



# Housing (Scotland) Act 2010

## 2010 asp 17

### PART 17

#### SUPPLEMENTARY AND FINAL PROVISIONS

VALID FROM 01/04/2012

#### **159 Offences by bodies corporate etc.**

(1) Where—

- (a) an offence under this Act has been committed by—
  - (i) a social landlord, or
  - (ii) a body corporate, or a Scottish partnership or other unincorporated association, other than a social landlord, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual, or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

that individual as well as the offender is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

- (a) in relation to a registered social landlord, an officer of the registered social landlord,
- (b) in relation to a local authority, an officer or member of the local authority,
- (c) in relation to a body corporate other than a local authority or registered social landlord—
  - (i) a director, manager, secretary or other similar officer of the body,
  - (ii) where the affairs of the body are managed by its members, the members,
- (d) in relation to a Scottish partnership, a partner, and

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- (e) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

VALID FROM 01/04/2012

## **160 Formal communications**

- (1) A “formal communication” means—
- (a) any approval, application, certificate, consent, direction, notice, offer to sell, requirement or submission, or
  - (b) any copy of such a thing,
- which is made, served or given under or for the purposes of this Act.
- (2) A formal communication must be in writing.
- (3) A formal communication is made, served or given if it is—
- (a) hand delivered to the person concerned,
  - (b) sent, by first class post or by using a registered or recorded delivery postal service, in an envelope or package addressed—
    - (i) where sent to the Regulator, to the “Scottish Housing Regulator” at the Regulator's principal office,
    - (ii) where sent to a registered social landlord, to the landlord at the address set out in the register,
    - (iii) where sent to a local authority, to the local authority at its principal office,
    - (iv) where sent to a body other than a registered social landlord or local authority, to the body at its registered or principal office,
    - (v) where sent to an individual, to the individual at the individual's principal place of business or usual or last known abode,
    - (vi) in any case, to the person concerned at a postal address designated for the purpose by that person (such designation to be made by giving notice to the person making, serving or giving the formal communication), or
  - (c) sent to the person concerned in some other way (including by email, fax or other electronic means) which the sender reasonably considers likely to cause it to be delivered on the same or next day.
- (4) A formal communication which is sent by email, fax or other electronic means is to be treated as being in writing only if it is legible and capable of being used for subsequent reference.
- (5) A formal communication is, unless the contrary is proved, to be treated as having been made, served or given—
- (a) where hand delivered, on the day of delivery,
  - (b) where posted, on the day on which it would be delivered in the ordinary course of post, or
  - (c) where sent in a way described in subsection (3)(c), on the day after it is sent.
- (6) This section does not apply in relation to—

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- (a) an application, direction, notice or other thing which is made, served or given for the purposes of legal proceedings, or
- (b) an approval by the Scottish Parliament.

## 161 Orders

(1) Any power of Ministers under this Act to make orders is exercisable by statutory instrument.

(2) Any such power includes power to make—

- (a) in the case of an order made under section 166(2) (commencement orders), such transitional, transitory or saving provision as Ministers consider appropriate,
- (b) in the case of any other order, such supplementary, incidental, consequential, transitional, transitory or saving provision as Ministers consider appropriate,
- (c) different provision for different purposes.

(3) A statutory instrument containing an order is subject to annulment in pursuance of a resolution of the Scottish Parliament. This subsection does not apply—

- (a) to orders made under section 166(2) (commencement orders), or
- (b) where subsection (4) makes contrary provision.

(4) An order—

- (a) under section 24(3)(b), or
- (b) under section 163(1)(a) which adds to, replaces or omits any text in this or any other Act,

may be made only if a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

VALID FROM 01/03/2011

## 162 Minor and consequential amendments and repeals

Schedule 2 sets out minor amendments and amendments and repeals consequential on the provisions of this Act.

## 163 Ancillary provision

(1) Ministers may by order make any—

- (a) supplementary provision, or
- (b) incidental, consequential, transitional, transitory or saving provision,

which they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision of this Act.

(2) Such an order may modify any enactment, instrument or document.

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## 164 Connected bodies

A body is connected to a social landlord if—

- (a) the social landlord can (directly or through nominees) secure that the body's affairs are conducted in accordance with the social landlord's wishes,
- (b) the body can (directly or through nominees) secure that the social landlord's affairs are conducted in accordance with the body's wishes,
- (c) the body is the social landlord's subsidiary,
- (d) the social landlord is the body's subsidiary, or
- (e) the body is the subsidiary of a body of which the social landlord is a subsidiary.

“subsidiary” has the same meaning in this section as in the Companies Act 2006 (c.46) or, as the case may be, the Co-operative and Community Benefit Societies and Credit Unions Act 1968 (c.55).

## 165 Interpretation

In this Act, except where the contrary intention appears—

“approved person” means a person approved under section 126,

“asset” includes property, rights and interests,

“assured agricultural occupancy” has the same meaning as in Part 1 of the Housing Act 1988 (c.50),

“assured tenancy” has the same meaning as in Part 2 of the Housing (Scotland) Act 1988 (c.43),

“body” includes a body of persons corporate or unincorporated and a partnership constituted under the law of Scotland,

“charity” means a body entered in the Scottish Charity Register,

“connected body”, and similar expressions, have the meaning given by section 164,

“constitution”—

- (a) in relation to a registered company, means its articles of association,
- (b) in relation to a registered society, means its rules,
- (c) in relation to a body of any other status, means the instrument which establishes it and states its purposes,

“disposal”, in relation to property, means any disposal of the property or any interest in it and, in particular, includes—

- (a) a sale or lease of the property or any interest in it,
- (b) granting security over the property or any interest in it, and
- (c) granting an option or otherwise entering into a contract for disposal,

“eligible house” has the meaning given by section 127(1),

“enforcement notice” has the meaning given by section 56,

“equal opportunities” has the same meaning as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46),

“financial management or governance target” has the meaning given by section 37,

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“house” includes—

- (a) any part of a building occupied or intended to be occupied as a separate dwelling, and in particular includes a flat, and
- (b) any yard, garden, garage, outhouse and pertinent belonging to the house or usually enjoyed with it,

“housing accommodation” includes flats, lodging-houses and hostels,

“housing activities” means any activities undertaken by a social landlord in relation to housing services which are or may be provided by it,

“housing services” means providing housing accommodation and related services and includes anything done, or required to be done, in relation to—

- (a) the prevention and alleviation of homelessness,
- (b) the management of housing accommodation,
- (c) the provision of services for owners and occupiers of houses,
- (d) the provision and management of sites for gypsies and travellers, whatever their race or origin,

“inquiries” means inquiries under section 42,

“landlord” means any person who lets a house under a tenancy, and includes the landlord's successors in title,

“Lands Tribunal” means the Lands Tribunal for Scotland,

“legislative registration criteria” has the meaning given by section 24,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39) and references to a local authority area are to be construed accordingly,

“local authority landlord” means a landlord which is a local authority, a joint board or joint committee of 2 or more local authorities, or the common good of a local authority, or any trust controlled by a local authority,

“Ministers” means the Scottish Ministers,

“offer to sell” has the meaning given by section 129,

“officer”—

- (a) in relation to a registered social landlord which is a registered company, has the meaning given by section 1173 of the Companies Act 2006 (c.46),
- (b) in relation to a registered social landlord which is a registered society, has the meaning given by section 74 of that Act,
- (c) in relation to a registered social landlord of any other status, means any person concerned in the management or control of the registered social landlord,

“owner”, in relation to any property, means a person who has right to the property whether or not that person has completed title,

“performance improvement plan” has the meaning given by section 55,

“performance improvement target” has the meaning given by section 34,

“personal indemnity insurance” has the meaning given by section 65(3),

“qualifying tenant” has the meaning given by section 127(2),

“register” has the meaning given by section 20(1),

“registered company” means a company for the purposes of the Companies Act 2006 (c.46),

“registered social landlord” means a body registered in the register,

“registered society” means a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12),

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- “registered tenant organisation” has the meaning given by section 53(6) of the Housing (Scotland) Act 2001 (asp 10),
- “registration criteria” has the meaning given by section 23,
- “the Regulator” means the Scottish Housing Regulator established by section 1,
- “regulatory intervention” is to be construed in accordance with section 52,
- “regulatory registration criteria” has the meaning given by section 25,
- “relevant regulators” has the meaning given by section 18(2),
- “responsible individual” has the meaning given by section 63,
- “revision” includes addition and replacement,
- “tenancy” means an agreement under which a house is made available for human habitation, and “lease” and other related expressions are to be construed accordingly,
- “tenant” means a person who leases a house from a landlord and whose right in the house derives directly from the landlord, and in the case of a joint tenancy means all the tenants,
- “Scottish secure tenancy” has the same meaning as in the Housing (Scotland) Act 2001 (asp 10),
- “Scottish Social Housing Charter” has the meaning given by section 31,
- “secured creditor” in relation to a registered social landlord, means a creditor who holds a security over assets,
- “security” means any security or charge (including a floating charge),
- “short Scottish secure tenancy” has the same meaning as in the Housing (Scotland) Act 2001 (asp 10),
- “social landlord” means a registered social landlord, local authority landlord or a local authority which provides housing services,
- “undischarged bankrupt” means an individual—
- (a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),
  - (b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it),
  - (c) who is the subject of—
    - (i) a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 (c.66) or the Insolvency Act 1986 (c.45), or
    - (ii) a bankruptcy restrictions undertaking entered into under either of those Acts, or
  - (d) who has been adjudged bankrupt (and has not been discharged), or is subject to any other kind of order, arrangement or undertaking analogous to those described above, anywhere in the world.

## 166 Commencement

- (1) The following provisions come into force on Royal Assent—
- section 161
  - section 163
  - section 165
  - this section
  - section 167

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- (2) Ministers may by order appoint the day on which each other provision comes into force.

**167 Short title**

This Act is called the Housing (Scotland) Act 2010.

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