

HOUSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

STRUCTURE OF THE ACT

Part 4 – Inquiries and Information

51. [Part 4](#) provides the regulator with powers to carry out inquiries and obtain information from social landlords.

Inquiries

52. [Sections 42 to 46](#) replace the inspection powers in sections 69, 70, 72 and 73, and paragraphs 16 to 18 of Schedule 7, in the Housing (Scotland) Act 2001 with more flexible powers of inquiry, consistent with the principles of a proportionate and risk-based approach to regulation.
53. [Section 42\(1\)](#) allows the regulator to make inquiries into bodies connected with a social landlord, such as subsidiaries or associates, as well as the social landlord itself. Subsection (2) allows the regulator to determine the purpose and timing of inquiries. For example, it may decide to carry out an inquiry unannounced or at short notice, or an inquiry into a group of landlords, a specific theme or specific geographical area.
54. Inquiries can relate to a social landlord’s housing activities (which are defined in the Interpretation section, 165). The regulator may also make inquiries into registered social landlords’ financial or other affairs ([section 42\(3\)\(b\)](#)). An inquiry can be carried out by the regulator’s own staff, or the regulator may appoint someone else (an “inquirer”) to carry it out.
55. [Section 43](#) gives the regulator right of access at reasonable times to a social landlord’s premises and to any relevant information, including documents stored electronically. The landlord (and anyone on the landlord’s premises) must ensure the regulator is given any facilities or assistance it may reasonably request for its inquiries. The regulator has the power to obtain, copy or take away any relevant information held by a social landlord. This section also makes it a criminal offence to fail to assist, or in any way obstruct, the regulator in carrying out its inquiries.
56. [Section 44](#) allows the regulator to arrange for a social landlord’s housing to be surveyed if it suspects the landlord is failing, or at risk of failing, to achieve an outcome in the Social Housing Charter, meet a performance, financial management or governance target or implement a performance improvement plan. Subsection (9) makes it a criminal offence to obstruct a survey. It is also an offence for a landlord to fail to give at least seven days’ notice of the survey to residents in the houses due to be surveyed.
57. [Section 45](#) allows the regulator to have an “exceptional” audit carried out as part of its inquiries into a registered social landlord’s affairs. Under this section a qualified auditor may be appointed by the regulator to audit the RSL’s accounts and balance sheet and report back to the regulator on any specified matters. This is separate from, and does not affect, the audit requirements contained in either Part 6 of this Act or any other legislation.

58. **Section 46** gives the regulator the power to publish a report of any inquiries it makes, but it is not obliged to publish a report on every inquiry. It must, however, publish and bring to the attention of interested parties a statement setting out the types of inquiries on which it will publish reports. Whenever it prepares an inquiry report the regulator must send a copy to the social landlord concerned. Where it publishes an inquiry report, it must send a copy to every registered tenants' organisation associated with that landlord.

Information

59. **Section 47** requires the regulator to provide a means for tenants to bring to its attention significant performance failures by social landlords. The regulator must publish a statement explaining what is meant by "significant performance failures" and the arrangements it will make for dealing with them.
60. **Section 48** gives the regulator the power, when making inquiries or for any other purpose related to its regulatory functions, to obtain any information it needs about a social landlord or a connected body. A request for information can be made to any person. However, subsection (3) provides that the regulator's initial request must be directed to the social landlord or the connected body. It can only be directed elsewhere if the landlord or connected body fails, or is unable, to provide the information required. It is a criminal offence under section 49 to fail without reasonable excuse to provide (or knowingly or recklessly provide false or misleading) information. It is also a criminal offence to alter, suppress or destroy information required under section 48.
61. **Section 50** requires the regulator to issue guidance for landlords on how they should involve people who are or who may become homeless, tenants or other service users (or their representatives) in preparing information which the regulator has requested the social landlord provide. Subsection (2) allows the regulator to require a social landlord to provide information on how it has involved such persons (or their representatives) in providing the information to which the guidance relates. Guidance may be given generally or for particular purposes. Subsections (4) and (5) specify those people the regulator must consult before issuing or revising the guidance, and require the regulator to bring the guidance to the attention of affected social landlords.
62. **Section 51** places a duty on the regulator to issue a code of practice on inquiries, setting out how it will make inquiries and perform functions under Part 4 of the Act. There is a similar duty on the regulator in section 54 covering regulatory intervention under Part 5.