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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 117**

**HOUSING**

**The Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004**

<i>Made</i>	- - - -	<i>10th March 2004</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>11th March 2004</i>
<i>Coming into force</i>	- -	<i>1st April 2004</i>

The Scottish Ministers in exercise of the powers conferred by section 93(2) and section 109(2) of the Housing (Scotland) Act 2001(1), and of all other powers enabling them in that behalf, and after consultation with such bodies representing local authorities and registered social landlords and such other persons as they think fit in accordance with section 93(4) of that Act, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004 and shall come into force on 1st April 2004.

**Interpretation and application**

2.—(1) In these Regulations—

“the Act” means the Housing (Scotland) Act 2001;

“actual cashflow” means the cashflow approved by a local authority after completion of a project;

“appraisal” means, in relation to any grant, a process that enables a local authority to determine on the basis of all information available to that authority, whether contained in a document or otherwise, whether grant may be provided and the amount of any such grant;

“approved cashflow” means the projected cashflow approved by a local authority before commencement of a project;

“approved documents” means all specifications, designs, bills of quantity, plans, forms of building contract, professional appointments and tender reports submitted to and approved by a local authority in respect of a project;

“bank guarantee” means a bank guarantee provided by a commercial bank as security for a grant, the terms of which have been approved by a local authority;

“business” means any person or body that carries out a commercial activity;

“chartered surveyor” means a surveyor registered with the Royal Institution of Chartered Surveyors;

“client group” means a category of individual which a local authority agrees is eligible to purchase or rent a unit in respect of which grant is paid;

“GPSE” has the meaning given by paragraph 1 of Schedule 4 to these Regulations;

“grant” means a grant included in the categories of grant assistance specified in regulation 3;

“grant applicant” means a person who has applied for a grant but who has not had that application for grant approved by a local authority;

“grant recipient” means a person who has received a grant or has had a grant application approved by a local authority;

“GRO for owner occupation” has the meaning given by paragraph 1 of Schedule 2 to these Regulations;

“HAG” has the meaning given by paragraph 1 of Schedule 1 to these Regulations;

“housing trust” has the same meaning as in section 2 of the Housing Associations Act 1985(2);

“housing association” has the same meaning as in section 1 of the Housing Associations Act 1985;

“individual with particular needs” means an individual who requires housing designed to meet that individual’s specific requirements as a result of mental illness, mental disability or physical disability;

“licence agreement” means a licence agreement to allow a grant recipient to occupy and develop the subjects;

“local housing strategy” has the same meaning as in section 89 of the Act;

“market value” means the value of a unit as determined by a chartered surveyor as if that unit was available for sale on the open market with vacant possession;

“non registered housing association” means a housing association that is not an RSL;

“offer of grant” means an offer of grant made by a local authority to a grant recipient;

“performance bond” means a performance bond which is provided by a commercial insurance company as security for a grant, the terms of which have been approved by a local authority;

“permitted security” means a standard security, whenever granted, the terms of which have been approved by a local authority (and such approval shall be deemed to have been given in any case where it has been withheld unreasonably);

“private developer” means any person operating a business that develops property with a view to making profit, but does not include any public or local authority or an RSL;

“progress report” means the progress report and application for payment of grant submitted to a local authority in the form to be specified by that local authority at intervals specified by that local authority;

“project” means any project within the meaning of any of the Schedules to these Regulations;

“retail prices index” means the General Index of Retail Prices (all items) issued by the Office of National Statistics or any successor Ministry or Department;

“RHOG” has the meaning given by paragraph 1 of Schedule 3 to these Regulations;

“RSL” means a registered social landlord in terms of section 57 of the Act;

“shared ownership” has the same meaning as in section 83(3) of the Act;

“subjects” means any land or buildings that are provided, improved, adapted and repaired, developed and redeveloped, or acquired or constructed with grant assistance;

“term of the grant” means the term of the grant within the meaning of each of the Schedules to these Regulations;

“unit” means an individual flat or house that is provided by a project;

“voluntary organisation” means a body whose activities are not carried on for profit, but does not include any public or local authority, RSL, housing trust or non registered housing association; and

“in writing” includes reference to an electronic communication, as defined in the Electronic Communications Act 2000(3), which has been recorded and is consequently capable of being reproduced.

(2) Any reference in these Regulations to a numbered regulation or Schedule shall, unless the context otherwise requires, be construed as a reference to the regulation or Schedule bearing that number in these Regulations and any reference in a regulation of, or a Schedule to, these Regulations to a numbered paragraph is to a paragraph bearing that number in that regulation or Schedule, as the case may be.

(3) These Regulations shall only apply in the case of financial assistance provided out of grants paid to the local authority by the Scottish Ministers but shall not apply where the relevant offer (as accepted) of grant by the Scottish Ministers so indicates.

### **Categories of grant assistance**

3. These Regulations apply to the following categories of grant assistance provided by a local authority:—

- (a) HAG, to which the provisions of Schedule 1 apply;
- (b) GRO for owner occupation, to which the provisions of Schedule 2 apply;
- (c) RHOG, to which the provisions of Schedule 3 apply; and
- (d) GPSE, to which the provisions of Schedule 4 apply.

### **Provisions applying to each category of grant assistance**

4. Schedules 1 to 4 to these Regulations have effect for the purposes of the grants to which they apply as follows—

- (a) Part 1 provides the purposes for which local authorities may provide grant assistance;
- (b) Part 2 provides the classes of person to whom local authorities may provide grant assistance;
- (c) Part 3 provides the procedures to be followed by a local authority in considering whether to provide grant assistance; and
- (d) Part 4 provides the terms and conditions on which grant assistance is to be provided.

### **Procedures applying to all categories of grant assistance**

5. In addition to the procedures referred to in regulation 4(c) the procedures set out in the following paragraphs are to be followed by a local authority in considering whether grant assistance of any category is to be provided–

- (a) all applications for grant, offers of grant, acceptances of offers of grant, and applications for payment of grant shall be in writing;
- (b) all applications for grant shall be subject to an appraisal to ensure that–
  - (i) any project for which grant is provided is consistent with priorities identified in that local authority’s local housing strategy; and
  - (ii) the grant does not exceed the minimum required to enable a project to proceed taking into account funding available from all other sources;
- (c) the grant applicant must demonstrate to the local authority’s satisfaction that it shall have sufficient funding from all sources to complete the project for which the grant is provided; and
- (d) no grant is paid in advance of or in excess of expenditure incurred for a project, save where the grant recipient is an RSL and the grant is required in respect of the acquisition of the subjects in which circumstances grant may be paid within 14 days prior to the expenditure being incurred by that RSL in respect of that acquisition.

### **Terms and conditions applying to all categories of grant assistance**

6. In addition to the terms and conditions referred to in regulation 4(d) the terms and conditions set out in the following paragraphs shall apply on the provision of all categories of grant assistance and shall be incorporated in every offer of grant–

- (a) no payment of grant shall be made until an offer of grant is accepted;
- (b) failure to comply with the terms and conditions in this regulation and those applying to the category of grant to which the offer of grant relates shall be deemed to be a default on the part of the grant recipient and the local authority may, on such a default, enforce its rights in accordance with that offer of grant and these Regulations;
- (c) the grant recipient shall make payment of any sum due to the local authority in terms of the offer of grant by a date specified by that local authority for that purpose and interest at a rate as may be reasonably determined by that local authority shall be payable by that grant recipient to that local authority on any sum which is overdue;
- (d) the grant recipient and the local authority shall bear their own legal fees which arise in connection with the grant and the grant recipient will pay all registration and recording dues in connection with the taking of any security;
- (e) the project shall comply with all applicable statutory requirements;
- (f) the grant recipient shall indemnify the local authority from and against all actions, proceedings, claims, losses, expenses and damages arising from any breach by that grant recipient of any undertaking or obligation in connection with the grant and for all liability in respect of personal injury to or death of any person or of any damage to any property arising out of or in the course of or caused by the carrying out of the project by that grant recipient or those authorised by it;
- (g) the subjects and the units shall be adequately insured to the satisfaction of the local authority and in the case of the units for at least full reinstatement value;
- (h) the grant recipient shall not breach any agreement with the local authority in respect of the project;

- (i) the project shall be carried out with all due diligence, completed to the satisfaction of the local authority and no material changes shall be made to the approved documents without the prior written consent of that local authority;
- (j) the offer of grant shall be deemed to be withdrawn where the project does not commence or proceed within time periods specified in that offer of grant unless the local authority consents in writing to extend those specified periods;
- (k) save for grant assistance provided by GPSE in terms of Schedule 4 to these Regulations, either the grant recipient or the granter of a licence agreement to the grant recipient has or can obtain a good and marketable title to the subjects with no burdens, conditions, restrictions or servitudes affecting the subjects which would adversely affect the project;
- (l) in the event of the grant recipient receiving, or being entitled to receive, any other monies for the project not disclosed by that grant recipient to the local authority at the time of the grant application, that grant recipient shall disclose the nature and the amount of the other such monies to that local authority within 7 days of being advised that it is to receive, or is entitled to receive, other such monies and that local authority shall be entitled at its sole discretion to—
  - (i) reduce the amount of grant then unpaid by such sum as that local authority reasonably considers appropriate; or
  - (ii) require repayment of any grant then paid up to the full amount of the grant;
- (m) for the term of the grant—
  - (i) the grant recipient shall not be, nor be deemed for the purpose of any law to be, unable to pay its debts as they fall due;
  - (ii) the grant recipient shall not be insolvent nor apparently insolvent, nor admit inability to pay its debts as they fall due and an insolvency practitioner, administrative receiver, receiver or liquidator or administrator shall not be appointed to that grant recipient or in respect of any of its assets, and steps shall not be taken to appoint any of the foregoing;
  - (iii) save where the grant recipient is an RSL or a public company, there shall be no change in the composition, constitution or control of the grant recipient without the prior written consent of the local authority;
  - (iv) the grant recipient will not assign its rights or obligations in respect of the grant or any part of it to any other person or body without the prior written consent of the local authority;
  - (v) the grant recipient shall not be wound up, struck off or dissolved, other than for the purpose of restructuring of that grant recipient for trading purposes;
  - (vi) the grant recipient shall not cease or threaten to cease operating or trading;
  - (vii) there shall be no legal diligence or execution affecting any material asset of the grant recipient required for the project;
- (n) the grant recipient shall not provide false or misleading information to the local authority or omit to provide information that has been requested by that local authority;
- (o) for the term of the grant no security over the subjects shall be called up or enforced; and
- (p) save where the grant recipient is an RSL, for the term of the grant the grant recipient shall not create or permit any security, encumbrance or diligence over or affecting the subjects other than—
  - (i) any permitted security; or
  - (ii) any security granted in favour of the local authority.

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St Andrew's House, Edinburgh  
10th March 2004

*MARGARET CURRAN*  
A member of the Scottish Executive

## SCHEDULE 1

Regulations 3(a), 4, 5 and 6

### HAG

## PART 1

### INTERPRETATION AND PURPOSE

#### Interpretation

1. In this Schedule—

“adaptations” means the works required to adapt an existing unit to suit the needs of a tenant or occupant of that unit who is an individual with particular needs, such works being independent from any other works;

“acquisition stage” means the stage in a project at which a grant applicant seeks to acquire the subjects;

“cost plan stage” means the stage in a project at which a grant recipient has a detailed design proposal for a project including a full breakdown of estimated costs for the project;

“decant accommodation” means accommodation that is provided by a grant recipient to temporarily re-locate persons who have had to leave their property to enable a project to be undertaken;

“decant costs” means costs incurred to temporarily re-locate persons who have had to leave their property to enable a project to be undertaken;

“funding route 1” means a method of funding to provide grant for a programme;

“funding route 2” means a method of funding to provide grant for a project;

“funding route 3” means a method of funding to provide grant for a project which requires at least one detailed funding application from the grant recipient at either cost plan or tender stage of that project;

“funding route 4” means a method of funding to provide grant for a project which requires detailed funding applications from the grant recipient at each of the acquisition, cost plan and tender stages of that project;

“furniture costs” means the cost of providing furniture for accommodation provided by a grant recipient to individuals who require temporary accommodation or assistance in securing permanent accommodation;

“HAG” means a grant paid by a local authority to a grant recipient in respect of a project;

“HAG subsidy target” means a monetary target which is agreed by a local authority and a grant recipient based on an estimate of how much HAG subsidy a programme or project requires;

“lead tenancies” means a project that makes available empty properties for rent by RSLs where the RSLs in turn rent such properties from another person;

“repairs” mean repairs to units provided for rent where those units were provided under a previous project in respect of which HAG was paid where—

- (a) an offer of grant was issued at the tender stage of that previous project prior to 30th September 1989; and
- (b) the rent for the units shall not increase as a result of the repairs;

“performance grading” means the overall grading awarded to an RSL by Scottish Ministers;

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“programme” means all of a grant recipient’s projects for a period of up to three years from the date of the programme agreement, the programme agreement being in terms of paragraph 6(2);

“project” means works undertaken by a grant recipient to provide housing by providing, improving, adapting and repairing subjects or related matters;

“target outputs” means the approximate number of units to be provided by a grant recipient for specific client groups as housing for rent, shared ownership and owner occupation; and

“tender stage” means the stage in a project when a grant recipient has a fully costed proposal in respect of a project; and

“term of HAG” means the period of time specified in the offer of HAG for which the terms and conditions of the grant are to apply.

**Purpose**

2. The purpose of HAG is to assist with providing, improving, adapting and repairing housing or related matters.

**PART 2**

**CLASSES OF PERSON**

3. The classes of person to whom local authorities may provide assistance by HAG are RSLs.

**PART 3**

**PROCEDURE TO BE FOLLOWED BY A LOCAL AUTHORITY**

**Determination of funding routes**

4. Prior to the appraisal of any application for HAG to provide, improve and adapt units, a local authority shall determine the appropriate funding route for each grant applicant based on–

- (a) the performance grading of the grant applicant; and
- (b) the record of the grant applicant in managing programmes and projects efficiently and in delivering programmes and projects which that local authority considers represent good value for money.

**Procedure applying to HAG to provide, improve and adapt units**

5. Once the appropriate funding route is determined for each grant applicant a local authority shall ensure that in any case where a grant applicant is applying for HAG to provide, improve and adapt units that–

- (a) the procedures in paragraph 6 shall apply to funding route 1 cases; and
- (b) the procedures in paragraph 7 shall apply to funding routes 2, 3 and 4 cases.

**Procedure for funding route 1 cases to provide, improve and adapt units**

6.—(1) A local authority shall ensure that, in a case where it determines that funding route 1 applies, a grant applicant submits to that local authority a programme proposal report in terms satisfactory to, and in a form to be specified by, that local authority, detailing–



- (a) all proposed HAG projects to be undertaken by the grant applicant for a period up to 3 years;
  - (b) the design and specification standards the grant applicant seeks to achieve for each project; and
  - (c) the grant applicant's policies and procedures for managing procurement processes to ensure that the standards in sub-paragraph (1)(b) above are achieved.
- (2) Following receipt and appraisal of a programme proposal report, a local authority may issue a programme agreement indicating the amount of HAG that it may make available to a grant applicant over a period of up to 3 years which programme agreement shall specify—
- (a) target outputs;
  - (b) HAG subsidy target; and
  - (c) project locations.
- (3) Once a programme agreement has been issued, the local authority shall ensure in relation to each project that a grant applicant submits in such terms as that local authority considers satisfactory—
- (a) at acquisition stage, a report using the form to be specified by that local authority and at settlement the form to be specified by that local authority;
  - (b) at cost plan stage, where that local authority considers necessary, a report using the form to be specified by that local authority; and
  - (c) at tender stage, a report using the form to be specified by that local authority.

**Procedure for funding routes 2, 3 and 4 cases to provide, improve and adapt units**

7.—(1) A local authority shall ensure that in a case where it determines that either funding routes 2, 3 or 4 apply, a grant applicant submits to that local authority a project proposal report for the project to be undertaken by that grant applicant in terms satisfactory to, and in a form to be specified by, that local authority.

(2) Following receipt and appraisal of a project proposal report, a local authority may issue a scheme agreement indicating the amount of HAG that it may make available to a grant applicant in respect of the project which scheme agreement shall specify—

- (a) funding route that applies;
- (b) purpose of the project;
- (c) project location;
- (d) timescales for work connected to the project; and
- (e) target outputs.

(3) In a case where funding route 2 applies the local authority, after issue of a scheme agreement, shall ensure that a grant applicant submits to that local authority in relation to a project, in such terms as that local authority considers satisfactory—

- (a) at acquisition stage, a report using the form to be specified by that local authority, and at settlement the form to be specified by that local authority;
- (b) at cost plan stage, where that local authority considers necessary, a report using the form to be specified by that local authority; and
- (c) at tender stage, a report using the form to be specified by that local authority.

(4) In a case where funding route 3 applies the local authority, after issue of a scheme agreement, shall ensure that a grant applicant submits to that local authority in relation to a project, in such terms as that local authority considers satisfactory—

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- (a) at acquisition stage, a report using the form to be specified by that local authority, and at settlement the form to be specified by that local authority; and
- (b) at cost plan and at tender stage either–
  - (i) an application using the form to be specified by that local authority at cost plan stage and then at tender stage a report using the form to be specified by that local authority; or
  - (ii) a report using the form to be specified by that local authority at cost plan stage and then at tender stage an application using the form to be specified by that local authority,

save where a local authority considers it unnecessary to submit an application or report at cost plan stage in which case an application using the form to be specified by that local authority shall be submitted at tender stage.

(5) In a case where funding route 4 applies the local authority, after issue of a scheme agreement, shall ensure that a grant applicant submits to that local authority in relation to a project, in such terms as that local authority considers satisfactory–

- (a) at acquisition stage, an application using the form to be specified by that local authority and at settlement the form to be specified by that local authority;
- (b) at cost plan stage, where that local authority considers necessary, an application using the form to be specified by that local authority; and
- (c) at tender stage, an application using the form to be specified by that local authority.

#### **Procedure for HAG for lead tenancies**

8. Where a grant applicant applies for HAG for lead tenancies, a local authority shall ensure that a grant applicant submits to that local authority, in such terms as that local authority considers to be satisfactory, applications using the forms to be specified by that local authority together with any additional information as may be required.

#### **Procedure for HAG for repairs**

9. Where a grant applicant applies for HAG for repairs, a local authority shall ensure that a grant applicant submits to that local authority, in such terms as that local authority considers to be satisfactory, applications using the forms to be specified by that local authority together with any additional information as may be required.

#### **Procedure for HAG for decant costs**

10. Where a grant applicant applies for HAG for decant costs, a local authority shall ensure that a grant applicant submits to that local authority, in such terms as that local authority considers to be satisfactory, applications using the forms to be specified by that local authority together with any additional information as may be required.

#### **Procedure for HAG for adaptations**

11. Where a grant applicant applies for HAG for the cost of adaptations, a local authority shall ensure that a grant applicant submits to that local authority, in such terms as that local authority considers to be satisfactory, applications using the forms to be specified by that local authority together with any additional information as may be required.

### **Procedure for HAG for furniture costs**

12. Where a grant applicant applies for HAG for furniture costs, a local authority shall ensure that a grant applicant submits to that local authority, in such terms as that local authority considers to be satisfactory, applications using the forms to be specified by that local authority together with any additional information as may be required.

## **PART 4**

### **TERMS AND CONDITIONS ON WHICH ASSISTANCE IS PROVIDED**

#### **Termination of a programme agreement**

13. Any programme agreement may be terminated by the local authority if–
- (a) the grant recipient fails to deliver the programme to the reasonable satisfaction of that local authority; or
  - (b) the performance grading of the grant recipient reduces to a lower standard during the term of the programme agreement.

#### **Terms and conditions for HAG to provide, improve, adapt and repair units**

14. The terms and conditions on which HAG is provided to provide, improve, adapt and repair units (but these terms and conditions shall not apply for HAG for lead tenancies) are–

- (a) the grant recipient shall accept a tender for a programme or a project from a contractor only in the amount that the local authority has approved at tender stage;
- (b) the grant recipient shall develop the subjects in accordance with the project and for no other purpose whatsoever;
- (c) the units shall–
  - (i) be sold by the grant recipient for owner occupation;
  - (ii) where the sale is the first sale in a sale for shared ownership, be sold by the grant recipient; or
  - (iii) be available for rent;
- (d) the grant recipient shall not sell, let or otherwise dispose of the subjects, the units or any part thereof save as in accordance with the project and with sub-paragraph (c) above without written notification to the local authority prior to such sale, let or other disposal;
- (e) the grant recipient shall obtain vacant possession of the subjects;
- (f) where the project includes units for sale for owner occupation other than shared ownership, the units offered for sale shall not include new build property;
- (g) where the project includes units for sale for owner occupation or for shared ownership, the units shall be marketed by the grant recipient in accordance with a strategy agreed in writing with the local authority; and
- (h) any payment of HAG by the local authority to the grant recipient must be expended on the project by that grant recipient within 14 days after that payment by that local authority.

#### **Default**

15. Where HAG has been provided to provide, improve, adapt and repair units the breach of any of the terms and conditions detailed in paragraph 14 and regulation 6 shall constitute a default.

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### **Effect of default**

16. In the event of a default, which is in the opinion of the local authority capable of being remedied, that local authority shall allow the grant recipient a period in which to remedy the default, said period being determined by that local authority on the basis of what it considers reasonable in the circumstances and that local authority shall serve a notice in writing on that grant recipient to that effect.

17. In the event of a default which is in the opinion of the local authority not capable of being remedied or is a default in terms of paragraph 16 that has not been remedied in terms of that paragraph—

- (a) where no HAG has been paid that local authority shall not make a payment; and
- (b) in all other cases where payment or part payment of HAG has been made the grant recipient shall immediately repay to that local authority any such payment or part payment up to the full amount of the HAG under deduction of any sums attributable on a pro-rata basis to any unit or units which are provided in accordance with the project.

### **Recovery of sums**

18. Where HAG has been paid to the grant recipient, the local authority may recover the full amount of the HAG or a proportion thereof from the date it ascertains that HAG should be repaid where—

- (a) in the case of HAG to provide, improve, adapt and repair units, no later than on completion of the project—
  - (i) the units provided differ from those specified in the offer of grant;
  - (ii) the proceeds from the sale of units for owner occupation or shared ownership differ from those specified in the offer of grant; or
  - (iii) the cost of the project is less than that specified in the offer of grant;
- (b) HAG has been paid to acquire or repair units for decant accommodation and these units are sold after use; or
- (c) HAG has been paid for furniture costs and the grant recipient ceases to provide a furnished unit within a period of five years from the date of the initial let of the unit.

## SCHEDULE 2

Regulations 3(b), 4, 5 and 6

### GRO FOR OWNER OCCUPATION

## PART 1

### INTERPRETATION AND PURPOSE

#### **Interpretation**

1. In this Schedule—

“first purchaser” means the purchaser of a unit from a grant recipient who cannot be an officer, trustee or director of that grant recipient, or an individual with any financial interest in that grant recipient, or a family member of that grant recipient;

“GRO for owner occupation” means grant for the provision of housing for owner occupation to be paid by a local authority to a grant recipient in respect of a type 1, type 2 or type 3 project;

“post completion return” means the form submitted by a grant recipient to a local authority within 28 days of the conclusion of missives in respect of the sale of the last unit in a project;

“project” means the type 1, type 2 or type 3 project approved by a local authority for GRO for owner occupation;

“term of the GRO for owner occupation” means the period of time specified in the offer of GRO for owner occupation for which the terms and conditions of the grant are to apply;

“type 1 project” means a project to provide units for owner occupation in areas with a high concentration of rented housing;

“type 2 project” means a project to provide units for owner occupation in established urban areas where there are limitations in the range of available housing relative to demand; and

“type 3 project” means a project to provide units for owner occupation for sale to client groups at a price which may be less than the market value in areas where there is a limited supply of housing for sale to those client groups as a result of housing market conditions.

## **Purpose**

2. The purpose of GRO for owner occupation is to assist type 1, 2 and 3 projects that provide, by providing, improving and adapting subjects, units for sale for owner occupation.

## **PART 2**

### **CLASSES OF PERSON**

3. The classes of person to whom local authorities may provide assistance by GRO for owner occupation are—

- (a) private developers;
- (b) housing trusts; and
- (c) non registered housing associations.

## **PART 3**

### **PROCEDURE TO BE FOLLOWED BY A LOCAL AUTHORITY**

4. A local authority shall ensure that—

- (a) each grant applicant submits an application using the form to be specified by that local authority to enable that local authority to undertake an appraisal of the project;
- (b) each grant applicant is made aware of any additional information requirements on the application referred to in sub-paragraph (a) above; and
- (c) any client group targeted as first purchasers have been agreed with a grant applicant and that grant applicant has a marketing strategy to ensure those client groups receive priority when the units are marketed for sale.

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## PART 4

### TERMS AND CONDITIONS ON WHICH ASSISTANCE IS PROVIDED

5. The terms and conditions on which GRO for owner occupation is provided are–
- (a) the grant recipient shall provide units for owner occupation in accordance with the project and for no other purpose whatsoever;
  - (b) all units shall be sold by the grant recipient for owner occupation to first purchasers who shall occupy the units as their only or principal residence;
  - (c) the grant recipient shall not sell or otherwise dispose of the subjects or any part thereof save as in accordance with sub-paragraph (b) above without the prior written consent of the local authority;
  - (d) the units shall have National House-Building Council certification or equivalent certification approved by the local authority;
  - (e) any client group targeted for the sale of units in accordance with paragraph 4(c) shall receive priority right to purchase the units as first purchasers when the units are marketed for sale;
  - (f) the grant recipient shall submit to the local authority progress reports, the return used to record sales of units to first purchasers and a post completion return all when required by that local authority in the forms to be specified by that local authority;
  - (g) the grant recipient shall grant a standard security over the subjects in favour of the local authority in terms satisfactory to that local authority save where that grant recipient has obtained a bank guarantee or performance bond in terms of sub-paragraph (h) or (i) below;
  - (h) where the local authority requires that a bank guarantee or performance bond is obtained, and the grant recipient owns the subjects, that grant recipient shall obtain a bank guarantee or performance bond in terms satisfactory to the local authority;
  - (i) where the grant recipient has entered into a licence agreement and the local authority requires that a bank guarantee or performance bond is obtained the conditions that require to be met are–
    - (i) the grant recipient has entered into a licence agreement in respect of the subjects in terms satisfactory to that local authority; and
    - (ii) the grant recipient has delivered to that local authority a bank guarantee or performance bond in respect of the project in terms satisfactory to that local authority;
  - (j) (i) where a project is a type 3 project and a unit is sold by the grant recipient at less than market value, the local authority shall require that grant recipient to ensure that the first purchaser of any unit shall at that first purchaser's own expense and including any expenses of that local authority, grant a standard security in favour of that local authority for the pro rata amount of GRO for owner occupation apportioned to that unit, which standard security shall provide that a repayment in terms of sub-paragraph (j)(ii) below shall apply within such a period from the date of entry by the first purchaser as may be specified by that local authority in the event of–
    - (aa) the sale by the first purchaser; or
    - (bb) the title of the unit being transferred by the first purchaser for no consideration;
  - (ii) in the event of a sale or transfer in terms of sub-paragraph (j)(i) above there shall be repaid to the local authority whichever is the lesser of–

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- (aa) the pro rata amount of the GRO for owner occupation apportioned to the unit; or
- (bb) the difference between the price at which the unit is sold by the first purchaser (or the open market value if higher) and the price at which the unit was sold to the first purchaser as defined in terms of sub-paragraph (j)(iii) below;
- (iii) the price at which the unit was sold to the first purchaser for the purpose of sub-paragraph (j)(ii)(bb) above shall be the actual price paid by that first purchaser increased by—
  - (aa) the annual rate of inflation in accordance with the retail prices index from the date of entry of the sale by the grant recipient to the first purchaser to the date of entry in respect of the sale by the first purchaser; and
  - (bb) the value of any material improvements carried out by the first purchaser;
- (k) where the local authority requires the grant recipient shall ensure that the first purchaser of any unit shall at that first purchaser's own expense and including any expenses of that local authority, grant a standard security in favour of that local authority for the pro rata amount of the GRO for owner occupation apportioned to that unit, which standard security shall provide that repayment of the pro rata amount of the GRO for owner occupation shall apply within such period from the date of entry by the first purchaser as may be specified by the local authority in the event of the first purchaser ceasing to occupy the unit as that first purchaser's only or principal residence; and
- (l) any payment of GRO for owner occupation by the local authority must be expended on the project by the grant recipient within 14 days after that payment by that local authority.

## **Default**

6. The breach of any of the terms and conditions detailed in paragraph 5 and regulation 6 shall constitute a default.

## **Effect of default**

7. In the event of a default which is in the opinion of a local authority capable of being remedied, that local authority shall allow the grant recipient a period in which to remedy the default, said period being determined by that local authority on the basis of what it considers reasonable in the circumstances and that local authority shall serve a notice in writing on that grant recipient to that effect.

8. In the event of a default which is in the opinion of the local authority not capable of being remedied or is a default in terms of paragraph 7 that has not been remedied in terms of that paragraph—

- (a) where no GRO for owner occupation has been paid that local authority shall not make a payment; and
- (b) in all other cases where payment or part payment of GRO for owner occupation has been made, the grant recipient shall immediately repay to that local authority any such payment or part payment up to the full amount of the GRO for owner occupation under deduction of a sum attributable to sales of units to first purchasers which have concluded at the date of default.

## **Recovery of sums based on the actual cashflow**

9. Where the grant calculated by the local authority using the actual cashflow following receipt of the post completion return is less than the amount of grant specified in the offer of grant (which is

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calculated using the approved cashflow), 50% of the difference in these two amounts shall be paid by the grant recipient to that local authority within 14 days of ascertainment by that local authority that a repayment of grant is due.

## SCHEDULE 3

Regulations 3(c), 4, 5 and 6

### RHOG

## PART 1

### INTERPRETATION AND PURPOSE

#### Interpretation

**1.** In this Schedule–

“new build property” means subjects comprising a unit that is to be constructed for or by a grant recipient;

“off the shelf property” means subjects comprising a unit that a grant recipient–

- (a) acquires;
- (b) acquires and improves; or
- (c) already owns but improves;

“project” means the provision of a unit which is either a new build property or an off the shelf property;

“RHOG” means rural home ownership grant paid by a local authority to a grant recipient in respect of the subjects in a rural area; and

“term of the RHOG” means 10 years from the date of payment of the RHOG for which the terms and conditions of the grant are to apply.

#### Purpose

**2.** The purpose of RHOG is to enable individuals in rural areas to meet the costs of acquiring, constructing or improving a property for occupation as their only or principal residence.

## PART 2

### CLASSES OF PERSON

**3.** The classes of person to whom local authorities may provide assistance by RHOG are individuals appraised by a local authority as having insufficient household income to obtain a suitable property for their and their household’s only or principal residence in a rural area on the grounds of cost, location or availability, where those individuals–

- (a) are employed in or have received a formal offer of employment in that area;
- (b) have resided in that area for more than a year and can demonstrate throughout that period a local or family connection with that area; or
- (c) have resided in that area for more than a year and are unable to work due to age, long term sickness or disability.



## PART 3

### PROCEDURE TO BE FOLLOWED BY A LOCAL AUTHORITY

4. A local authority shall ensure that—
- (a) each grant applicant submits a preliminary application to enable that local authority to determine whether that grant applicant is eligible for RHOG;
  - (b) each grant applicant assessed as eligible for RHOG in terms of sub-paragraph (a) above submits a detailed application to enable that local authority to undertake an appraisal of the project; and
  - (c) it does not approve an application for RHOG where the project is eligible for, or has received, a grant under section 42 of the Crofters (Scotland) Act 1993(4).

## PART 4

### TERMS AND CONDITIONS ON WHICH ASSISTANCE IS PROVIDED

#### **New build property**

5. The terms and conditions on which RHOG for new build property is provided are—
- (a) the grant recipient shall use RHOG towards the cost of acquiring the subjects and constructing a unit and for no other purpose whatsoever;
  - (b) the unit shall be the only or principal residence of the grant recipient;
  - (c) the grant recipient shall not sell, let, or otherwise dispose of the subjects, units, or any part thereof during the term of the RHOG without the prior written consent of the local authority; and
  - (d) the grant recipient shall grant a standard security over the subjects in favour of the local authority in terms acceptable to that local authority.

#### **Off the shelf property**

6. The terms and conditions specified in paragraphs 5(b), (c) and (d) shall apply to RHOG for off the shelf property and the additional terms and conditions on which RHOG for off the shelf property is provided are that the grant recipient shall use RHOG towards the cost of—

- (a) acquiring the unit;
- (b) acquiring and improving the unit; or
- (c) improving the unit which is already in the ownership of that grant recipient,

and for no other purpose whatsoever.

#### **Default**

7. The breach of any of the terms and conditions detailed in paragraphs 5 or 6 (whichever are appropriate) and regulation 6 shall constitute a default.

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(4) 1993 c. 44.

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### **Effect of default**

8. Save where paragraph 10 applies, in the event of a default, which is in the opinion of the local authority capable of being remedied, that local authority shall allow the grant recipient a period in which to remedy the default, said period being determined by that local authority on the basis of what it considers reasonable in the circumstances and that local authority shall serve a notice in writing on that grant recipient to that effect.

9. Save where paragraph 10 applies, in the event of a default which is in the opinion of the local authority not capable of being remedied or is a default in terms of paragraph 8 that has not been remedied in terms of that paragraph—

- (a) where no RHOG has been paid that local authority shall not make a payment; and
- (b) in all other cases where payment or part payment of RHOG has been made the grant recipient shall immediately repay to that local authority any such payment or part payment up to the full amount of the RHOG.

10. In the event of a default by the grant recipient of failing to comply with paragraph 5(c) the grant recipient shall repay to the local authority on such sale, let or other disposal, the full amount of the RHOG, or a portion thereof, the amount to be repaid being the difference between the sale price or market value of the unit, whichever is the higher, less any amount due under any permitted security up to the full amount of the RHOG.

### **Payment of grant**

11. Payment of RHOG shall only be made in one instalment at the completion of the project.

## SCHEDULE 4

Regulations 3(d), 4, 5 and 6

### GPSE

## PART 1

### INTERPRETATION AND PURPOSE

#### **Interpretation**

1. In this Schedule—

“GPSE” means a grant to develop, redevelop and improve the physical, social, economic and recreational environment related to housing paid by a local authority to a grant recipient;

“project” means the type A, type B or type C project approved by a local authority for GPSE;

“term of GPSE” means the number of years specified in the offer of GPSE for which the terms and conditions of the grant are to apply;

“type A project” means a project to develop, redevelop and improve the physical environment related to housing;

“type B project” means a project to develop, redevelop and improve the social and recreational environment related to housing; and

“type C project” means a project to develop, redevelop and improve the economic environment related to housing.

## **Purpose**

2. The purpose of GPSE is to assist the development, redevelopment and improvement of the physical, social, economic and recreational environment related to housing.

## **PART 2**

### **CLASSES OF PERSON**

3. The classes of person to whom local authorities may provide assistance by GPSE are–
- (a) RSLs;
  - (b) individuals;
  - (c) private developers;
  - (d) private landlords;
  - (e) housing trusts;
  - (f) non registered housing associations; and
  - (g) voluntary organisations.

## **PART 3**

### **PROCEDURE TO BE FOLLOWED BY A LOCAL AUTHORITY**

4. A local authority shall ensure that–
- (a) each grant applicant submits an application in the form to be specified by that local authority to enable that local authority to undertake an appraisal of the project; and
  - (b) each grant applicant is made aware of any additional information requirements on the application referred to in sub-paragraph (a) above.

## **PART 4**

### **TERMS AND CONDITIONS UNDER WHICH ASSISTANCE IS PROVIDED**

5. The terms and conditions on which GPSE is provided are–
- (a) GPSE shall be used by the grant recipient for the purpose of meeting the costs (including acquisition costs if applicable) of developing the subjects in accordance with the project and for no other purpose whatsoever;
  - (b) save where the grant recipient is an RSL, where the grant recipient owns the subjects that grant recipient shall not sell or otherwise dispose of the subjects or any part thereof during the term of the GPSE without the prior written consent of the local authority;
  - (c) where the grant recipient is an RSL and owns the subjects that RSL shall not sell or otherwise dispose of the subjects or any part thereof during the term of the GPSE without written notification to the local authority;
  - (d) any payment of GPSE by the local authority must be expended on the project by the grant recipient within 14 days after that payment by that local authority; and
  - (e) if required by the local authority the grant recipient will grant a standard security over the subjects in favour of that local authority in terms acceptable to that local authority.

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## **Default**

6. The breach of any of the terms and conditions detailed in paragraph 5 and regulation 6 shall constitute a default.

## **Effect of default**

7. Save where paragraph 9 applies, in the event of a default, which is in the opinion of the local authority capable of being remedied, that local authority shall allow the grant recipient a period in which to remedy that default, said period being determined by that local authority on the basis of what it considers reasonable in the circumstances and that local authority shall serve a notice in writing on that grant recipient to that effect.

8. Save where paragraph 9 applies, in the event of a default which is in the opinion of the local authority not capable of being remedied or is a default in terms of paragraph 7 that has not been remedied in terms of that paragraph—

- (a) where no GPSE has been paid that local authority shall not make a payment; and
- (b) in all other cases where payment or part payment of GPSE has been made the grant recipient shall immediately repay to that local authority any such payment or part payment up to the full amount of the GPSE.

9. In the event of a default by the grant recipient of failing to comply with paragraph 5(b), or where the owner of the subjects sells or otherwise disposes of the subjects or any part thereof during the term of the GPSE, the grant recipient shall repay to the local authority a sum equivalent to the amount by which the value of the subjects has increased as a result of the GPSE, as verified by a chartered surveyor, up to the full amount of the GPSE such repayment being made in full within 28 days of the sale or disposal.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations provide the mechanics for four different grant schemes to be operated by local authorities. They are made under section 93(2) of the Housing (Scotland) Act 2001.

The Regulations consist of regulations 1 to 6 and 4 Schedules. Regulations 1 to 6 apply to all four grant schemes. Each of the four Schedules then deal exclusively with one of the grant schemes.

Regulations 1 and 2 deal with the commencement provisions, contain the interpretation of a number of words and phrases that appear throughout the Regulations and Schedules and deal with the application of the Regulations.

Regulation 3 explains that each of the Schedules relates to a different grant scheme and regulation 4 details that each Schedule is divided into four parts. Those four parts all relate exclusively to the grant scheme dealt with in that Schedule. Part 1 details the purpose of the grant scheme. Part 2 details the classes of person who are eligible to apply to the local authority under that grant scheme. Part 3 details the procedure that a local authority is to use in relation to that grant scheme and Part 4 details the terms and conditions that are to apply in relation to that grant scheme.

Regulation 5 details certain procedures that apply to all four grant schemes and regulation 6 states a number of terms and conditions that again apply to all of the grant schemes.

Schedule 1 deals with HAG grant. This grant is available only to Registered Social Landlords for wide ranging purposes in relation to the provision, improvement, adaptation and repair of housing or related matters.

Schedule 2 deals with GRO grant for owner occupation. There are a number of persons who may apply for this grant whose purpose is the provision of houses for owner occupation in various specified areas or for specific categories of individuals.

Schedule 3 deals with RHOG. This grant is available only to individuals who must meet specified criteria. The grant is to assist in the provision of acquiring and improving property which is to be the grant recipient's only or principal residence.

Schedule 4 deals with GPSE which is a grant to improve the physical, social, economic and recreational environment related to housing. Application for such grant may be made by a wide range of persons.