

HOUSING (SCOTLAND) ACT 2001

EXPLANATORY NOTES

BACKGROUND AND OVERVIEW

Part 3 – Regulation of Social Landlords

Chapter 1 – Registered Social Landlords

Section 57: The register of social landlords

97. This section places a duty on the Scottish Ministers to maintain an accessible register of social landlords. It also arranges for the transition from the current register of housing associations maintained by Scottish Homes to the new register. The new register will include all those bodies who are currently on the Scottish Homes register, whether they are registered by statute or under contract. The section also provides that Ministers must notify the bodies concerned at least one month before the change in registration arrangements occurs.

Section 58: Eligibility for registration

98. This section sets out the basic criteria for registration as a social landlord. A body is eligible if it is either an industrial and provident society or a registered company. In either case the body must have its registered office in Scotland. The body must not trade for profit, and must have housing as one of its objects, although it may be engaged in other activities as provided for in this section. The Scottish Ministers have the power to amend the permissible additional purposes, objects and powers by order, but any such changes will only affect bodies registered subsequently.

Section 59: Registration

99. This section gives the Scottish Ministers the power to register as a social landlord any body which is eligible and to determine the way in which such application must be made. Ministers can charge for registration. Ministers must also inform the Financial Services Authority when an industrial and provident society is registered with them.

Section 60: Removal from the register

100. This section sets out the circumstances in which the Scottish Ministers may remove a body which is on the register of social landlords, and the process for so doing. The criteria for removal are that the body is no longer eligible for registration, has ceased to exist or does not operate, or otherwise meets the criteria for removal from the register established by Ministers under section 61. Ministers must give the body at least 14 days notice before removing it from the register.

Section 61: Criteria for registration or removal from register

101. This section places a duty on the Scottish Ministers to establish and publish criteria for registration as a social landlord or for removal from the register. Ministers must have regard to these criteria when deciding whether or not to register or de-register

a body, and before establishing or varying any criteria they must consult bodies representing registered social landlords and bodies representing tenants of registered social landlords.

Section 62: Appeal against decision on registration or removal

102. This section provides an appeal mechanism for bodies who are aggrieved by a decision of the Scottish Ministers not to register it as a social landlord or to remove it or not remove it from the register. The appeal is to the Court of Session, and where the appeal is against the decision relating to the removal of a body from the register Ministers must not remove the body from the register until the appeals process is complete. Ministers must also give notice to the Financial Services Authority of any appeal against a decision relating to the removal of a body which is an industrial and provident society from the register.

Section 63: Regulation of registered social landlords

103. This section introduces *schedule 7*, which makes detailed provision about the regulation of registered social landlords. The schedule is largely a restatement and updating of the provisions of the Housing Associations Act 1985 (most of which is repealed by *paragraph 11 of*

104. *schedule 10*). *Parts 1 and 2 of schedule 7* include provisions which cover:

- the control of payments by a registered social landlord to members, officers and employees of the landlord;
- the constitution of registered social landlords, and changes to the rules of the registered social landlord;
- powers to remove members of the governing body or to appoint new members to the governing body;
- the amalgamation, dissolution, rearrangement or reconstruction of the registered social landlord; and,
- powers to deal with circumstances where a registered social landlord is being wound up or dissolved.

105. *Part 3 of schedule 7* allows the Scottish Ministers to lay down requirements as to accounts and audit arrangements for a registered social landlord. *Part 4* gives powers to Ministers to undertake an inquiry into the affairs of a registered social landlord and to take action following an inquiry or audit. Those powers include the power to direct the transfer of part or all of the land of a registered social landlord where Ministers are satisfied that there has been misconduct or mismanagement or where the management of its land would otherwise be improved.

Section 64: Insolvency etc

106. This section introduces *schedule 8*, which makes provision about the insolvency of registered social landlords. These provisions effectively replicate the insolvency provisions currently in place in England and Wales. The key difference is the extension of the moratorium period from 28 to 56 days.

Sections 65 to 68: Disposal of land and related matters

107. These sections together set out the provisions governing registered social landlords who wish to dispose of land (including houses). “Disposal” is defined in section 66(6).

Section 65: Power of registered social landlord to dispose of land

108. This section provides the basic power for a registered social landlord to dispose of land held by it, subject to sections 66 to 68 and 76 and schedules 7 and 9, and without prejudice to tenants' right to buy.

Section 66: Consent required for disposal of land by registered social landlord

109. This section requires the consent of the Scottish Ministers for any disposal of land by a registered social landlord. Consent may be given generally or in particular circumstances. Before giving their consent, Ministers must have regard to the views expressed by those consulted – section 68 and schedule 9 set out the circumstances in which consultation is to take place.

Section 67: Disposals not requiring consent

110. This section specifies those disposals which do not require the consent of the Scottish Ministers – principally the granting of a tenancy or the sale of a property under the right to buy. It includes a power for Ministers to specify further disposals which do not require their consent.

Section 68: Disposals of land: consultation with tenants

111. This section requires a registered social landlord to consult its tenants before making a disposal. There are exemptions from this requirement for certain categories of disposals: disposals which do not require consent under section 66 (these are defined in section 67); disposals covered by the alternative consultation arrangements in [schedule 9](#); and disposals of an interest by way of security for a loan.

Section 69: Inspections

112. This section gives the Scottish Ministers powers to carry out an inspection of the management of the affairs of a registered social landlord in relation to the provision of housing accommodation and related services. (The scope of this term is set out in section 83.) An inspector has right of access at reasonable times to the premises of the registered social landlord and to any relevant document, and the landlord must ensure that the inspector is given all information, explanation or other facility which the inspector may reasonably require for the purposes of the inspection. It is a criminal offence not to comply with the requirement of an inspector without a reasonable excuse. This section mirrors the provisions of section 72, which applies to inspections of local authorities' housing functions.

Section 70: Inspection reports

113. This section requires the Scottish Ministers to issue and publish a report of any inspection carried out under section 69, and to send a copy of it to the registered social landlord and any registered tenant organisation. The report must identify any ways in which the landlord's activities were found to be unsatisfactory. This section mirrors the provisions of section 73, which apply to reports on local authorities' housing functions.

Section 71: Appointment of manager

114. This section allows the Scottish Ministers to appoint a special manager to a registered social landlord. They can either appoint a manager themselves or can require the landlord to appoint a manager. Ministers can make such an appointment to ensure that the management of the affairs by a registered social landlord is of an appropriate standard either generally or in relation to a particular matter, and they may specify which of the affairs of the landlord the manager is to manage. *Subsection (2)* allows Ministers to determine the period and terms and conditions for the appointment of the

manager. The manager will have general powers to do what is necessary to fulfil their functions, and may also be given specific powers by Ministers.

Chapter 2 – Local Authority Housing Management

Section 72: Inspections

115. This section provides powers for the Scottish Ministers to carry out an inspection of the exercise of the functions of a local authority in relation to the management of housing accommodation and the provision of related services. The provisions of this section mirror the provisions of section 69, which applies to inspections of registered social landlords' housing activities.

Section 73: Inspection reports

116. This section requires the Scottish Ministers to issue and publish a report of an inspection carried out under section 72 and send a copy to the local authority and to any registered tenant organisation. The provisions mirror the provisions of section 70, which applies to reports on registered social landlords' housing activities.

Section 74: Remedial plans

117. This section allows the Scottish Ministers to require a local authority to prepare and submit to them a remedial plan setting out the authority's proposals for dealing with matters which have been found to be unsatisfactory in an inspection report. Before requiring a local authority to submit a remedial plan, Ministers must send a draft requirement to the authority, specifying a period within which the authority may make comments to Ministers on the proposed requirement. Ministers must have regard to those comments before imposing any requirement on the local authority to produce a remedial plan. When a local authority has submitted a remedial plan, Ministers may approve it, reject it or approve it with modifications. They may also approve it and impose conditions as to its adoption and implementation by the authority. If a plan is approved by Ministers the authority must adopt and implement it in accordance with any conditions imposed. When a plan is rejected, the authority must prepare a revised plan and submit it to Ministers.

Section 75: Remedial plans: appointment of manager

118. This section empowers the Scottish Ministers to carry out an inspection of the implementation of a remedial plan, imposed under the previous section, by a local authority. Where, as a result of such an inspection, Ministers consider that the remedial plan is not being implemented satisfactorily, they may appoint a manager to exercise such functions of the authority as they specify. Such functions must be in relation to the management of housing accommodation and the provision of related services. Such a manager must not be appointed before consultation with the local authority, representative bodies of local authorities, and the Accounts Commission for Scotland, and Ministers must have regard to any comments received from those bodies before making an appointment of a manager. A manager is to be appointed on such terms and conditions and for such period as Ministers may determine. The manager has general powers necessary to carry out the functions imposed on them, and also has such specific powers as Ministers may specify.

Chapter 3 – Common Provisions

Section 76: Disposals of tenanted houses: consultation and consent

119. This section, together with *schedule 9*, sets out the duties of local authorities, registered social landlords and the Scottish Ministers in relation to consultation of tenants before a disposal which would result in a change of landlord. It includes a requirement to carry

out a ballot of affected tenants before their houses are transferred into new ownership, and a duty on Ministers not to give their consent to such a transfer unless they are satisfied that a majority of those expressing a view in the ballot wish the disposal to proceed.

120. *Subsection (2)* provides that no tenanted property of a local authority or registered social landlord should be transferred to any landlord other than a registered social landlord, unless Ministers are satisfied that transfer to a registered social landlord is not appropriate.

Section 77: Power to obtain information

121. This section and section 78 make provision for the Scottish Ministers to have access to the information held by a registered social landlord or a local authority in connection with the management of housing accommodation and the provision of related services. Ministers can serve a notice on a person requiring the person to provide them or a person authorised by them with such information or documents as they may specify. *Subsections (3) to (6)* specify the persons on which a notice may be served: in general, no notice is to be served on an officer, member, employee or agent of the local authority or landlord unless a notice has previously been served on the local authority or landlord and has not been complied with or the information or documents are not believed to be in the possession of the local authority or landlord.

Section 78: Power to obtain information: further provision

122. This section contains supplementary provisions in relation to the power of the Scottish Ministers to obtain information under section 77. It includes provisions relating to the disclosure of confidential information. It provides technical clarification of what is meant by a document and producing it, and entitles a person receiving documents under section 77 to copy or make extracts of them. This section also makes it a criminal offence to fail to do anything necessary to provide information under section 77, or to alter, suppress or destroy a document which a person may have been required to produce.

Section 79: Issue of guidance by the Scottish Ministers

123. This section gives the Scottish Ministers the power to issue guidance with respect to the management of housing accommodation and related services by local authorities and registered social landlords. *Subsection (2)* lists particular matters which guidance may cover. Before issuing any guidance, or revised guidance, Ministers must consult such persons as they think fit. *Subsection (7)* provides that any guidance issued under this section, under Part 1 of the Act or under section 37 of the Housing (Scotland) Act 1987 (homelessness), is relevant in determining whether or not there has been mismanagement by a local authority or a registered social landlord, or whether action needs to be taken to ensure a proper level of management.

Section 80: Code of good practice

124. This section places a duty on the Scottish Ministers to publish a code of practice at least once every 5 years on the operation of regulation under this Part of the Act.

Section 81: Charges for regulatory functions of the Scottish Ministers

125. This section allows the Scottish Ministers to charge a local authority or registered social landlord an amount in respect of their expenses in exercising their regulatory functions in connection with the provision of housing accommodation and related services by the authority or landlord. Ministers are required to consult the authority or landlord before charging them.

*These notes relate to the Housing (Scotland) Act 2001 (asp 10)
which received Royal Assent on 18 July 2001*

Chapter 4 – Interpretation of Part 3

Section 82: Meaning of “subsidiary” and “associate”

126. This section defines terms which occur in this Part of the Act in relation to the provisions concerning the power to obtain information from registered social landlords.

Section 83: Interpretation of Part 3

127. This section clarifies the meaning of certain terms which occur in this Part of the Act.