to have access to decision makers. Landlords should not confuse this with straightforward market research techniques, although these too have their place. In the case of RSLs, it is not enough simply to have tenants on the committee. There needs to be active engagement with tenants organisations and other interested tenants.

## **PART 3: TENANT PARTICIPATION STRATEGY**

### **Tenant Participation**

29. Section 53 of the Act covers two broad areas. It sets out the duty on local authority landlords and RSLs to prepare a tenant participation strategy and introduces the concept of “registered tenants organisations”, with this register being maintained by the landlord and being made available for public inspection.
30. Section 53(1) sets out the requirement for the development of a tenant participation strategy. The purpose of the tenant participation strategy is to achieve continuous improvement in landlords’ performance in supporting and enabling tenants to participate, consistent with best value principles, by listing and prioritising the actions, agreed with tenants, which would achieve improved practice. The strategy should be a living organism that grows and develops; a partnership agreement that is subject to regular review by landlord and tenants, to reflect their evolving relationship.
31. Many landlords will have a tenant participation strategy in place already. The Act, however, makes specific provision as to what the strategy should include, for example working with registered tenants organisations, which an existing strategy would be unlikely to cover. As a result, it is essential that all relevant landlords go through the strategy development process. In the first instance, this tenant participation strategy would need to be finalised by 31 March 2003.
32. The drawing up of this first strategy should be seen as a starting point and it would be appropriate to include in the strategy how and when it will be reviewed. It may be that some initial strategies will be relatively simple. This is not a problem, provided the strategy has been drawn up in consultation with tenants and is meaningful, achievable and has measurable targets. As policy and practice in relation to tenant participation develops, tenant participation strategies will evolve. In any event, as the landlord and stakeholders should review the strategy, it is important that targets remain meaningful, measurable and achievable, whilst recognising the longer term aspirations of its partners. It is also important that the strategy is expressed in plain language and is user friendly.

33. Section 53(1) states that the strategy is about promoting the participation of tenants in the formulation of policy. Specifically, this is where it relates to the management of housing accommodation and the provision of related services, where they affect tenants. In practice it would be useful to link this to other areas of landlord activity. This could include broader community involvement, community learning and regeneration strategies. Landlords will already be carrying out many of these broader activities that will help deliver the tenant participation strategy.
34. The tenant participation strategy should specifically include (as required by section 53(2)):
- (a) provision as to:
    - (i) the arrangements for obtaining and taking account of the views of registered tenant organisations and tenants as to the matters on which the landlord should make proposals of the type referred to in *Subsection (1)* and the nature and content of such proposals;
    - (ii) notifying registered tenant organisations and tenants of the matters on which the landlord expects to be making such proposals;
    - (iii) the information to be provided to registered tenant organisations and tenants about such proposals and their likely effect; and
  - (b) an assessment of the resources (including financial and other assistance to bodies comprised of or representing tenants) required, and a statement of the resources proposed, to give effect to the strategy.

### Preparation of the Strategy

35. Where a landlord is developing a tenant participation strategy, it is essential that this is done in consultation with tenants, including existing tenants organisations. There is the potential that some tenants organisations will not see engaging with the landlord on the development of the strategy as a priority. Landlords should make every effort to involve as many groups as possible.
36. A key factor is the importance that the landlord places on the process. If it is seen as a high priority for the landlord, then this may help bring groups on board. The point is to have a document that reflects the landlord's objectives in developing and promoting the strategy and takes on board the tenants' perspective. This is particularly important, as the strategy is not simply a statement about the landlord's policy in relation to tenant participation. It should reflect how the landlord proposes to work with tenants, both as individuals and as members of registered tenants organisations.
37. There are, of course, practical issues for landlords in consulting on the strategy, especially where there is little or no tradition of tenant involvement. The actual approach will vary from area to area but some techniques could include:
- a newsletter to all tenants inviting an input to the development of the strategy – although this approach should be backed up by more proactive activities

such as leafleting, roadshows, public meetings, individual surgeries, helpline or website (landlords would need to consider and plan for these well in advance);

- working with existing groups – if a landlord does not have an established relationship with tenant groups, then making contact with organisations which have made representations to the landlord may be a useful start;
- liaising with the local federation, where this exists – will give immediate access to a number of groups, although the landlord will need to establish how much the federation represents local groups and, in the case of RSLs particularly, whether a federation based around a local authority landlord has members who are tenants of the RSL (the registration of federations is discussed further under registration criteria);
- holding an event, either in local areas or centrally – this approach will require work and resources on the landlords part to bring tenants together, particularly where tenant organisation is weak. There can also be issues here that a group of interested tenants is not in itself a tenants group for, as the registration criteria makes clear, a group must have some form of constituted structure. A meeting of interested tenants may be a useful starting point for promoting the setting up of tenant groups.

38. Landlords should determine the most appropriate way to engage on the development of the strategy. Where tenants and tenant groups are not engaged in the strategy from the start, there is a greater chance of it being seen as a paper exercise. As the review and development of the strategy involving tenants is a key component, having tenants engaged at the start makes this more straightforward. This review should be ongoing and on the basis of measurable outputs, for example, meetings held, information issued, number of tenants groups set up, responses to consultations or meeting attendance. Each landlord should, however, determine in consultation with tenants the most appropriate indicators to adopt.

### Developing the Strategy Process

39. The requirement to develop a tenant participation strategy has a number of key stages. The first stage is to establish a baseline as to how the organisation is performing. There are a number of ways to do this, for example a tenant participation audit, carried out internally or by an externally appointed consultant. TIS has prepared a Tenant Participation Healthcheck for landlords to self complete, to assess performance. A copy is attached at **Annex A**. Landlords can tailor this for their own use. Further healthchecks should be carried out on a regular basis and may involve tenants. The Tenant Participation Advisory Service has also produced guidance on auditing (see bibliography at **Annex D**).

40. Once the strategy is published it should be the subject of ongoing review. The review process should be set out in the strategy and agreed as part of the

consultation with tenant and registered tenant organisations. It should include agreed standards against which performance can be measured. These should be linked to the original aims and objectives of the strategy itself.

41. The strategy should also set out the arrangements for registration of tenant organisations and the mechanisms for appeal against non-registration, removal or refusal to remove an organisation from a registered list.
42. The effectiveness of a landlord in developing and monitoring the tenant participation strategy will be one of the topics covered as part of Communities Scotland's inspection process, see Communities Scotland's website: <http://www.inspection.communitiesscotland.gov.uk/>

### Obtaining and Taking Account of Views

43. The legislation on this is quite clear – landlords have to seek and take account of the views of tenants organisations and individual tenants as to the matters on which the landlord should make proposals and the nature and content of such proposals and they must set out in the strategy their arrangements for doing so.
44. Section 53(2)(a) recognises that participation is a two-way process and that this means landlords asking tenants for their views **before** they formulate proposals on which they will be required to consult their tenants. This means that tenants are engaged in the agenda setting process. In other words, a landlord who is thinking about making changes to its policy on allocation of houses, for example, will be required to consult tenants as to what their views are on such a proposal, before the proposed changes to the allocations policy are drafted up and put out to consultation. Where there is a registered tenants' group in an area, it is likely that detailed discussion of such proposals will take place through consultation with that group. This does not, however, negate the landlord's duty to consult individual tenants as well as tenants groups. In practice, therefore, and taking the example given above, the landlord would be required to write to tenants seeking views, either direct – through public meetings, questionnaires, etc. – or through the registered tenant organisation. The landlord would then be required to go back out to consultation with tenants and registered tenant organisations on the detail of any proposals subsequently drawn up.
45. Many landlords use a number of tools to seek tenant views, including: conferences; attending tenant group meetings; setting up focus groups or tenant panels and tenant satisfaction surveys. There needs to be some way to interact with proposals, so while surveys may be useful in seeking the views of a wide number of tenants, they may not lend themselves to more detailed discussion. The mechanisms adopted to seek views need to be able to establish proposals, identify views, provide a forum for response and debate and engage as widely as possible with tenants.

## Assessing the Resources Required

46. In order to raise the status of the tenant participation strategy beyond the simply aspirational, the Act requires that the tenant participation strategy contain an assessment of the resources required and resources proposed to implement the strategy. One of the key principles of the National Strategy, “Partners in Participation”, outlined at the start of this guidance is that registered tenant organisations will require adequate resources for organisation, training and support. Resources need not simply be funds committed but might also include:
- access to premises to serve as an office and for meetings;
  - administrative support (for example, taking minutes at meetings, photocopying, sending out mailings and booking meeting venues);
  - support to help develop the capacity to build/maintain representative organisations;
  - funds to produce written information, hold events, meet travel/subsistence expenses;
  - access to independent advice.
47. Agreement is needed between the tenant representative group and the landlord about how resources will be controlled. Landlords should ensure groups are granted control of resources where groups wish the control and can demonstrate that they have the experience and capacity to fulfil this role.
48. In establishing the resources required, landlords should not simply consider this from their organisational perspective but should ensure that, as part of the participative process in drawing up the strategy, the reasonable aspirations of tenants are taken into account.
49. In any event, tenants must be involved in any discussion about resources for RTOs in the context of the wider tenant participation strategy and the strategy should detail the resources that are to be provided and any arrangements for monitoring and control of expenditure.

## PART 4: REGISTERED TENANT ORGANISATIONS (RTOs)

### Background

50. The concept of registered tenants organisations (RTOs) is central to the tenant participation process, as stated in the Act. An RTO will be an independent organisation set up primarily to represent tenants’ housing and related interests. The aim is to give tenants associations, which meet criteria set out below, a recognised role in the tenant participation process. As the Act makes clear, consultation with registered tenants organisations is not a substitute for consulting with individual tenants, but the mechanisms for this are likely to be different (see paragraphs 69 to 79 below).
51. The register is a public document and should be available for inspection at reasonable times, for example in landlord offices. As this is a public document there may be some sensitivities among tenant groups as to the information which

is given for groups. As a minimum the register should have the name of the group, area of operation, a contact address (which the group should choose – a box number may be acceptable) and other information, such as a website, dates of regular meetings, etc. It is essential that, as part of the registration process, tenants' groups know that this information will be publicly available and that they can elect to choose which contact address is given. In any event, landlords should be mindful of any data protection issues arising from the publication of the register.

### Criteria for Registration of Tenant Organisations

52. Scottish Ministers have set out the criteria for registration in an order. In drawing up registration criteria, the aim has been to balance the interests of tenants organisations seeking recognition with those of landlords managing the process. The criteria set out below aims to be inclusive while ensuring that registered organisations are accountable to members.
53. In order to achieve registration, a tenant organisation has to meet a range of criteria as set out in The Housing (Scotland) Act 2001 (Registration of Tenant Organisations) Order 2002 which is available on the HMSO Website:  
<http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/s-stat.htm>
54. The criteria for registration is summarised in **Annex B** to this guidance followed by a detailed explanation of each component.

### Procedures for Registration

55. The landlord should have available information which sets out the criteria for registration and de-registration of groups and how this will be implemented. Landlords should make the Annex available to tenants groups seeking registration so that they are fully aware of the criteria and the reasoning behind it.
56. The procedure should set out how groups can apply, including how groups can seek advice and information. There should also be a clear statement of the duties on RTOs arising from the registration criteria set out by Ministers. The timescale for registration should also be clear.
57. It is for landlords to decide on the internal procedures to manage the registration process and where the final decision will rest. In most cases, however, this will require a committee decision by elected Council members or RSL governing body members. There should also be a procedure for appeals to the landlord over registration issues, but this would not supersede the right to appeal to Ministers over registration issues.
58. The registration should normally last for three years, but landlords could set out a different timescale within their tenant participation strategy. This could be, for example, to allow for groups to re-register at or around the same date to allow for efficient management of the process.
59. Where a group's constitution, membership or area of operation changes, there is the question as to whether they should re-register with the landlord. The landlord

may wish to reconsider registration in the light of significant changes, for example, where the group no longer represents tenants of that landlord, or where the area of operation has changed. This should be set out in the registration information and agreed as part of the development of the tenant participation strategy. Where groups were de-registered by the landlord because of such changes, they would retain their right of appeal to the Scottish Ministers. Where a landlord is involved in stock transfer proposals, the future of any RTO should be considered in consultation with the RTO and the acquiring landlord.

60. The failure of a registered group to meet the criteria for registration would constitute grounds for deregistration.

### **Information Requirements**

61. The guidance on the new Scottish secure tenancy discusses what information will be provided to RTOs and tenants about such proposals and their likely effect. Briefly, the requirements are as set out below.

62. Section 23 of the Act sets out a tenant's right to a written tenancy agreement and information. As well as the right to a tenancy agreement, tenants must receive information on the following:

- before the creation of the tenancy information on the right to buy (RTB) and obligations which a tenant is likely to incur if they exercise that right;
- changes to the right to buy that would affect the tenant's right to buy; and
- the landlord's complaints procedure.

63. Section 23 of the Act also lists other information that the landlord must supply on request:

- the terms of the tenancy;
- the landlord's policy and procedures in relation to setting of rents and charges;
- the landlord's policy and rules in relation to admission to any housing list, priority of allocation of houses, transfers and exchanges and repairs and maintenance;
- how the RTB provisions apply in relation to the tenant, the tenancy and the house;
- the obligations the tenant is likely to incur if the tenant exercises his right to buy the house, including any obligation to maintain any building of which the house forms part and any common areas;
- where the landlord is a local authority or a RSL, the landlord's tenant participation strategy; and

- the landlord's arrangements for taking decisions in the exercise of its functions in relation to the management of housing accommodation and the provision of related services by it. This might include information on the landlord's committee structures, consultation procedures, time scales, etc.

64. This requirement mirrors the duty to inform RTOs. There are a number of ways in which landlords may address the individual tenant information requirements of the Act. Many landlords have adopted a tenant's handbook as a way to give information to tenants. Newsletters are also a way to disseminate information on changes to policy and services. Landlords may also opt to write to tenants directly. An example of how this could work in relation to rent increases would be the use of a newsletter to give details of the landlord's rent policy, the services offered, how the rent increase has been calculated and an opportunity to comment on this. The detail of how the rent increase would impact on an individual tenancy would then be the subject of an individual letter to the tenant which could inform the tenant of the outcome of the consultation and the reasons for the landlord's decision.
65. The detailed entitlement to information is set out in the guidance to the Scottish secure tenancy, "Housing Scotland Act 2001: Scottish Secure and Short Scottish Secure Tenancy", available from Scottish Executive Development Department, Housing 2-3, 1G Victoria Quay, Edinburgh EH6 6QQ (e-mail: [housing.information@scotland.gsi.gov.uk](mailto:housing.information@scotland.gsi.gov.uk)) or on Scottish Executive website: <http://www.scotland.gov.uk/library3/housing/ipst-00.asp>

### Groups which do not wish to Register

66. There may be circumstances where a tenant group does not wish to register with the landlord. Where this is the case individual group members will have their right to be consulted, but landlords may, as a good practice measure, consult with non-registered groups. Consultation with such a group would be outwith the statutory provisions of the Act.

### Removal from the Register

67. Landlords should discuss with the organisation at the time of registration under what circumstances the organisation can seek to be removed and similarly, under what circumstances the landlord would seek to remove the organisation from its register. The period of notice for removal from a register should feature in the tenant participation strategy. The tenant participation strategy should also cover the process of removal, that is, written notice of removal with reasons and timescale and information about the appeals process. A record should be kept by the landlord of RTOs which have been removed from the register.

### Appeals

68. A tenant organisation may appeal against a landlord's decision to either:
- not register the organisation;
  - remove the organisation from the Register; or
  - not remove the organisation from the Register.

It is important that the landlord make the tenant organisation aware at the time of registration about the mechanisms for appeal. These should form part of the tenant participation strategy.

The first stage of any appeal should be through the landlord's internal appeals procedures. If the tenant organisation is not satisfied by the outcome of the internal appeal it may appeal formally to Scottish Ministers.

The formal appeals process will be considered by the Regulation & Inspection Division of Communities Scotland, on behalf of Scottish Ministers.

## **PART 5: CONSULTATION**

### **Consultation with Tenants and Registered Tenants Organisations**

69. Section 54 of the Act requires a landlord and a registered social landlord to notify the tenant and every RTO of any of the proposals set out below and the likely effect of such proposals on the tenant and to have regard to representations by tenants or tenants groups, within a reasonable timescale.

#### **Proposals Subject to Consultation**

70. Section 54(2) (a) to (d) of the Act set out the proposals on which a landlord should consult its tenants either individually or collectively through an RTO. These are:
- (a) its policy in relation to housing management, repairs or maintenance, where the proposal, if implemented, is likely to significantly affect the tenant;
  - (b) the standard of service in relation to housing management, repairs and maintenance which it intends to provide;
  - (c) its tenant participation strategy; and
  - (d) a disposal which would result in a change of landlord or, if different, of owner of the house which is the subject of the tenancy.
71. Landlords are also required under section 25 of the 2001 Act to give each tenant not less than 4 weeks' notice, in writing, before increasing rents or other charges. Where a landlord proposes to increase the rents of all or any class of its tenants, it must first consult those tenants who would be affected.
72. The legislation is silent on how such consultation is to be carried out and how wide consultation should be. This is deliberate to allow sufficient flexibility to cover differing circumstances in different areas and differing levels and methods of consultation. To a large extent, it will depend on the size of the landlord's stock and how many tenants are likely to be affected and on whether there is an RTO

in existence. In practice, this is likely to vary from landlord to landlord and even from proposal to proposal. What is important is that the most appropriate model of consultation should be chosen. The effectiveness of the chosen model should be reviewed in the light of responses received and within the wider review of the tenant participation strategy. It is important for landlords to consider and set out in the strategy how account is to be taken of the views of tenants and by whom. This could include having available on request a summary of the results of consultation and the proposed action.

73. We would recommend that landlords set out minimum standards, agreed in consultation with tenants/RTOs, for all consultations with tenants required under section 54 of the Act, which should be published as part of the tenant participation strategy. These should set out the areas on which the landlord will consult with individual tenants/RTOs, a timetable of main events including time for responses by tenants, the information the landlord will make available to individual tenants/RTOs to help them take an informed and effective part in the consultation, and details of:
- how and when the final decision will be taken;
  - how the proposal will affect tenants;
  - how and within what timescale tenants can make their views known to the landlord;
  - details of how the tenants will receive feedback;
  - the contact officer dealing with the consultation; and
  - information on how and where to complain.
74. There may be different approaches to consultation taken in relation to individual tenants and RTOs. Individual tenants have a right to be consulted on both proposals from the landlord and on what issues are to be consulted on. The first stage may well be addressed, for example, through early notice in newsletters. Where the landlord is consulting individuals on issues likely to affect that tenant, there must be a clear mechanism for tenants to register their views. Where there are RTOs, the landlords should engage these at a very early stage in the process of developing proposals and should seek the view of any RTOs as to the extent of consultation needed on any proposal and how this should be conducted. If the landlord has more than one RTO, it must consult all such RTOs in an equal manner.
75. Where a proposal impacts on all tenants, for example changes to the landlord's allocation policy, it would be expected that all tenants should be consulted. It would be for the landlord, however, in line with the tenant participation strategy, to decide whether such consultation should take the form of public meetings, door to door surveys, individual letters to tenants or a combination of any of these. In all cases where the proposal is one affecting all tenants, landlords must ensure that there are arrangements in place and that these are well publicised, to allow all tenants who wish to make their views known the opportunity to do so.

76. The Act requires that the landlord takes account of any representations made to it, and allows a reasonable period for such representations which must be specified in the notice. "Reasonable period" is not defined but the tenant participation strategy should, in any event, set out the timescales for consultation as agreed between individual tenants/RTOs. Where this is not covered by the strategy, landlords should take steps to consult individual tenants/RTOs to agree a reasonable timescale. In some cases, the landlord's proposal will only affect certain tenants in a part of the landlord's area. An example might be a proposal to install double glazing in certain houses. In these cases, consultation with tenants and RTOs across the landlord's area of operation will be in terms of issues around the broader improvement programme. Points of detail on any agreed proposal would be the subject of consultation with the affected tenants only.
77. Where a landlord is consulting tenants on an individual basis, it is for the landlord to decide how best to do this in the light of local circumstances and taking account of tenants views. In developing its tenant participation strategy, the landlord will take the views of tenants into account as to what would be acceptable in terms of methods and levels of consultation. These might include:
- public meetings, conferences and seminars;
  - tenants forums;
  - special taskforces of tenants and housing officers to review policy or management of services;
  - questionnaires and surveys;
  - "walkabouts" with tenants to look at particular areas;
  - information leaflets/letters/posters;
  - newsletters;
  - open days/exhibitions/roadshows; or
  - development of internet sites where tenants can receive information and report their views.

### **Standards of Service**

78. One of the areas where the landlord is required to consult is on the standard of service in relation to housing management, repairs and maintenance which it intends to provide. Local authorities should already be doing this in the context of the Best Value regime and RSLs in relation to Performance Standards.

### **Change of Landlord or Owner**

79. Landlords must consult tenants on any disposal which would result in a change of landlord or, if different, of owner of the house which is the subject of the tenancy. This requirement reflects the provisions in section 76 and schedule 9 to the Act relating to the consultation and consent requirements for disposals of tenanted houses by a local authority landlord or an RSL. The Code of Practice for Tenant Participation in Stock Transfers, produced by the Tenant Participation Working Group and published by the Scottish Executive in January 2001 is relevant here. Also relevant is "Guidance for Local Authorities: Housing Transfers

to Community Ownership” published by the Scottish Executive in August 2000. Copies of the guidance are available from Scottish Executive Development Department, H1-1, 1G Victoria Quay, Edinburgh EH6 6QQ (Tel 0131 244 5594) or on Scottish Executive website:  
[www.scotland.gov.uk/library3/housing/hgl-00.asp](http://www.scotland.gov.uk/library3/housing/hgl-00.asp)

## PART 6: TENANT MANAGEMENT AGREEMENTS

### Background

80. Local authorities currently have power under section 22 of the Housing (Scotland) Act 1987 to enter into an agreement with a housing co-operative for the exercise by that co-operative of the landlord’s housing management function. This provision is permissive, and relies on the willingness of a landlord to allow tenants to assume housing management functions. This power was strengthened by the introduction on 1 April 1994 of a new “right to manage” (section 22A of the 1987 Act, as inserted by section 152 of the Leasehold Reform, Household and Urban Development Act 1993) which is modelled on the section 22 provision in that it requires that housing co-operatives have the approval of Scottish Ministers and that all agreements must be approved by them. It also goes further by providing a mechanism to appeal to Scottish Ministers in the event that a landlord declines to voluntarily enter into a management agreement. Although any management agreement entered into with the authority does not continue after transfer, the transfer contract can include a contractual “right to manage”.
81. Section 55 replaces the existing provisions of sections 22 and 22A of the 1987 Act and sets out arrangements for a tenant management co-operative to enter into an agreement with a landlord, a registered social landlord or a water or sewerage authority to manage the landlord’s houses. Scottish Ministers must approve such management bodies and the terms of the agreement between the landlord and the co-operative. There is a right of appeal to Ministers in the case of an inability to agree terms or a refusal by the landlord to enter into an agreement.
82. Section 56 defines the range of functions which a landlord may make subject to a tenant management agreement. *Subsections (4) and (5)* make clear that a landlord’s houses which are the subject of a tenant management agreement are still to be treated as the authority’s houses for the purposes of the authority’s Housing Revenue Account and related financial support from the Executive.

### Establishment of a Tenant Management Co-operative (TMC)

83. The Executive considers that the right to manage afforded by section 55 of the 2001 Act will strengthen the rights of tenants. Under it, tenants will be able to take decisions about the management of their houses and this should lead to greater tenant satisfaction. At the same time, it must be recognised that formation of a TMC is not an easy option, and it will require a high level of commitment by those involved over an extended period of time.
84. While landlords may seek to encourage formation of TMCs, it is equally possible that tenants will take the initiative to seek to establish a TMC. This is most likely

to happen in an area which has a tradition of tenant participation and involvement in housing issues. In such an area tenants will be aware of the satisfaction to be gained from being able to exercise real control over their living conditions, and of the benefits which can be obtained through bringing their personal initiative and interest into housing management. They will know that good housing management is crucial to tenants' enjoyment of a good quality of life. Consequently, they will be aware that taking over the housing management functions of a landlord is not a step to be entered into lightly, and that much time and effort will be required, both in the initial stages and subsequently, to gain the expertise and knowledge to successfully manage their homes. Experience elsewhere suggests that the time required between initial stages of identifying an interest among tenants and finally taking over functions from a landlord may be three years or more. Clearly this will require a long term commitment by tenants.

85. Where tenants are thinking of seeking to manage their homes, they must form themselves into an appropriately constituted organisation. A tenant management co-operative requires to have a constitution which clearly defines its functions and provides a framework within which its affairs are to be run. The constitution must reflect the aim of managing housing for the benefit of tenants, and secure the essential involvement of tenants in decision making. The constitution must cover basic issues including functions, membership, general meetings, management arrangements, election and powers of office bearers, disputes, record keeping, amendment of rules, and winding up.
86. Funding will be an important early consideration for a TMC. This might be obtained in a number of ways. So far as independent funding is concerned, a TMC might raise funds by subscription or by tenant levy. It may wish to pursue the possibility of obtaining financial support from its landlord. In addition, to direct financial assistance there are other ways by which support might be given by a landlord, for example, by providing meeting rooms and office space; access to, or provision of, photocopying and word processing facilities; secondment of staff; and provision of consultants to help a TMC draw up a feasibility study or development plan.

### **Scottish Ministers' Approval of a TMC as a Housing Co-operative**

87. To become a TMC, tenants who have formed themselves into a society, company or body of trustees must obtain the approval of Scottish Ministers. Under section 55(2) of the Act, Scottish Ministers must approve such a society, company or body of trustees if they are satisfied that they are generally suitable to carry out such functions.
88. In deciding whether or not to give approval to a TMC, Scottish Ministers will have to satisfy themselves that it is properly constituted and that it is a "society, company or body of trustees" as specified in section 55. They will also wish to be assured that the TMC has the broad support of the residents of the houses for whom it proposes in due course to assume management responsibility. It will be crucial, therefore, to the TMC's request for the approval of Scottish Ministers that

it is able to demonstrate such support. One means by which this could be shown would be by conducting an initial ballot or poll of tenants of the houses concerned.

89. Information at this stage about the TMC's abilities may not be extensive and, consequently, Scottish Ministers' approval to the body in terms of section 55(2) cannot imply any judgement as to the TMC's ability to carry out specific housing management functions it proposes to take over. If Scottish Ministers give their approval to the TMC, it simply becomes a "tenant management co-operative" for the purposes of the 2001 Act, and can then make application to the landlord under section 55(3). Scottish Ministers' consideration of an agreement entered into between the TMC and the landlord is dealt with below.

#### Application by TMC to Landlord

90. By the time it is ready to make application to a landlord to exercise all or part housing management functions, a TMC will have been in existence, at least in embryo form, for some time. It will have to confirm to the landlord that it has the approval of Scottish Ministers under section 55(2), and submit information about its constitution, the houses which are to be subject to any agreement, those housing management tasks it wishes to take over and those which are to remain with the landlord, allocations, finance and resources, safeguards for tenants and various other issues including the TMC's ability to undertake the tasks it proposes to assume. It will also require to show that the TMC has the broad support of the residents of the houses in respect of which it proposes to manage certain or all of the landlord's management functions. One means by which this could be shown would be by conducting an initial ballot or poll of tenants of the houses concerned.
91. The detailed aspects of the information to be provided by a TMC where it makes application to a local authority are discussed in **Annex C**.

#### Consideration of Application by Landlord

92. Under section 55(3) of the 2001 Act, the landlord must make an agreement with the TMC if it is satisfied that the TMC:
- (a) has the approval of the Scottish Ministers;
  - (b) is able to perform the functions it proposes to take over competently and efficiently; and
  - (c) is representative of the tenants of the houses concerned.
93. Item (a) above will be a matter of fact. Either the TMC will have the approval of Scottish Ministers, or it will not.
94. As to the competence of the TMC to perform the functions it hopes to assume responsibility for, and its efficiency at performing those functions, the landlord will

require much information. Many of these matters should be covered in the initial application submitted by the TMC to the landlord, as described in **Annex C**. The landlord will require to consider such information as is available to it, and should carry out a feasibility study into the TMC's proposals.

95. The TMC may also require assistance to obtain the necessary training to enable it in due course to satisfy the authority as to its competence. This will take some time, but it is important that this stage is not hurried. If it is, the risk is that a TMC could assume responsibility for housing management functions without having the capacity to cope with the complex managerial and technical issues involved, or having underestimated the task it proposes to assume. The landlord will want to be assured that the TMC has a management structure appropriate to the housing functions being assumed. It will also want to be assured that the TMC is able and willing to operate to current standards of good practice.
96. As to efficiency, there is a question about the size and viability of a TMC. TMCs have already been established in Scotland, covering from 60 houses up to 830 houses. The Executive see the right to manage as an important strengthening of the powers of tenant organisations in Scotland, and wish to encourage tenants to exercise their right to manage. It is recognised, however, that establishing a TMC is hard work which requires considerable time and effort on the part of both tenants and the landlord. It will be necessary therefore, to ensure that the energy is directed towards projects which have the prospect of viability.
97. There must be a question, for example, as to whether a TMC could reasonably be established for a single four in a block of flats. There must be a consideration as to whether it is reasonable to expect landlords to enter into agreements on such a small scale. We would suggest, therefore, that there should be a minimum limit of 100 on the number of properties involved, below which the right to management would not normally be exercised. Landlords may make a case for having a smaller number of houses where there are distinctive local characteristics which would merit this, for example in rural areas.
98. The final requirement on which the landlord has to be satisfied is whether the TMC is representative of the tenants of the houses concerned. This means that the TMC must be representative of the tenants of the houses which are to be the subject of any agreement with the landlord.
99. In almost all cases, many months will have elapsed since the TMC first initiated its proposals, and a new ballot or poll of tenants should be carried out. If, therefore, a landlord is satisfied that the TMC has the approval of the Scottish Ministers, and that it is able to perform the functions competently and efficiently, it is proposed that the landlord should:
  - (a) serve a notice on the tenant of each house identified in the proposal summarising the terms of the proposal, and containing an address within the locality at which a copy of the TMC's proposals may be inspected; and
  - (b) arrange for a ballot or poll of those tenants concerned, to establish their opinion about the proposal.

100. Facilities for the inspection of the proposals should be in line with equal opportunities requirements. For example, the location should be accessible to persons with a physical disability, and proposals should be available in appropriate formats and languages.
101. It is suggested that the support of tenants for a TMC would be demonstrated through a straight majority vote. On this basis, if the proposal failed to obtain a majority vote in favour, the landlord would be unable to make an agreement with the TMC, whose proposals would fall.

### Scottish Ministers' Approval of Agreement Between a TMC and a Landlord

102. If the outcome of the ballot or poll is favourable and the authority is satisfied that the TMC meets the statutory requirements, a landlord may then enter into an agreement with the TMC. Scottish Ministers' approval under *Subsection 55 (7)* should then be sought. In considering a request for approval to an agreement, Scottish Ministers will wish to have before them information on the matters described at Annex C, together with a copy of any feasibility study or development programme. Scottish Ministers propose to ask that the information to be given to them by the landlord and TMC should include the following:
- (i) information about how the ballot or poll has been conducted;
  - (ii) a copy of the information given to tenants; and
  - (iii) a note of the outcome of the ballot or poll.
103. At the point a TMC assumes responsibility for housing management functions, it will need resources to enable it to carry out the activity. The expectation is that a TMC will operate within a negotiated allowance or budget which the landlord will make available to it to carry out those housing management tasks which are specified in an agreement. The Executive expects, therefore, that an agreement between a TMC and a landlord would include provision to cover funding of the activities to be carried out under the agreement.
104. If a landlord was unwilling to include any provision about funding in an agreement, the likely consequence is that the TMC and the landlord would be unable to agree on terms. It would then be open to the TMC to appeal to Scottish Ministers (under *Subsection (6)* of section 55), who may determine the terms of the agreement. This could include ensuring that the agreement contains provision for the funding by the landlord of the activities of the TMC exercising the right to manage.

### Appeal Against Refusal of Landlord to Enter into an Agreement

105. Where the landlord refuses to enter into an agreement with the TMC on the grounds that it does not satisfy the statutory requirements of paragraph (b) or (c) of *Subsection 55(3)*, the TMC may appeal to Scottish Ministers under *Subsection 55(4)* who may confirm, or reverse, the decision of the landlord. As already

indicated, Scottish Ministers would wish to have before them information on all the issues indicated in **Annex C**, together with any feasibility study or development programme prepared about the TMC's proposals. It may be necessary to seek further information from either the TMC or the landlord before Scottish Ministers are able to reach a decision. It might also be necessary for them to require that further work is done, including carrying out a feasibility study or development plan, on the competence and efficiency of the TMC and its proposals.

106. If Scottish Ministers confirm a decision of a landlord not to enter into an agreement with a TMC, the proposals fall. If, on the other hand, Scottish Ministers reverse a refusal decision of a landlord, the landlord and the TMC are required to come to an agreement. If it is not possible to reach agreement, the TMC may appeal to Scottish Ministers who have power to determine the terms of the agreement under section 55(6). Should a case ever come to this stage, it is likely that Scottish Ministers will already have considerable information in their hands from the appeal which would already have been made to them under section 55(4). It may be necessary for them at this stage, however, to elicit further information from either or both of the parties as to the consequences of any conditions they may impose.

#### **Review**

107. A formal review process should be built into any agreement between the landlord and the TMC. Any such review should involve both the landlord and the TMC.

#### **Termination of Agreements**

108. There is no statutory limitation on the length of any agreement and it is envisaged that most agreements would be open-ended. Consequently, any agreement between a TMC and a landlord should make specific provision for termination of the agreement. This should cover both parties, since termination of an agreement could be instituted by either the TMC or the landlord. We anticipate two circumstances in which an agreement might be terminated:

- (a) where a TMC is wound up or becomes insolvent; or
- (b) where the landlord believes that the TMC is mismanaging its affairs or acting in a way which puts the good management of the houses concerned in jeopardy – this would cover the case where a TMC failed to deliver services in accordance with the agreement or was mismanaging its finances.

109. Termination of an agreement with a TMC would not prevent tenants from exercising their right to manage in the future, though a landlord could refuse to proceed to consider a further application if it had substantial grounds for believing that the circumstances which gave rise to the termination were still present.

110. Applications to Scottish Ministers for approval of a TMC or any appeal to Scottish Ministers should be addressed in the first instance to Scottish Executive Development Department, Housing 2-3, 1G Victoria Quay, Edinburgh EH6 6QQ (Tel: 0131 244 2023).

## ANNEX A

### Tenants Information Service (TIS): Tenant Participation Healthcheck

The list presented here is based primarily on the provisions of the Housing (Scotland) Act 2001 and the principles in the National Strategy for Tenant Participation.

It is structured around two key ideas:

- Landlords being open to influence.
- Tenants’ capacity to influence.

Successful tenant participation is the joint accomplishment of both landlords and tenants. A “healthcheck” of tenant participation will be interested in the capacities of tenants as well as landlords. Landlords’ strategies must therefore include measures to stimulate tenants’ capacity to influence.

Not all questions will have equal weight or relevance, given the range of types and sizes of landlords. The questions are designed to prompt a rounded assessment of progress, and to help identify scope for improvement, rather than a simple “yes” or “no”. The regulator expects all landlords to provide evidence for how they are achieving against Performance Standards and this will be assessed during an inspection. Therefore, it would be useful to include the list of evidence against the items in the healthcheck.

This healthcheck is consistent with Communities Scotland’s drive to encourage performance self-assessment by landlords and is not inconsistent with their approach. It is important to note, however, that the healthcheck is distinct from Communities Scotland inspection guidance and self-assessment questions which can be found on Communities Scotland website <http://www.inspection.communitiesscotland.gov.uk/>

Reference in the list to “members of the Governing body” applies to councillors in councils and members of the board of management in registered social landlords.

#### TIS – Healthcheck

##### 1. Landlords Being Open to Influence

	Housing (Scotland) Act 2001	National Strategy Principles
Do the appropriate staff and members of the landlord’s governing body have a general appreciation of, and commitment to, the national strategy for tenant participation and its stated principles?		all
Do the appropriate staff and members of the landlord’s governing body have sound knowledge of the tenant participation/consultation provisions of the Housing (Scotland) Act 2001 and of tenant participation practice, generally?	S23, S53, S54, S55, S56	

	Housing (Scotland) Act 2001	National Strategy Principles
Does the landlord have, or is the landlord working towards, a strategy for the promotion of tenant participation, upon which tenants have been consulted?	S53(1) S54(2)(c)	
Does the strategy include joint landlord/tenant monitoring and evaluation of progress being made in tenant participation?		
Does the landlord invite dialogue with tenants on issues or subjects for review at the stage of defining the problem, or setting terms of reference for the review?	S53(2)(a)	2
Does the landlord invite tenants to bring forward issues/subjects for dialogue?	S53(2)(a)	
Is the main agenda for tenant participation (subjects/issues) forward planned jointly with tenants and the tenant participation processes appropriate to each jointly agreed?		3
Does the landlord maintain a register of tenants' representative organisations? (until the new Act comes fully into force, a reasonable substitute question here would be: <i>does the landlord maintain a list of recognised tenants' representative organisations, with recognition and access to resources, being conditional on open democratic working practices and sound control of finances?</i> )	S53(3)	6
Are the landlord's staff and members of the Governing body clear about the distribution of decision-making authority within its organisation?		4
Has the landlord devolved decision making in ways to make access by tenants to decision makers easier?		4
Are processes in place to allow tenants to express views to the landlord, which, when received, are given consideration, those processes reflecting the level of tenant participation wanted by tenants?	S53(2)	

	Housing (Scotland) Act 2001	National Strategy Principles
Are reasonable timescales set against the aforementioned processes?		5
Are tenants afforded the opportunity to take part in the review of service standards, best value reviews, and monitoring landlord performance?		
Are proposals for change and their anticipated effects on tenants notified to them in an easily digestible way, with reasonable time allowed for tenants' representations to be made and considered before being decided upon?	S54(1) & (2)	

## 2. Tenants Capacity to Influence

	Housing (Scotland) Act 2001	National Strategy Principles
Do tenants, elected by other tenants to represent them, have places on, or otherwise have access to, the landlord's governing body to make representations?		1 & 4
Are there effective organisations or informal networks of tenants actively involved in representing tenants interests?		6
Do tenants' representatives have a general appreciation of, and commitment to, the national strategy for tenant participation and its stated principles?		all
Do tenants' representatives have sound knowledge of the tenant participation/consultation provisions of the Housing (Scotland) Act 2001, and of tenant participation practice, generally?	S23, S53, S54, S55, S56	
Do tenants' representatives have the capacity and organisational means to represent tenants both in local areas, and at a more strategic level?		
Are tenants' representative organisations competently and democratically managed?		

	Housing (Scotland) Act 2001	National Strategy Principles
Are innovative ways used to link tenants with common interests, but whose homes are very widely dispersed or remote?		9
Do tenants' representatives engage with tenants more widely to ensure they represent their constituency with authenticity? (This question should be read to include any minority or particular interests within the community.)		10
Do tenants respond well to invitations for dialogue on issues and topics for review, upon which the landlord wants to access tenant opinion?		3
Do tenants' representatives advance their own agenda of issues/topics for dialogue with the landlord?		3
Do tenants' representatives have the capacity and skills to advance the views of the tenants they represent?		8
Are tenants' representatives well informed, or know how to become well informed, on the subjects in the tenant/landlord dialogue?		3
Do tenants' representatives have a sound appreciation of the distribution of decision-making throughout the landlord's personnel?		4
Are tenants' representatives able to identify their resource needs and access appropriate resources?		8

### 3. Landlords Assisting Tenants' Capacity to Influence

	Housing (Scotland) Act 2001	National Strategy Principles
Has the landlord, in consultation with tenants, assessed the resource needs of tenant participation?	S53(2)(b)	8
Does the landlord provide resources for tenant participation and access such resources elsewhere, or assist tenants to do so?		8
Does the landlord encourage tenant access to relevant leaning opportunities?		8
Are resources in place to support building the capacities of tenants?		8
Does the landlord assist tenants, where appropriate, to organise activities and events designed to gather tenant opinion?		1
Are efforts made by the landlord to provide information to tenants required by law, and to make tenants aware of the information they may have on request?		3
Does the landlord provide the relevant information to tenants while issues are under consideration in tenant participation processes?	S53(2)(a)	3
Are the criteria for registration/ <i>recognition</i> of tenants' organisations jointly agreed with tenants, and assistance given to overcome obstacles to meeting them?	S53(3), (4), (5) & (6)	6

# ANNEX B

## Criteria for Registration of Tenant Organisations

The criteria for registration of tenant organisations are set out in The Housing (Scotland) Act 2001 (Registration of Tenant Organisations) Order 2002. This can be obtained from HMSO and can be viewed on the HMSO website:

<http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/s-stat.htm>

This Annex summarises the main points of the criteria, together with an explanatory note (shaded). For the exact wording you can view the order.

1. The organisation must have a publicly available written constitution that sets out:
  - its objectives and area of operation;
  - how people can become members of the organisation;
  - the way the committee will operate;
  - how people can become committee members/office bearers;
  - how the business of the organisation will be conducted;
  - how decisions will be reached democratically;
  - how funds will be managed;
  - arrangements for public meetings;
  - arrangements for an annual general meeting (AGM);
  - how changes can be made to the constitution;
  - its commitment to the promotion of equal opportunities
  - its commitment to the promotion of the housing and housing related interests of tenants.

The aim of this is to ensure that organisations have a structure that allows for election of office bearers, gives opportunities for members to express views and ensures that elected officers report to their members. This does not mean that the body has to be a formally incorporated body, such as an Industrial and Provident society. A simple constitution that spells out how the organisation will be accountable to members will suffice in many cases, but where an organisation has access to substantial funds it may be appropriate to look at more formal incorporation.

It is essential that landlords receive a copy of a tenant association's constitution as part of the registration process. Many landlords, who are working proactively to promote tenant participation, will have acceptable model policies that groups can adopt, if they wish. It is important for landlords to note that the constitution is a basis for registration. If the constitution does not fulfil the criteria for registration, the landlord can refuse to register but landlords should, in any event, work with prospective RTOs to help them meet the criteria for registration.

2. The organisation must have a committee that:
  - (after the first year) is elected at an AGM;
  - has at least three members;
  - can co-opt others onto the committee during the course of the year;
  - has elected office bearers;
  - can demonstrate that decisions are reached democratically; and
  - promotes equal opportunities.

The aim of this criterion is to enable the group to demonstrate how decisions are reached democratically and how the organisation is run. This requirement aims to place accountability at the forefront of tenant groups. In assessing this criterion landlords may look at the constitution of the organisation, details of office bearers, details of co-optees and how they were appointed, meeting frequency, minutes, etc. It should be borne in mind that, as voluntary organisations, tenants groups may not be able to demonstrate as clearly as better resourced bodies how effectively they do this. In the first instance the landlord may wish to establish, as part of the registration process, how decisions will be made and how members may influence the group.

For initial registrations, the constitution will be a key document in assessing accountability within the group. For subsequent registrations the landlord may consider some of the other indicators identified above.

3. The organisation must operate within:
- a defined area which includes housing stock owned and managed by the landlord with whom it is seeking to register; or
  - membership of the organisation and participation in its activities must be open to all eligible tenants within its defined area of operation.

The purpose in defining areas of operation for registered tenants groups is to allow for clarity in the setting up of groups and to recognise natural areas of operation. There may also be issues for landlords looking at areas of operation, where competing groups are set up or where a number of very small groups are active in an area. This is an example where the registration process could be used proactively to facilitate more effective working. In the case of a number of small groups working in the same area they could be encouraged to join up as a group or to federate for the purposes of working with the landlord.

While landlords may use the registration process to promote effective liaison, the fact that there are competing groups or a number of small groups should not in itself be taken as a justification for not registering a tenants group, providing that the group meets the general criteria for registration. Where there are competing groups purporting to represent the same tenants, the landlord should discuss with each of the groups their rival claims and come to a decision on the evidence presented as to which of the groups should be registered. It is, of course, open to the landlord in such circumstances to register each of the groups or none of the groups, but groups will have the right of appeal against non-registration.

Registration for tenants groups with a landlord operating on a national basis should reflect the management structure of the landlord. There may be strong practical reasons for having the registration linked to local management boundaries, but the landlord may choose to bring tenant groups together for national consultation. The landlord should reflect how registration could operate most effectively within the context of the tenant participation strategy. Tenants groups should in this situation, however, not be disadvantaged in terms of access

to the management of the landlord as a whole, when compared with locally - based landlords.

The registration of national tenants groups should be limited to where a tenants group organised on a national basis reflects the structure of their landlord, for example a national RSL. There would not be a requirement to register generic multi-landlord federations operating on a national basis.

4. The organisation must have appropriate accounting records and present an audited annual financial statement to the AGM.

This applies where tenant groups raise or secure funding, particularly from the landlord. The external scrutiny may be by formal audit, but in many cases this may not be appropriate, as the sums of money involved do not warrant the cost of audit. Many landlords carry out audits of funded groups as a condition of funding, which may be the appropriate level of external scrutiny. The key issue where a group has funds, is that these are properly reported and accounted for, both to funders and the group as a whole.

5. The organisation must demonstrate that it is committed to representing the interests of its members and that, when consulted by the registering landlord, it can represent the views of its members who are tenants of the registering landlord in its defined area of operation.

The requirement to demonstrate a commitment to representing the interests of members arises from a need for tenant groups to be accountable in what they do. This is particularly important as membership of many tenants groups is defined in their constitution as being open to all tenants in an area, without the need to sign up as members. Having such an approach to membership in the constitution would not debar a group from registration. There is a need, therefore, for some indication of how the group will represent its members. This could be controversial, particularly where landlords were seen to be making a subjective judgement on how representative a group was. It may also be difficult for new groups to be able to demonstrate this, as they have no track record.

The most effective way for groups to demonstrate their commitment would be to produce a simple statement that said how they would do this. The statement would include objectives about how the organisation would be accessible to its members and engage with its members. These objectives, demonstrating how tenants views are represented, will vary according to local circumstances and resources. An example could be that the group would, say, hold four public meetings a year, publish two newsletters and particularly promote its AGM. This could be material in any appeal process, should the group be deregistered in future, where a comparison could be made between the stated objectives and actual practice and outcomes.

It is important that landlords see registration as a pro-active process. Rather than reject a group for being "unrepresentative", the landlord should work with the

group to help them meet registration criteria. Landlords should also be aware that, whether or not a group agrees with their policies, they are still entitled to be registered, providing they meet the criteria.

Where a landlord received complaints that a group was not encouraging active involvement it could investigate these. In terms of registration criteria, a landlord would need to be very clear that a group was not encouraging active involvement if it was to de-register the group. Any decision like this could, of course, be subject to appeal to Scottish Ministers.

Where the organisation represents tenants of different landlords, it has the right to be registered with those landlords, provided it meets the criteria for registration set out in the Housing (Scotland) Act 2001 (Registration of Tenant Organisations) Order 2002. If the organisation is not registered with a particular landlord, that landlord will have no statutory duty to consult with the organisation. It follows that, if an organisation is to benefit all of its members, it must be registered with each of the landlords involved. Equally, there may be a tenant organisation whose membership includes tenants of two or more different landlords (as well as perhaps representing owner-occupiers or other residents). In such cases, it is essential that the organisation, when consulted by a particular landlord can ensure that the views given are representative of the tenants of that landlord. Only the Scottish secure or short Scottish secure tenants of the landlord have statutory rights in relation to the 2001 Act; not owner-occupiers or private sector tenants.

### Tenant Federations

6. The criteria for registration of local tenant federations will be the same as for individual tenant organisations. A federation which is registered with each of the landlords of its member groups will have statutory rights to be consulted by those landlords on housing and related issues affecting the area served by its membership. This will give the federation direct involvement with such issues rather than through each of the member groups concerned. As with tenant organisations representing tenants of two or more different landlords, it is essential that when consulted by a particular landlord, a tenants federation can ensure that the views given are representative of the tenants of that landlord. Where a local federation does not have tenants of a particular landlord, there is no statutory duty on that landlord to register that federation.

### Mixed Groups

7. It is recognised that groups may comprise a mix of tenants and residents. There is nothing to prevent a mixed group of tenants and residents applying to be registered provided they meet the necessary criteria and provided there is a mechanism in place within the RTO for the views of the tenants of that landlord to be sought, for example, through tenant only surveys or tenant sub-committees.

8. Application material to be submitted by the tenant organisation to the landlord with whom it is seeking to register:
- the written constitution;
  - names and contact details of committee members (identifying the office bearers); and
  - a description of the area of operation.

The application material which the tenants organisation should make available on application for registration includes a copy of its constitution; names and contact addresses of committee members, identifying office bearers and any co-optees; a description of its geographical area of operation; and a statement of how it will represent tenants in the area of its operation. Landlords should work pro-actively with groups that may require support to develop such material. It is important to note, in relation to contact addresses of committee members, that some members may not wish to identify their home or work address. In such circumstances, it should be sufficient to rely on a box number or other c/o address, such as that of the landlord itself.

Registration of tenants groups should not be seen as a reactive administrative task. For some groups, who are already developed, registration will be relatively straightforward. For others, however, there will be a need for development of the group towards registration. The process of registration offers opportunities to proactively develop tenant groups, with registration being held out as an achievable objective for groups. Going through the registration process would allow groups to develop the structures that they need to support their other activities. At a basic level, landlords could assist by having available model constitutions, membership policies and advice on equalities. Higher level support could include development work to encourage tenant groups to form, or to channel issues to the correct forum. RTOs should also be able to access development support from other bodies engaged in such work.

The process of registering tenants organisations is one where landlords must operate fairly. There is a right of appeal to Scottish Ministers, on the basis of whether a landlord declined to register a tenants organisation, or removed a tenants organisation from the register. Ministers will look at such appeals in relation to the criteria set out.

### Removal from the Register

9. An RTO can be removed from the Register in any of the following circumstances:
- the tenants organisation no longer meets the registration criteria; or
  - the tenants organisation ceases to exist or does not operate; or
  - there is mutual agreement between the landlord and tenants organisation.

Removal from the Register should take place only after an agreed period of notice.

## Appeals

10. A tenant organisation may appeal against a landlord's decision to:
  - not register the organisation; or
  - remove the organisation from the Register; or
  - not remove the organisation from the Register.
  
11. The appeals process will be considered by the Regulation & Inspection Division of Communities Scotland, on behalf of Scottish Ministers. It is important to note, however, that an appeal should be presented to Communities Scotland only after the landlord's internal appeal procedures have been exhausted. The internal appeals procedure should be initiated without delay and should be completed within 3 months of the appeal being made or as otherwise agreed between the landlord and the RTO.

# ANNEX C

## Application by Tenant Management Co-Operative to Landlord

Where a TMC makes an application to a landlord under section 55(3) of the 1987 Act, it should provide information on the matters set out below.

**Status** – the application should describe the TMC’s status: society, company or body of trustees. It should also state whether it is registered with the Registrar of Friendly Societies or any other body.

**Constitution** – covering the matters described briefly in paragraph 85 of the guidance.

**Houses concerned** – the TMC needs to identify those properties, management of which it wishes to assume.

**Tasks it wishes to take over** – the TMC needs to state the management tasks it proposes to undertake.

**Tasks to be retained by the landlord** – a clear and unambiguous statement is required, which should include any arrangements which have been made for consultation with, or participation by, the TMC in exercise of the functions.

**Finance and resourcing** – the TMC should ensure that there are arrangements for the proper handling of its finance. We expect an agreement between a TMC and a landlord to include provision to cover funding of the activities to be carried out under the agreement. Consequently the TMC will wish to detail resourcing for the work it proposes to undertake, in particular in relation to staff, secretarial services, office provision, etc.

**Safeguards for tenants** – it may be necessary to provide safeguards for tenants living in an area where it is proposed to establish a TMC and who wish neither to become members of it nor to move.

**Consultation between TMC and landlord** – it will be desirable to have some formal arrangement for liaison and consultation between the TMC and the landlord. This could take many forms, but the TMC might consider whether its constitution should provide for a landlord member to sit on its Management Committee or its main Committee, or for the landlord to have a reserve power of nomination to the Committee.

**Winding up** – specific provision must be made for:

- (i) management of the houses concerned to be recovered by the landlord should either party wish to terminate the agreement, or if the TMC is wound up or becomes insolvent;
- (ii) where (i) above applies, provision for a period of notice for termination and for notification to Scottish Ministers; and
- (iii) independent arbitration in cases of dispute about the interpretation of the agreement and on whether there was sufficient ground for its termination without the consent of one of the parties.

## ANNEX D

### Further Reading

The further reading list consists of a wide range of publications which touch on a number of aspects of tenant participation. This list is not exhaustive and is provided for information only.

- Chartered Institute of Housing (2001) *Housing Management Standards Manual Version 2.5*, Chartered Institute of Housing
- Scottish Federation of Housing Associations (2000), *Raising Standards in Housing Chapter 12: Tenant Participation*, SFHA
- Accounts Commission for Scotland (1999), *Can't Get no Satisfaction: Using A Gap Approach To Measure Service Quality*, Accounts Commission for Scotland
- Audit Commission (1999), *Listen Up: Effective Community Consultation*, Audit Commission
- Beckford, J. *et al* (forthcoming), *Encouraging Participation: A Toolkit for Tenants and Social Landlords*, Chartered Institute of Housing
- Cabinet Office (2000), *Code of Practice on Written Consultation*, Cabinet Office
- Chapman, M. and Kirk, K. (2001), *Lessons for Community Capacity Building: A Summary of Research Evidence*, Scottish Homes
- Chartered Institute of Housing (1999), *Good Practice Briefing 15: Resident Involvement in Housing Services*, CIH
- Cole, I., Hickman, P. and Reid, B. (1999), *Accounting for the Uncountable: Tenant Participation in Housing Modernisation*, Chartered Institute of Housing
- Community Planning Task Force (2002), *Engaging Communities: Sources of Further Information*, Community Planning Task Force
- Cooper, C. and Hawtin, M. (eds) (1998), *Resident Involvement and Community Action*, Chartered Institute of Housing
- Connaught (1999), *On-Site Tenant Liaison for Occupied Refurbishment and Maintenance Programmes – A Good Practice Guide*, TPAS
- CoSLA (1998), *Focusing On Citizens: A Guide To Approaches and Methods*, CoSLA
- Fitzpatrick, S. *et al* (1998), *Including Youth in Regeneration: A Lot to Learn?*, The Policy Press
- DETR (1999), *Developing Good Practice in Tenant Participation*, DETR

- Housing Corporation (2000), *"Just Do It!" A Directory of Examples of Service User Involvement in Supported Housing*, Housing Corporation
- Housing Corporation (2001), *A Study of Tenant Participation in Registered Social Landlords*, Housing Corporation
- Housing Corporation (2001), *The bigPicture: The Involvement Business*, Housing Corporation
- Laird, A. et al (2000), *Assessment Of Innovative Approaches to Testing Community Opinion*, Scottish Executive Central Research Unit
- Laird, R. and Greaves, K. (2000), *Effective research for RSLs*, Housing Corporation
- National Assembly for Wales (2001), *Review of Tenant Participation in Wales: A Good Practice Note*, National Assembly for Wales
- National Housing Federation (2000), *Resident Involvement Strategies: a Handbook for Registered Social Landlords*, NHF
- National Housing Federation (2000), *Running STATUS: a Guide to Undertaking the Standardised Tenant Satisfaction Survey*, National Housing Federation
- National Housing Federation (2001), *Tenant Participation Compacts: A Guide for Registered Social Landlords*, NHF
- Organisational Development and Support Ltd (1998), *Assessing Tenants' Satisfaction – Resource Pack*, Scottish Homes and the Scottish Federation of Housing Associations
- Positive Action in Housing (2002), *Promoting Inclusion of Minority Ethnic Communities: A Best Practice and Training Guide for Scottish Tenants' Groups*, PAIH
- Reid – Howie Associates (2002), *Good Practice Guidance Consultation with Equalities Groups*, Scottish Executive Central Research Unit and Equality Unit
- Robertson, D. and McLaughlin, P. (1996), *Looking into Housing: A Practical Guide to Housing Research*, Chartered Institute of Housing
- Scott, Suzie et al (2000), *Good Practice In Housing Management: Review Of Progress*, Scottish Executive Central Research Unit
- Scott, Suzie et al (2001), *Good Practice In Housing Management: A Review Of The Literature*, Scottish Executive Central Research Unit
- Scottish Executive (2000), *Code of Practice for Tenant Participation in Best Value*, Scottish Executive

- Scottish Executive (2000), *Code of Practice for Tenant Participation in Stock Transfers*, Scottish Executive
- Scottish Executive (2001), *Code of Practice for Tenant Participation in Rural Areas*, Scottish Executive
- Scottish Homes (1998), *Guidance Note: Tenant Satisfaction and Performance Monitoring*, (SHGN 1998/12), Scottish Homes
- Scottish Office (1994), *Good practice in housing management: Tenant Participation Good Practice Note 4*, Scottish Office
- Scottish Office (1999), *Partners in Participation: A National Strategy for Tenant Participation*, Scottish Office
- Stevenson, R. and Gibson, P. (2002), *Customer and Citizen Focused Public Service*, Scottish Executive Central Research Unit
- Tenants Information Service (2002), *Tenant Participation Healthcheck*, TIS, Glasgow.
- Tenants Information Service (2001), *Basic Guide to Starting a Tenants/Residents Association*, TIS, Glasgow.
- Tenants Information Service (2000), *Involving Tenants in Regeneration*, TIS, Edinburgh.
- Tenants Information Service (2000), *Jargon Buster – The Plain English Guide for Tenants*, TIS, Dundee.
- Tenants Information Service (2000), *Discussion Paper – Benchmarking Tenant Participation*, TIS, Dundee.
- Tenants Information Service (2000), *Tenant Involvement in Best Value – Tenants Action Checklist*, TIS, Dundee.
- Tenants Information Service (2000), *Exploring the Potential for Tenant Involvement in Best Value*. TIS, Dundee.
- Tenants Information Service (1997), *Tenant Participation in Standard Setting – Paying Rent and Rent Arrears; Tenancy Turnovers; Tenancy Management; Repairs Reporting and Quality Control*, TIS, Dundee.
- TPAS Scotland (1998), *Equalising Opportunities: Tenant Participation and Involvement for People with Housing and Support Needs*, TPAS Scotland
- TPAS Wales (1996), *It Seems Like Common Sense to Me: Supported Housing Tenants Having a Say*, TPAS Wales

- TPAS Wales (date not known), *DIY Training Pack for Supported Housing*, TPAS Wales
- TPAS *Tenant Involvement in Supported Housing*, TPAS
- TIGHRA Information Sheets on Tenant Participation
  - *Measuring the Effectiveness of participation*
  - *Tenant Participation Strategies*
  - *Criteria and Registered tenant groups*

The following websites contain useful material, including on-line versions on some of the references listed above:

- Cabinet Office: Consultation Code of Practice Home Page  
[www.cabinet-office.gov.uk/servicefirst/2000/consult/index.htm](http://www.cabinet-office.gov.uk/servicefirst/2000/consult/index.htm)
- Chartered Institute of Housing in Scotland  
[www.cih.org/frames.scotland.htm](http://www.cih.org/frames.scotland.htm)
- Community Planning Task Force Scotland: Working Group 3 Reports and Findings  
[www.communityplanning.org.uk/wg3pubs.html](http://www.communityplanning.org.uk/wg3pubs.html)
- Housing Corporation  
[www.housingcorp.gov.uk](http://www.housingcorp.gov.uk)
- National Assembly for Wales: Housing  
[www.wales.gov.uk/subihousing/content/housingginafw/housinginnafw\\_e.htm](http://www.wales.gov.uk/subihousing/content/housingginafw/housinginnafw_e.htm)
- National Housing Federation  
[www.housing.org.uk/information/aboutus/index.asp](http://www.housing.org.uk/information/aboutus/index.asp)
- Office of the Deputy Prime Minister: Tenant Participation  
[www.housing.odpm.gov.uk/tp/index.htm](http://www.housing.odpm.gov.uk/tp/index.htm)
- Positive Action In Housing  
[www.paih.org/](http://www.paih.org/)
- Scottish Executive: Central Research Unit  
[www.scotland.gov.uk/cru/](http://www.scotland.gov.uk/cru/)
- Scottish Executive: Publications  
[www.scotland.gov.uk/publications/recent.aspx](http://www.scotland.gov.uk/publications/recent.aspx)

- Scottish Executive Working Group on Housing Act Implementation: Tenant Participation Sub Group  
[www.scotland.gov.uk/housing/workinggroup/tp.asp](http://www.scotland.gov.uk/housing/workinggroup/tp.asp)
- Scottish Federation of Housing Associations  
[www.sfha.co.uk](http://www.sfha.co.uk)
- Tenants Information Service Scotland  
[www.tis.org.uk](http://www.tis.org.uk)
- TPAS: The Tenant Participation Advisory Service for England  
[www.tpas.org.uk](http://www.tpas.org.uk)
- TPAS Wales  
[www.tpascymru.org.uk](http://www.tpascymru.org.uk)
- TIGHRA  
[www.xto73.dial.pipex.com/page14.html](http://www.xto73.dial.pipex.com/page14.html)

© Crown copyright 2002

Further copies are available from the Scottish Executive  
Victoria Quay, Edinburgh EH6 6QQ  
Tel: 0131 244 2105

The text pages of this document are produced from 100% Elemental Chlorine-free,  
environmentally preferred material and is 100% recyclable.

Astron. B27105 09/2002

