

TO: AUDIT, RISK & SCRUTINY POLICY BOARD

ON: 26TH AUGUST 2019

REPORT BY: LEAD OFFICER

**HEADING: MAINTENANCE OF MULTI OCCUPANCY ACCOMMODATION
(MIXED TENURE BUILDINGS)**

1. SUMMARY

- 1.1 This Report updates progress on the review entitled “Maintenance of Multi Occupancy Accommodation” as agreed as part of the Audit, Risk and Scrutiny Board’s annual programme of activity for 2019/20.
 - 1.2 Meetings have taken place with Officers from Communities, Housing and Planning Services and Legal Services to gather their thoughts and opinions on the maintenance process of multi-occupancy accommodation within Renfrewshire.
 - 1.3 Benchmarking with North Lanarkshire Council has taken place. North Lanarkshire Council have a similar mix of housing stock as Renfrewshire Council and the purpose was to gain an understanding of their maintenance processes to discuss benchmarking standards and to explore examples of best practice.
 - 1.4 A Scottish Parliament working group review of the Maintenance of Tenement Scheme Property has recently been undertaken by a cross party group of MSPs. The Final Recommendations Report was published in June 2019 and a copy is attached as Appendix 5.
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2. RECOMMENDATIONS

It is recommended that the Audit, Risk & Scrutiny Board:

- 2.1 Notes the content of the report as outlined at paragraph 4.1;
 - 2.2 Agrees the next steps for the review process;
 - 2.3 Agrees to request the attendance of relevant Council Officers to the meeting of the Audit, Risk & Scrutiny Board on 23rd September 2019.
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3. KEY POINTS

- 3.1 The key points to date in the review of maintenance of multi-occupancy accommodation (mixed tenure buildings) include:

There is a variety of legislation which covers repairs in mixed tenure properties. The Tenements (Scotland) Act 2004 aims to ensure that tenement buildings have a scheme for management and maintenance as part of ensuring that they are kept in good repair. The Act sets out a Tenement Management Scheme which applies where the title deeds of all flats in the tenement either do not deal with particular issues in the Tenement Management Scheme or are inconsistent. In most mixed-tenure or multi-occupancy blocks where not all of the flats or units are owned by the Council, the Tenement Management Scheme will apply at least in part to maintenance and repair matters as there will be Council properties which have never been sold as individual flats or commercial premises and so not all of the title deeds will deal with management and repair issues. Where the Tenement Management Scheme applies, it sets up a decision-making structure that should make it easier for owners to reach decisions to enable them to carry out repairs and maintenance. In most cases, this will mean that common repairs can be carried out with the agreement of the majority of owners. However, whilst in certain circumstances matters can be taken to the sheriff court, the Act does not put in place any mechanism for mediation for resolution of disputes between owners.

A Working Group report of cross party MSPs on Maintenance of Tenement Scheme Property was published in June 2019 – Final Recommendations Report and contained three main recommendations:

- 1. Building Inspections - The “scheme property” of all tenements should be inspected every five years and a report prepared that will be publicly available to existing or prospective owners and tenants, neighbours and policy makers.
- 2. Establishing compulsory owners’ associations - The group continues to believe that owners’ associations are an essential element of tenement maintenance by providing leadership, effective decision-making processes and the ability of

groups to enter into contracts.

3. Establishment of Building Reserve Funds - The core of the original proposals was that Building Reserve Funds (BRF) should be held in a specially established national or regional level fund, in the form of a social investment fund. Safe Deposits Scotland was used as an example, but a Credit Union structure could equally be suitable. However, it is accepted that some residents' associations will already have, or will want to establish and control, their own building maintenance accounts. Comparing the two, it is felt that a central fund has many advantages over an owners' association-held fund.

The majority of this report's proposals require legislative action. Some may simply require secondary legislation and could be introduced relatively quickly; whilst other proposals – those which are more straightforward – might be included in related legislation dealing with, for example, planning, finance or energy.

4. NEXT STEPS

- 4.1 At the next meeting on 23rd September 2019, senior officers of the Council will be invited to attend to discuss the maintenance process of multi-occupancy accommodation (mixed tenure buildings) within Renfrewshire which will assist the Board in reaching conclusions on the review.
- 4.3 The Lead Officer will meet with a Housing Association and a Tenant and Residents Association to gather their thoughts and opinions on the maintenance process of multi-occupancy accommodation within Renfrewshire. Tenant and Residents Associations have been on summer recess with scheduled meetings planned for September 2019.

5. BACKGROUND

- 5.1 Renfrewshire Council has 2,848 mixed tenure or multi-occupancy properties which the Council as Local Authority retains an interest in. The tenure split and numbers are contained below:

Tenure Split	No of Blocks	%
50/50	760	26.7%
Full Council	685	24.1%
Majority	701	24.6%
Minority	702	24.6%
Grand Total	2848	100%

- 5.2 There is a variety of legislation which covers repairs in mixed tenure properties, including:
 - o Tenements (Scotland) Act 2004

- o Housing (Scotland) Act 1987 and 2006
- o Environmental Protection Act 1990
- o Building (Scotland) Act 2003
- o The Private Housing (Tenancies) (Scotland) Act 2016
- o Title Conditions (Scotland) Act 2003
- o Property Factors (Scotland) Act 2011
- o Repairing Standard 2016 (amended 2006 Act)

5.3 Tenements (Scotland) Act 2004

5.3.1 The primary legislation in relation to repairs to strategic parts in respect of flatted buildings which are common property is the Tenements (Scotland) Act 2004. Although it is called the Tenements (Scotland) Act 2004, the law affects every owner (home, business or shop) in a building which is divided horizontally into two or more flats (i.e. flats on different floors) at least two of which are in separate ownership.

5.3.2 The Act aims to ensure that all tenements have a scheme for management and maintenance so as to help ensure that the communally-owned parts of buildings, , are kept in good repair. It sets up a default decision-making structure in the Tenement Management Scheme that applies to many of the main structural parts of the building which are referred to in the Act as “scheme property”, where the title deeds to the properties in the tenement building do not all deal with a particular issue or are inconsistent: this should make it easier for owners to reach decisions to enable them to carry out repairs and maintenance. Where the Tenement Management Scheme is applicable, in most cases, this will mean that common repairs can be carried out with the agreement of the majority of owners. However, whilst the Tenements (Scotland) Act provides that in certain circumstances where there are disputes court actions can be raised in the sheriff court, the Act does not put in place any mechanism for mediation for resolution of disputes between owners.

5.3.3 Who is responsible for what?

- Individual responsibility - Anything serving only one flat, including the door from the stair, its windows and the inside of walls, floors and ceilings to the halfway point with the next property. Generally speaking, owners are solely responsible for all repairs and maintenance to their own flat.
- Mutual or user responsibility – “Mutual” property is anything used by two or more flats, including the close stairs, close stair windows, chimneystacks, service cables, pipes. Where the Tenement Management Scheme applies, repairs to these mutual parts of the building should be paid for equally by all who use that part – unless their Title Deeds say otherwise.
- Common responsibility - This is an important part of the law. It outlines all the parts of the building where maintenance is paid for by all owners. These usually include in tenement buildings part-owned by the Council: the roof, the foundations and external walls, and also and any other part of the property which the Title Deeds set out as being the property of two or more owners. It is important to note that where the

Tenement Management Scheme is applicable to maintenance of a tenement building's roof, paying for roof repairs is basically the responsibility of every owner in the building – this is unless the Deeds completely provide for maintenance otherwise.

5.4 Consultation Process for maintenance and repair of Multi-Occupancy Accommodation (mixed tenure properties).

- 5.4.1 Renfrewshire Council will not generally carry out repairs or improvements without consulting other owners within the building first. Where its decision-making provisions apply, the Tenements (Scotland) Act 2004 allows the Council to carry out common repairs to scheme property if a majority of the relevant owners agree to the work. However, Renfrewshire Council will also intervene where emergency common repairs are required, particularly where a repair directly affects a council-owned property. Other more general repairs that are reported by owners or tenants in a block will be assessed and prioritised. Details are contained at Appendix 3 for the owners' responsibility for common repairs.
- 5.4.2 Renfrewshire Council has 2,848 mixed tenure/ multi-occupancy properties. Annually, there are around 1000-1500 repair jobs raised for mixed tenure/multi-occupancy properties.
- 5.4.3 Renfrewshire Council or their appointed Contractor carry out all repair and maintenance in mixed tenure accommodation. Renfrewshire Council do not carry out these works as a factor. If a repair is an emergency then the Council would carry out the works as another owner and bill the owners. For routine repairs and maintenance, quotes are sent to owners to indicate if they are willing to pay their share. There is a 28-day period for the tenant to inform Renfrewshire Council of their decision.
- 5.4.4 Generally, there is one vote per unit / dwelling. The voting rights are contained within a properties' title deeds or, where applicable, under the Tenements (Scotland) Act. Where the Tenement Management Scheme applies, a unit could have greater voting rights if their floor space is significantly greater than the smallest unit in the block. A majority agreement in the scheme decision is required for the maintenance or repairs to proceed.
- 5.4.5 Around one third of jobs do not go ahead as there is no majority agreement with tenants. Anecdotally, this is due to maintenance / repair costs and a lack of funds by owners. Around 20-50 owners in mixed tenure properties progress with completing the repair works themselves and invoicing Renfrewshire Council on completion.
- 5.4.6 As part of consultation process, grant assistance up to 50% for Capital Works is available subject to benefits received by tenants. Utility funding (Energy Efficiency) up to 100% can be provided for insulation works with tenant only paying £150.
- 5.4.7 Renfrewshire Council tenants have the right to have some small urgent repairs carried out within a given timescale. This is called the 'Right to Repair' scheme. The

scheme covers certain repairs costing less than £350, known as 'qualifying' repairs. Further details of this are contained at Appendix 4 of this report.

5.5 Benchmarking of other Local Authorities

Benchmarking took place with North Lanarkshire Council in July 2019 who have similar mix of housing stock to Renfrewshire to gain an understanding of their maintenance processes; providing benchmarking standards and to explore examples of best practice.

Question	Response
What is the Consultation process with private, landlords, households, HAs etc for essential repairs/maintenance?	North Lanarkshire carry out all repair/maintenance/capital as another owner in the block. We do not carry out these works as a factor. If a repair is an emergency then we would carry out the works as another owner and bill the owners. For routine repairs and maintenance, a mandate is sent to owners to indicate if they are willing to pay their share.
What is the Voting allowance per unit/dwelling?	In terms of housing each social housing property would have 1 vote.
What is the Disputes Process when a majority decision for repairs has not been reached?	If an agreement is not reached then works do not progress. It is expected that the building element would fall further into disrepair and the council would use its legislative powers e.g. defective buildings or buildings below tolerable standard, to force through the works and recoup the associated costs.
Is there any Financial assistance for householders from Council?	If it is a large repair or a capital programme work, then the owners would get a 50% grant as standard or a 75% grant if the meet qualifying criteria e.g. benefits etc. Owners can also get up to a 5-year payment plan at no interest to pay their share of the costs.
What improvements have been made in recent years to improve the process for North Lanarkshire Council and those in mixed tenure ownership properties.	North Lanarkshire have recently allowed private landlords to have a 2-year payment plan if they own a single property. If the invoice amount is over £3000 landlords can get 3-year payment plan.

Implications of the Report

1. **Financial** – None
2. **HR & Organisational Development** – None
3. **Community Planning** – None
4. **Legal** - None
5. **Property/Assets** – None
6. **Information Technology** - None
7. **Equality & Human Rights** - The recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website
8. **Health & Safety** – All work undertaken is assessed under appropriate Health and Safety legislation.
9. **Procurement** – All procurement legislation is adhered to when items are procured for this project.
10. **Risk** – None
11. **Privacy Impact** – None
12. **Cosla Policy Position** – None
13. **Climate Risk** - none

List of Background Papers

- a) Audit Risk & Scrutiny Board Programme approved 29th May 2019
- b) Tenements (Scotland) Act 2004
- c) Common Repairs and Property Management

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Appendix 1

Date	Action
28 th May 2019	Review Commences
26 th August 2019	Review Continues
23 rd September 2019	Review Continues
4 th November 2019	Review Continues
20 th January 2020	Draft Report to Board
16 th March 2020	Final Report to Board
7 th May 2020	Final Report to Council

Terms of Review

“Both Council tenants and private residents are losing out because all parties can’t agree on regular maintenance and upgrading contacts. Council tenants find their property is left to last whether or not private tenants are involved and have agreed an upgrade of the property. Minor repairs don’t get done because all parties won’t agree the work is necessary or the cost is fair. Because of this disagreement, properties don’t get maintained, become run down, lose value and don’t attract good tenants. This then brings down the whole area. Private tenants believe they are being asked to pay over the odds for maintenance work by Council employees etc.”

The expected outcome of the review is as follows: “Find a way forward by which all parties agree to any maintenance or upgrading work. There will always be the odd resident who won’t agree to the work but they should have to bow to the majority. Perhaps problem properties should be “factored” by a third party. Factors can then use their knowledge base and go to outside contractors for quotes (perhaps something private tenants don’t feel capable of doing themselves). Help should be offered to private tenants where it can be shown that they genuinely do not have the finances to pay for the work”

Owners' responsibilities for common repairs

All homeowners are responsible for repairs and maintenance to their property. However, if you live in a flat, tenement or apartment block, you will also be responsible for helping to maintain and repair common areas of your building.

What are common areas?

When you buy a flat you take on rights and responsibilities for the common structure of the whole building.

These common parts are jointly owned with other owners in the building and may include:

- foundations and outside walls
- chimneys, stacks and vents
- the close and staircase
- bin stores and back courts
- the roof
- gutters, downpipes and drainage system
- door entry system
- common paths

Who is responsible for common repairs?

If common areas of your building need to be repaired, every owner must pay a share of any common charges for works and services.

Your title deeds normally tell you about your rights and responsibilities for your own property and for your shared responsibility for the whole building. They may also detail your proportional share of common costs and your obligations to manage and maintain the building jointly with the other owners. If all of the flats in a building do not have the same conditions set out in their deeds, you should get advice from a solicitor or refer to legislation under the [Tenements \(Scotland\) Act 2004](#).

You may decide that the easiest way to handle maintenance and repairs is to hire a property manager or factor to take care of it for you. However, you may decide to self-manage the building, meaning that you and your co-owners would carry out any management work directly.

Property that is jointly owned with the council

Because of the high level of right-to-buy sales in Renfrewshire, around 80% of the council's flatted housing is now in buildings which are jointly owned with private homeowners. Co-operation and participation from all owners are therefore essential in securing common repairs and improvements in these buildings.

The council will not carry out repairs or improvements without consulting other owners within the building first. However, the Tenements (Scotland) Act 2004 allows us to carry out common repairs if a majority of owners agree to the work. We will also intervene where emergency common repairs are required, particularly where a repair directly affects a council-owned property. Other more general repairs that are reported by owners or tenants in a block will be assessed and prioritised. Please note that some jobs may have to be

deferred due to budget restrictions.

You can download our leaflet, Common Repairs and Property Management, which explains how the council can help where it jointly owns property in a building.

Regrettably, grants for common repairs works are generally no longer available from the council. However, owners may receive grant assistance as part of Council led major investment works carried out in mixed tenure block properties.

Right to Repair

Renfrewshire Council tenants have the right to have some small urgent repairs carried out within a given timescale. This is called the 'Right to Repair' scheme.

The scheme covers certain repairs costing less than £350, known as 'qualifying' repairs. Details of 'qualifying' repairs and their response timescales are listed in the table. The timescales shown are the maximum period in working days from the day after you report a qualifying repair or inspection (excluding weekends and public holidays).

Qualifying Repair	Days to complete
Blocked flue to open fire or boiler	1
Blocked or leaking foul drains, soil stacks, or toilet pans where there is no other toilet in the house	1
Blocked sink, bath or drain	1
Loss of electric power	1
Partial loss of electric power	3
Insecure external window, door or lock	1
Unsafe access path or step	1
Significant leaks or flooding from water or heating pipes, tanks or cisterns	1
Loss or partial loss of gas supply	1
Loss or partial loss of space or water heating where no alternative heating is available	1
Toilet not flushing where there is no other toilet in the house	1
Unsafe power or lighting socket, or electrical fitting	1
Loss of water supply	1
Partial loss of water supply	3
Loose or detached banister or hand rail	3
Unsafe timber flooring or stair treads	3
Mechanical extractor fan in internal kitchen or bathroom not working	7

When you report a repair, we will let you know whether it is the Council's responsibility and whether it is a qualifying repair under the Right to Repair scheme.

If the repair does qualify under the scheme, we will tell you the time allowed to carry out the repair and explain your rights under the Right to Repair scheme, including the process for using an alternative contractor. We will also make arrangements with you to get into your home to carry out the repair.



Working Group on Maintenance of Tenement Scheme Property

Final Recommendations Report



Foreword



Housing affects all of us. After all, we all have to live somewhere.

But it gets precious little attention in the media unless things go wrong.

As someone who used to work in the media I have always thought that's a real shame.

One time when something went wrong was in June 2000.

Christine Foster, an Australian, was working in an Edinburgh city centre pub when masonry fell from the roof, through an awning, and hit her. She died from serious head injuries. She was just 26.

Christine's father, Michael, called on the government to lay down tougher regulations to help ensure safer construction in Scotland.

Very little has happened since to ensure that buildings, such as the one involved in that tragic case, are maintained properly; evidenced by recent figures from the City of Edinburgh Council that indicated over 20 reported incidents of falling masonry every month.

We know from the most recent housing condition survey that 68% of all dwellings have some degree of disrepair. Disrepair to critical elements stood at 50%, while 28% of dwellings had some instance of urgent disrepair, and 5% had some extensive disrepair. These figures have not moved in a year.

Nearly a fifth of all our housing is pre-1919 – that's 467,000 homes – and 68% of those have disrepair to critical elements, and 36% have critical and urgent repair needs.

This is why MSPs of all parties started to discuss the issue of tenement maintenance over a year ago.

We decided to set up a working group of ourselves and experts in the field to come up with proposals for government.

Ben Macpherson MSP was its first convenor, before his promotion to being a government minister, and then I took over the role.

I led a debate in the parliament on this issue last May, and the Housing Minister, Kevin Stewart MSP, agreed that a review should be carried out of relevant existing legislation, and of how tenement housing in Scotland could potentially be better maintained and enhanced.

Our proposals are challenging, but it is vital that government acts on them.

They won't be universally popular, but taking action now is the right thing to do.

Graham Simpson MSP



Commentary from MSPs

Alex Cole-Hamilton MSP

“Housing is of the utmost importance in every constituency. I have been fortunate enough to have experienced living in a variety of property types, including in flats for over sixteen years; but I have also been unfortunate, as have others, in trying to have necessary common repairs carried out. As policymakers, it is our duty to concentrate our minds on building integrity, property repairs, upgrades and the dire need for safety checks. To this day, however, there remains no mechanism by which to ensure the maintenance of tenements is carried out to the appropriate standard. The result of this being that it is left to individuals to sort out the works themselves. This is something I come across in my own constituency, is utterly unjust, and cannot continue.

I am really glad that this whole process has been done on a cross-party basis. The group is encouraging as it can be a stimulus for showing the Scottish Government what can actually be done to deal with Scotland's tenement housing stock. I hope that the Scottish Government will take this opportunity to support our proposals and act swiftly to preserve our built world.”

Daniel Johnson MSP

“Tenements define a large part of the housing landscape in south Edinburgh, as they do across large swathes of the city. I don't think there is any doubt that they form part of the essential character of the city that make it so appealing to residents and tourists alike. That's why the issue of maintenance is so important. Constituents continue to contact me regarding essential repair work that needs to be carried out but which, for any number of reasons, is proving difficult to organise. Those conversations make one thing crystal clear to me. The current situation cannot continue. Simply put, as it stands right now there is no requisite mechanism to organise works to maintain tenements to the necessary standard. Too often it is left to individuals to try and organise works, and sometimes be left severely out of pocket in the process. We need a system that protects the fabric of this city and that works for local residents.

It's why being part of the working group, on a cross-party basis, has been so important. I hope that the work of the group will lead to real and positive change for my constituents and those living in tenements across the city.”

John Mason MSP

“My own constituency of Shettleston in the East End of Glasgow includes many tenements – both of traditional sandstone and of post-war construction. Those under the management of housing associations are generally in good shape and regularly maintained. However, those in private ownership are a real mix. Some are well looked after; but others have no factor and residents cannot agree amongst themselves to get repair work done; still others do have factors, but they are powerless to carry out maintenance in the face of owners' unwillingness or inability to pay. The estate where I myself live consists of 270 flats which won an award when they had a major refurbishment about 1990, but virtually no maintenance has happened since then. Our properties are gradually deteriorating, and the factor seems powerless to do anything. I carried out a survey of the owners, but few seemed to feel there was any problem. Something has to change.

I am delighted that we have been able to carry out this work on a cross-party basis. Any element of compulsion on owners could prove to be unpopular. But somewhere along the line, we need to grasp the nettle.”

Andy Wightman MSP

“Around two-thirds of dwellings in Edinburgh are flatted, and it is inevitable that when I meet constituents our conversations turn to the deteriorating quality of tenement properties. But we used to do things a little better. Until the early 1980s, the council used to inspect tenement property across the city. Regrettably, however, the systems we had to ensure proper refurbishment and maintenance have been lost.

With appropriate care and preservation, tenements that have dominated our urban environments for over a century, should be maintained for many more centuries. They are a fundamental part of our public realm and should be treated as such. Yet, this debate has for too long been framed by private interests that have triggered a decline in the upkeep of our shared property and public infrastructure.

As legislators, we need to review the highly unsatisfactory state of affairs that confronts far too many people on a daily basis. This is a welcome publication and I commend the efforts that the Working Group have made to improve our tenements. It is now up to the Scottish Government to respond to these proposals and support our joint call to preserve our built environment.”

Definitions

Throughout this report are references to “tenements”, and “scheme property”, or words to that effect.

For clarity, the report considers a “tenement” as defined in section 26 of the Tenements (Scotland) Act 2004; namely a building or part of a building which comprises at least two related flats which are, or are designed to be, in separate ownership and are divided from each other horizontally. A tenement can include both commercial and residential properties.

Furthermore, the working group used the definition of “scheme property” in rule 1.2 of the Tenement Management Scheme in schedule 1 to the 2004 Act. Broadly, this means the parts of the building owned in common, such as the close; and other key parts, such as the roof and external walls.

Explanatory note on recommendations

The recommendations are interlinked. While each recommendation has its own benefits, the required transformative change to improve the fabric of Scotland's tenement property can only arise through the implementation of all three.

Whilst Government should introduce policies rewarding “best practice”, the three recommendations will require legislative change which should, ideally, be carried through the parliamentary stages concurrently. It is possible, however, to introduce recommendations around Building Reserve Funds and five yearly inspections prior to the owners' associations; but that approach could weaken the drive for improved maintenance.

The recommendations contained within the report have arisen through cross-party working and extensive stakeholder engagement. They are broad, and the working group specifies where further detailed investigation is required for issues of detail.

Existing support

In addition to the 2004 Act, the group recognises the benefits and contributions to the issue from existing policy, pilot schemes and funding, such as the Equity Loan Scheme; which is currently available in some, but not all, local authority areas.

Furthermore, any council in Scotland is able to use its “missing shares”¹ powers when one or more owners are unwilling or unable to pay; the owner cannot be found; or it is unreasonable to ask an owner to pay for communal maintenance. In these instances, the council pays for the owner's share of the cost of the required maintenance works to the shared communal

areas, and then recovers the expenditure from non-contributing owners subsequently.

The Group are also aware of local pilot schemes – such as the Traditional Buildings Health Check (TBHC), delivered by Stirling City Heritage Trust. BEFS understand the evaluation after five years to be positive and the project is continuing. As such, this Working Group believe the pilot, and other similar schemes, should be rolled out nationally.

Finally, the Working Group recommends the introduction of these recommendations is supported by fiscal initiatives – such as repairs having VAT parity with new build.

The role of grants and loans

Regardless of owners adopting better financial planning for repairs, there are always going to be situations where the cost of repairs is greater than the owner can afford and where there is too little equity in the property to enable loans to be obtained. Where equity is available, there is a role for financial institutions to lend – including the Building Reserve Global Fund. Other solutions requiring public finance will include:

- missing shares
- outright grant
- mortgage to rent.

These cases where repairs are uneconomic will occur both singly, according to owner circumstances, and spatially. There will be whole streets where property values will be too low to make repairs economic. Housing Action Areas for improvement or demolition will be the answer in some areas.

Energy efficiency

It is recognised that one of the most immediate, and effective, ways to improve energy efficiency is to keep a building repaired.

The proposals in this report are designed to support that aim. However, armed with improved organisational capabilities and with repairs under control, owners will be in a better position to consider communal energy efficiency schemes such as external wall insulation and the installation of renewables.

Tenements are physically well suited to such measures which could even work across whole terraces or developments providing benefits of scale. This is also why it is important to find ways for owners' associations to work together on jointly procured projects. Furthermore, this could go some way to assisting the Scottish Government reach its ambitious energy efficiency and climate change targets.

¹Introduced by Section 50 of the Housing (Scotland) Act 2006

Recommendations

1. Building inspections

The “scheme property” of all tenements should be inspected every five years and a report prepared that will be publicly available to existing or prospective owners and tenants, neighbours and policy makers.

This will allow them to see what condition each building is in, how much expenditure is required to bring it up to standard if it is defective, and what needs to be done by way of ongoing maintenance.

Inspections should be undertaken by qualified building professionals; specifically:

- a chartered building surveyor (MRICS – through building surveying pathway), or
 - a qualified architect (member of RIAS or recognised professional body in the UK e.g. RIBA)
- These professionals should be members of their respective bodies and:
- have appropriate training and experience;
 - be regulated by a professional body with appropriate professional indemnity insurance (PII);
 - abide by a code of professional conduct;
 - have a mandatory commitment to Continuous Professional Development (CPD); and
 - have access to redress/ombudsman.

A training or accreditation scheme could be developed for suitably experienced people who are not chartered building surveyors or architects in the future. However, the aforementioned requirements are essential to ensure professional standards and public safety, and should be mandatory.

For ‘A’ listed buildings, the professional should be accredited in accordance with a recognised conservation accreditation scheme through RICS or RIAS.

Inspection procedure and content

Once appointed by the owners’ association, the professional should arrange a pre-site visit to advise on the inspection requirements – such as access to roofs and concealed parts – and to make other necessary arrangements.

The appointed professional should inspect in the tenement in accordance with the relevant British Standard Guide (BS 7913:2013). The roof must be inspected – either physically or with a drone. If energy efficiency and fire safety measures are included as “Scheme Property” in the title deeds, then their inspection would be included in the survey.

In future, there is scope for the inspecting professionals to provide advice on the installation of energy efficiency improvement measures, or fire safety measures that comply with legislation or Government policy.

Maintenance should be managed, professional inspections undertaken, and reports prepared in accordance with BS 7913:2013, Annex B, pp 31-33 “Conservation Manuals, Logbooks and Five-yearly Inspections”.

The form and layout of the Inspection Report should be as set out in BS 7913:2013, with further investigations and works prescribed under the following categories:

1. **Immediate**
2. **Urgent**
3. **Necessary**
4. **Desirable**
5. **No reportable defect.**

As per home report practice, the qualified property professional will share a draft inspection report with the owners’ association for review and discussion. Following agreement, by the owners’ association and the professional, the report will be considered “approved”.

Following approval, all home owners will receive a copy of the report – either hard or electronic copy.

The report will contain the inspection conclusions, provide indicative costings for remedial work and any grants available for such works.

The professional must never recommend specific contractors to undertake recommended or advised works.

Inspection reporting and recording

The report will be a live document, updated on a regular basis by the owners’ association (acting as a log book), and will be held on a national, online register, and publicly accessible without charge.

The Scottish Land Information Service (ScotLIS) should

present all tenement inspection reports. However, further exploration on details of the online register is required.

The content of the tenement inspection report will supplement the information contained within Home Reports, by providing vital intelligence for any prospective purchaser of a tenement unit.

Accordingly, the tenement inspection report should be linked to the Home Report; this will require legislative change and should be subject to further public and professional consultation – particularly on the effect of existing practices and procedure.

The production of an updated inspection report should take place at minimum intervals of five years.

Enforcement

Enforcement of inspection reports could be a complex task given the number of tenements in Scotland.

Production and ‘uploading’ of the tenement inspection report should provide sufficient notification of inspections being carried out.

Furthermore, given the reports will be linked to the home report, anyone wishing to sell their property within a tenement will be unable to do so without a tenement inspection report.

The group, therefore, recommends that after a transitional period, a tenement flat or building cannot be sold or let without the existence of a tenement inspection report.



2. Establishing compulsory owners’ associations

In our Interim Report in January 2019, the group initially recommended that a revised version of the Tenement Management Scheme (TMS (B)) – as described in the Scottish Law Commission Report on the Law of the Tenement (Scott Law Com No 162, 1998) – would provide a suitable model to establish an owners’ association as a corporate body.

On reflection, however, we think that we should have more clearly defined “Owners’ Associations” in that report, as there are considerable differences between what is proposed and associations as they exist now.

The group continues to believe that owners’ associations are an essential element of tenement maintenance by providing

leadership, effective decision-making processes and the ability of groups to enter into contracts.

There are, however, complex policy and technical issues in introducing legislation to set up the owners’ association model, primarily because of the interaction with the property titles i.e. the legal terms under which ownership is held.

There are also Human Rights issues that need to be investigated. The group did not see these as insurmountable difficulties, but recommend that this issue is referred to the Scottish Law Commission for further development because the details in the legislation need to be right.

Current owners’ associations	Enhanced owners’ associations	Impact of proposals
No legal personality ²	Legal personality	Greater protection for owners who might otherwise be held individually responsible for the whole group’s debts. Can enter into contracts as a legal person – at present, a building professional or contractor would contract with each individual owner.
	Annual meeting mechanism	Provisions prevent absent or apathetic owners holding up repairs.
Control exerted on a step by step basis	Control exerted over development of an annual repair plan and budget. Empowered manager with agreed delegation	One set of decision-making makes property management easier, more effective and more efficient. This should result in lower admin costs being paid by owners.
	Manager has power to pursue non-paying owners	Analysis of owners’ stories suggests that fewer than 1 in 10 owners are willing to pursue other owners through the courts with the result that necessary repairs are not tackled, property conditions worsen, and social cohesion within the tenement is adversely affected.

²This excludes the small number of Owners’ Associations that have been established under the Development Management Scheme (DMS), which has been available since 2009, but in practice is only used in new larger developments.

It is therefore suggested that if individual owners’ associations are to be permitted to hold funds, this should be subject to strict safeguards, such as:

- no investment allowed beyond straightforward interest-bearing accounts; and
- these should only be permissible in developments where there is a fully accredited and registered property factor in management with control of the account.

The group agreed that the Building Reserve Fund (BRF) could be used for maintenance – as defined in Schedule 1 of the 2004 Act – including repairs and replacement, the installation of insulation, cleaning, painting and other routine works, gardening, the day to day running of a tenement and the reinstatement of a part (but not most) of the tenement.

Further work is required to establish the central parameters of this fund:

- how withdrawals from the fund are governed;
- how the fund would manage investment in order for it to grow in line with increasing repair costs;
- in what circumstances it could make loans to contributing owners to allow them to proceed with repairs where savings are not sufficient to cover identified repairs; and
- the ability of the fund to offer other member services; for example, block common insurance policies, owner-manager indemnity insurance, and escrow accounts.

Recommendation

Finance professionals should be convened to develop the fund structure and practice. This could include professionals within the banking and finance industries, representatives from Credit Unions, other existing deposit schemes, and housing association finance officers.

BRF contributions

Statutory guidelines should set out the minimum payment each building needs put into a BRF every year. The guidelines should be based on the assessed repair risk for that type of building and extent of common responsibility. There should be a transparent points system based on, for example, the:

- age of the building;
- number of individual units;
- presence of communal facilities (lifts, large areas of landscaping, roads etc); and
- building type.

Most of these factors can be ascertained from Registers of Scotland (RoS) and cross-checked at the first sale by the chartered surveyor carrying out a Home Report.

It is proposed that research should be conducted to assess

the impact of these factors on repair costs and to propose a suitable points system. Further research will also be required to identify what the initial minimum contribution should be and how it should be rated across the points system. It is anticipated that the initial minimum contribution should be set by Scottish Ministers.

Central or local government should have powers to vary the contribution levels to ensure they rise in line with repair costs and to gradually increase contributions both as owners become accustomed to saving, and as funds become more important in valuing properties.

Consultation will be required to determine whether the power to vary contribution levels would be more appropriately held at national or local level.

In all cases, however, owners’ associations should have the ability to make contributions in excess of the statutory figure if the owner’s association wishes to do so.

Interaction between owners’ association and BRF

Individual owner’s contributions to the BRF should be set according to the provisions of the titles or default tenement law in terms of the 2004 Act (TMS) – if these require each owner to pay equal shares for common repairs then each owner will pay an equal contribution to the BRF.

However, the control of the fund will be exerted through the owners’ association, once established, and subject to its decision-making procedure.



Owners’ associations should not have powers to spend outside the communally owned building and grounds. However, the drafting of the legislation should empower owners’ associations to work with others in the locality to be able to carry out, for example, back court improvements within a street block; or to allow a more efficient and effective programme of repairs to, for example, a wider group of buildings.

The working group believe that in instances where an owners’ association cannot be established, or an existing owners’ association fails, compulsory factoring would be the fall-back position.

This could be triggered by owners through, for example, appealing to the First Tier Tribunal (FTT) or by the local authority as enforcement action.

Compulsory factoring will be a more onerous task than standard property management as the manager will be working with a group of owners who cannot work together; there will be no system of delegations and no forward planning.

As such, standard management should certainly cost less than compulsory factoring. This is in itself will be an incentive to owners to work together effectively.

Recommendation

The group recommends that the Scottish Law Commission is asked to consider the introduction of compulsory Owners’ Associations in tenements.

3. Establishment of Building Reserve Funds

The core of the original proposals was that Building Reserve Funds (BRF) should be held in a specially established national or regional level fund, in the form of a social investment fund. Safe Deposits Scotland was used as an example, but a Credit Union structure could equally be suitable.

However, it is accepted that some residents’ associations will already have, or will want to establish and control, their own building maintenance accounts.

Comparing the two, it is felt that a central fund has many advantages over an owners’ association-held fund.

	Central Fund	Owners’ Association-held Fund
BRF could be set up without having an owners’ association	Yes	No
Accountability / governance and control	Good	Harder to prevent fraud and misuse
Protection against owners’ association going defunct	Good	Potential for loss
Central recording of contributions/ transparency	Good	Poor
Ability to invest funds	Relatively safe with professional management. Regulation possible.	
Ability to make loans to owners whose funds are insufficient for required repairs	Possible	
Ability to ensure use for long-term maintenance	Good	
Ability to ensure funds are heritable (transmittable to next and subsequent generations of owners)	Good	

Introduction timetable

It is estimated that a 10 year time scale is required to introduce all the legislation discussed. This takes into account the 4-5 year period where the Scottish Law Commission examine and consult on the owners’ association proposals. However, it is not necessary to wait until this part of the process is complete to introduce legislation covering the other proposals.

Ideally, the proposed central fund to hold the BRF contributions would be in place by the time a DMS is made compulsory for new-build tenements, and therefore also be compulsory for such developments from that time. This would effectively create a pilot phase for wider introduction of BRFs on a phased basis.

The introduction of mandatory inspections may also require phasing in, or adequate lead in time, in order to allow testing

of software or expanding the pool of people qualified to undertake property inspections.

This relatively lengthy period will also allow the property market to come to terms with the impact of the proposals, which will reduce any negative impact of a greater consideration of repair condition in property values. A degree of culture change could also be expected to occur as repair conditions take a much higher prominence in the news and through consultation over proposals.

Given this time period, and critical state of many tenements in Scotland, the group recommends the extension of pilots and schemes to a national level for those exemplifying best practice.

Year	Legislative Activity	Research activity	Policy Development Activity
2019	Report launched and debated in Parliament		
2019			Conference to gather and collate queries to aid investigation into challenges and assist planning
2020		Finance professionals’ investigation into BRF and Social Investment Funds.	Scottish Law Commission instructed to commence investigation on Owners’ Associations in Tenements (4/5 year initiative)
2020			Inspection process and procedures planned
2020	Public Consultation launched on less complex legislative provisions		
2020		Safe Deposit Scotland (or other suitable body) asked to prepare pilot / trial of BRF	
2021	Less complex legislative provisions, including making DMS and BRF compulsory in new buildings		
2021	Pilot launched – voluntary developments to undertake inspections, owners’ association and BRF		
2023-2024	Act written – revisions influenced by information from SLC and Pilot		
2025	Act put to Parliament with phased implementation inclusions		
2026			Questions about establishment of owners’ associations, property inspections and BRFs added to landlord registration documents, and Home Reports etc



Complexity of legislation

The majority of this report’s proposals require legislative action. Some may simply require secondary legislation and could be introduced relatively quickly; whilst other proposals – those which are more straightforward – might be included in related legislation dealing with, for example, planning, finance or energy.

As suggested above, the legislation introducing compulsory owners’ associations is likely to take the longest as the interaction with existing title provisions needs to be carefully investigated.

The following diagram shows the degree of complexity of the proposals made in this and previous papers with the most easily introduced provisions at the top and the most complex at the bottom.

It is important to note that the all of these recommendations can, and do, exist voluntarily. Before any legislation is made, it is possible that owners may wish to pursue actioning these proposals. We would urge the Scottish Government to recognise these actions as “best practice” and provide incentives and reward for groups of owners who take measures to improve their scheme property.

Legislative action

Introduced by secondary legislation

- Amendments to TMS³:
- Add DPCs and dormer windows and to “scheme property”
- Add installation of renewable car charging ports to “maintenance” (as per insulation)
- Redefine "Duty to Maintain" to include safety matters
- Amend definition of “majority” in a vote so that a tied vote is deemed to be in favour of action.
- Remove requirement of maintenance accounts to be interest bearing

Shares by RV and Feu Duty value to be abolished and TMS provisions substituted.

Amend “Missing Shares” legislation within the Housing (Scotland) Act 2006 making a tied vote decision opening up local authority powers.

Register of owners contact details

DMS compulsory in new buildings⁴

Amend Home Reports to include reference to tenement inspections etc

Compulsory tenement inspections

Compulsory BRF

Compulsory owners associations

Most complex legislation

³ With the exception of the removal of the requirement for maintenance accounts to be interest bearing, all the proposed changes to the TMS were discussed in the interim report. We have recently become aware that owner groups are having great difficulty in setting up bank accounts. Partly this is because the legislation requires owner groups to use interest bearing accounts and partly because of money laundering regulations.

⁴ As the DMS has already been legislated for, it would be relatively simple to make it compulsory for specified new buildings, although clearly this would require consultation.

Further research and actions

This report recommends further action and research is undertaken on various aspects of the proposal. These include:

- Scottish Law Commission to research into Tenement Management Schemes.
- Use of ScotLIS as the holder of all tenement inspection reports.
- Connection between the Home Report and Tenement Inspection Report.
- Inclusion of advice on the installation of energy efficiency and fire safety measures in the Tenement Inspection Report.
- Research should be conducted into the establishment and parameters of BRFs, and an assessment of the impact of the proposed points system.
- Further research into required to identify what the initial minimum BRF contribution should be, how it should be rated across the points system, and whether local authorities should have powers to vary local contributions.
- Government should recognise "best practice" and provide incentives and reward for groups of owners who take measures to improve their scheme property.

Explanatory note and further information

This report provides an overview of the final recommendations agreed by the Working Group.

The Working Group's Interim Report, further views and information on the legislative amendments, and how the recommendations were reached can be found at:

www.befs.org.uk/policy-topics/buildings-maintenance-2/

Tenements are the most common house type in all occupation



Tenements account for 584,000 properties in Scotland – equating to **24%** of Scotland's total housing stock



Pre-1919 tenements account for **7%** of Scotland's total housing stock – the fourth most common property [of all types and ages]



29% of tenements were built pre-1919 (equating to 7% of all housing stock in Scotland)



68% of all pre-1919 dwellings have Critical Disrepair [Scottish Average: 50%]



36% of all pre-1919 dwellings have Critical and Urgent disrepair [Scottish Average: 24%]



5% of all pre-1919 dwellings have Critical, Urgent & Extensive disrepair [Scottish Average: 2%]



Paying for common repairs or maintenance causes most disputes in tenements



Key dates

November 2017: Graham Simpson MSP hosted a parliamentary reception regarding RICS tenement health check.

January 2018: the Scottish Parliament debated Ben Macpherson MSP's motion on Maintenance of Tenement Communal Property, which included the proposal for a cross party working group on the subject.

March 2018: Inaugural meeting of the Scottish Parliamentary Working Group on Tenement Maintenance, with Convenor and Vice-Convenors appointed.

May 2018: the issue of tenement maintenance was progressed in a Scottish Parliament debate on a motion on the inadequacy of existing legislation in dealing with the condition of Scotland's tenement housing stock and a vote in favour of a review of the relevant legislation.

August 2018: Scottish Federation of Housing Associations organised a visit to the offices of Dunedin Canmore for members of the working group. This included a short tour of tenements undergoing repairs in Edinburgh and learning about the challenges housing associations face in handling maintenance in tenements where they are not the majority owner.

January 2019: Interim report of the Scottish Parliamentary Working Group on Tenement Maintenance published.

January 2019: March 2019: Stakeholder and Public Consultation on interim report recommendations.

June 2019: Full recommendations report published.

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Daniel Johnson MSP, Vice Convener
Andy Wightman MSP, Vice Convener
Stuart McMillan MSP
Maureen Watt MSP
Jeremy Balfour MSP
Gordon Lindhurst MSP
John Mason MSP
Stuart McMillan MSP

Individuals and organisations

BEFS, Secretariat
RICS, Secretariat
Scottish Federation of Housing Associations
Glasgow and West of Scotland Forum of Housing Associations
Property Managers Association Scotland
Tenement Action Group
RIAS
Scottish Association of Landlords
Citizens Advice Scotland
City of Edinburgh Council
Existing Homes Alliance
Professor Douglas Robertson
Dr Andrew Steven
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Confidence through professional standards

RICS promotes and enforces the highest professional qualifications and standards in the valuation, development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to markets and effecting positive change in the built and natural environments.

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