

# Final Business and Regulatory Impact Assessment

## **Title of Proposal**

The Housing Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 ('the Amendment Regulations')

## **Purpose and intended effect**

### **• Background**

The Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords And Other Persons) (Grants) Regulations 2004 ('the 2004 Regulations') make provision in relation to certain kinds of grant assistance provided by local authorities to registered social landlords and other persons out of grants paid to the local authority by Scottish Ministers (unless the relevant offer of grant by the Scottish Ministers excludes their application). This includes grants made by local authorities under the Transfer of Management of Development Funding arrangements (TMDF). The 2004 Regulations currently cover four different kinds of grant:-

- Housing Association Grant (HAG);
- GRO for Owner Occupation (GRO)
- Rural Home Ownership Grant (RHOG)
- Grants to improve the Physical and Social Environment (GPSE)

### **• Objective**

Section 92(2)(a) of the Housing (Scotland) 2001 Act ('the 2001 Act) gives local authorities the power to provide assistance to registered social landlords and other persons concerned with providing, improving, adapting, repairing, maintaining and managing housing. The 2004 Regulations which were made under section 93(2) of the 2001 Act, allow Scottish Ministers to introduce certain terms and conditions and procedures for local authorities to follow when providing certain types of grants. The 2004 Regulations require to be amended for the following reasons:-

- From June 2011, GRO grants were replaced with Partnership Support for Regeneration grants ('PSR')
- We propose to add a new kind of grant - Innovation and Investment Fund grants (IIF) to the classes of assistance that may be provided by local authorities under the 2004 Regulations; and
- To make certain consequential changes to the provisions relating to HAG in Schedule 1 to the 2004 Regulations, as a result of changes made by the Housing (Scotland) Act 2010.

The Amendment Regulations will make these changes to the 2004 Regulations.

- **Rationale for Government intervention**

### **PSR**

In June 2011, the Scottish Government replaced GRO grants with PSR grants (which received European Commission approval in 2006). The main differences between GRO and PSR grants are that PSR: provides additional flexibility around the levels of grant that can be funded by local authorities and the levels of grant that applicants are obliged to repay when the value of the grant offered at approval stage and the value of the grant calculated at completion stage differ. In addition, following the publication of the LIFT Evaluation in January 2011, the Scottish Government announced that SG it would no longer fund GRO grants in pressured areas (type 3 GRO grants). PSR is not offered for Type 3 projects. The replacement of GRO with PSR needs to be reflected in the 2004 Regulations in order to remove reference to GRO grants and ensure that certain procedures are followed by local authorities and that certain terms and conditions apply when PSR grants are made.

### **Innovation and Investment Fund**

Adding IIF grants to the kinds of grant assistance that can be provided by local authorities under the 2004 Regulations will ensure that certain procedures are followed by local authorities and certain terms and conditions are attached to IIF grants made by local authorities.

### **The Housing (Scotland) Act 2010**

As a result of changes made in the Housing (Scotland) Act 2010, from 1 April 2012, Scottish Ministers will no longer have power to grade registered social landlords. In light of this, the draft Amendment Regulations include provision which would replace references to “performance grading” in Schedule 1 to the 2004 Regulations (provisions relating to HAG) with a reference to information about the performance of the grant applicant or their ability to deliver the project contained in certain documents produced in terms of sections 41, 46, 55 & 56 of the 2010 Act (e.g. a performance report published by the Scottish Housing Regulator, a report of an inquiry made by the regulator in relation to the grant applicant, etc). We also propose that if the Scottish Housing Regulator appoints a manager in relation to the grant applicant’s housing activities under Section 57 or in relation to the grant applicant’s financial or other affairs, in terms of section 58 of the 2010 Act this can also be taken into account by the local authority in determining the appropriate funding route or in considering whether or not the project agreement should be terminated.

The 2004 Regulations and the draft Amendment Regulations fit most closely within National Outcome 10. By increasing the supply of good quality, affordable housing we will meet the current and future needs of Scotland, allowing labour to move effectively and creating sustainable, mixed communities in which people can live full and productive lives.

## Consultation

- **Within Government**

We have discussed our proposed changes to the provisions in relation to HAG within the 2004 Regulations with the Scottish Housing Regulator.

- **Public Consultation**

On 4 May 2012, the Scottish Government launched a consultation paper '*Consultation on the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons (Grants) Amendment Regulations 2012*'. The consultation closed on 27 July 2012.

Although there were only 7 respondents to the consultation, the majority of the responses indicate that there is good support for the introduction of the draft Amendment Regulations.

- **Business**

The 2004 Regulations, as amended, will apply to certain categories of grant assistance provided by local authorities to registered social landlords, non registered social landlords, housing trusts and private developers. The public consultation specifically sought the views of the Scottish Federation of Housing Associations ('SFHA'), Homes for Scotland, all mainstream registered social landlords in Scotland, all local authorities, Convention of Scottish Local Authorities (COSLA) and Association of Local Authority Chief Housing Officers (UK) (ALACHO).

## Options

### PSR

#### **Option 1 - Replace references to 'GRO grants' in the 2004 Regulations with Partnership Support for Regeneration grants.**

PSR replaced GRO in June 2011 and we propose that all references to GRO grants in the 2004 Regulations be replaced with PSR. This will ensure that the 2004 Regulations, as amended, will apply to future PSR applications. This will bring some consistency to administration of PSR grants by local authorities.

#### **Option 2 - Do Nothing**

If we did nothing, the 2004 Regulations would refer to, and make provision for, a type of grant that has been replaced and there would be no provision for the application of certain procedures and terms and conditions to PSR grants made by local authorities in terms of the Regulations.

## **Sectors and groups affected**

The provisions relating to PSR in the 2004 Regulations, as amended, will apply to grants made by local authorities to non-registered housing associations, private developers, and housing trusts. This includes grants made by Glasgow and Edinburgh City Councils as part of the TDMF arrangements with the Scottish Ministers.

## **Benefits**

Option 1 - This will bring some consistency to administration of PSR grant by local authorities.

Option 2 – There are no clear benefits here. If we did nothing, the 2004 Regulations would refer to, and make provision for, a type of grant that has been replaced.

## **Costs**

Option 1 - We do not expect there to be any increased administration burden on local authorities.

Option 2 – There would be no increased administration burden on local authorities.

## Innovation and Investment Fund

### **Option 1 - Introduce Innovation and Investment Fund to the categories of grant assistance under the 2004 Regulations**

This change will affect local authorities who provide IIF grant assistance and the registered social landlords who received assistance from local authorities. This will bring some consistency to the procedures that are followed by local authorities and to the terms and conditions under which Innovation and Investment Fund grants are provided to registered social landlords.

### **Option 2 - Do Nothing**

If we did nothing and the Innovation and Investment Fund was not added to the categories of grant assistance under the 2004 Regulations, there would be an absence of provision regarding the core procedures that local authorities should follow and the core terms and conditions on which IIF grants should be given by the local authority.

## **Sectors and groups affected**

The 2004 Regulations, as amended, will apply to grants made by local authorities from grants given to them by the Scottish Ministers. This includes grants made by Glasgow and Edinburgh City Councils as part of the TDMF arrangements with the Scottish Ministers.

## **Benefits**

Option 1 - The main benefit of introducing the Innovation and Investment fund to the categories of grant assistance under the 2004 Regulations is to bring some consistency to the procedures that are followed by local authorities and to the terms and conditions under which Innovation and Investment Fund grants are provided to registered social landlords.

Option 2 – While Innovation and Investment Fund grants could still be administered by local authorities, there would be an absence of provision regarding the core procedures that local authorities should follow and the core terms and conditions on which IIF grants should be given by the local authority.

## **Costs**

Option 1 - There should be little administration costs incurred by local authorities as we have previously informed them of our intention to add the Innovation and Investment Fund to the categories of grant assistance under the 2004 Regulations.

Option 2 – There should be little or no administration costs incurred as local authorities have previously provided grant assistance to registered social landlords for the purposes of the provision to increase the supply of good quality affordable housing.

## The Housing (Scotland) Act 2010

### **Option 1 - Remove and replace reference to ‘performance grading of a registered social landlord in Schedule 1 to the 2004 Regulations (HAG provisions)’**

**The references to “performance grading” would be** replaced with a reference to information about the performance of the grant applicant or their ability to deliver the project contained in certain documents produced in terms of sections 41, 46, 55 & 56 of the 2010 Act (e.g. a performance report published by the Scottish Housing Regulator, a report of an inquiry made by the regulator in relation to the grant applicant, etc). We also propose that if the Scottish Housing Regulator appoints a manager in relation to the grant applicant’s housing activities under Section 57 or in relation to the grant applicant’s financial or other affairs, in terms of section 58 of the 2010 Act this can also be taken into account by the local authority in determining the appropriate funding route or in considering whether or not the project agreement should be terminated. The amending regulations contain provision which would allow for this.

### **Option 2 - Do Nothing**

If we did nothing, the references to ‘performance grading’ in Schedule 1 to the 2004 Regulations would be redundant as the Scottish Ministers no longer have power to give a performance grading as a result of changes made by the Housing (Scotland) Act 2010. This would have an impact on the matters that a local authority can have regard to in determining funding routes and deciding whether or not to terminate a

programme agreement in relation to HAG grants.

### **Benefits**

Option 1 – The main benefit is that if certain information is produced in terms of the Housing (Scotland) Act 2010) about a grant recipient's performance or their ability to deliver the project, a local authority will be able to take account of that information in determining the appropriate funding route. In addition, the local authority may also consider that information in deciding whether to terminate a programme agreement if the information raises concerns about the ability of the grant recipient to complete a programme to the satisfaction of the local authority.

Option 2 - There are no benefits if we did not replace reference to 'performance grading' in the 2004 Regulations. If we did not make these changes, the only thing that a local authority could take into account when determining the appropriate funding route would be the record of the grant applicant in managing programmes and projects efficiently and in delivering programmes and projects which the local authority considers represent good value for money. Furthermore, a local authority would only be able to terminate a performance agreement in the event the registered social landlord actually fails to deliver the programme to the local authority's satisfaction.

### **Costs**

Option 1 - There should be little or no increased administration costs on local authorities who already need to be currently proactive to check the performance grading of a grant recipient when determining funding. Local authorities will continue to be proactive about checking whether or not any information of a kind referred to above exists or whether any of the steps set out in sections 57 and 58 of the 2010 Act have been taken.

Option 2 - We do not expect there to be any increased administration burden on local authorities.

### **Scottish Firms Impact Test**

The 2004 Regulations apply to financial assistance given by local authorities out of grants paid to the local authority by the Scottish Ministers, unless excluded by the relevant offer of grant by the Scottish Ministers so indicates. It is not expected that these proposals will have an impact on Scottish Firms.

Although there were no face-to-face meetings with stakeholders, as part of the public consultation, a Partial Business and Regulatory Impact Assessment accompanied the Scottish Government's consultation paper on the Amendment Regulations. The Scottish Government engaged with a wide range of bodies including COSLA, SFHA, ALACHO, all local authorities, all mainstream registered social landlords, and Homes for Scotland.

The consultation responses received have not altered the Scottish Government's overall view that there are no significant costs arising as a result of these changes being made to the 2004 Regulations.

### **Competition Assessment**

The 2004 Regulations and proposed Amendment Regulations allow Scottish Ministers to introduce certain terms and conditions and procedures for local authorities to follow when providing certain types of grants and therefore there should be no distortive effect on the market.

We applied the Office of Fair Trading's competition filter assessment, which sets out a four questions test for examining any potential competition impact of a proposed policy and the answers were as follows:

- i) the proposals do not directly limit the number or range of suppliers;
- ii) the proposals do not indirectly limit the number or range of suppliers;
- iii) the proposals do not limit the ability of suppliers to compete; and
- iv) the proposals do not reduce suppliers' incentives to compete vigorously.

### **Test run of business forms**

There are no new forms associated with this proposal.

### **Legal Aid Impact Test**

The Scottish Government Legal Services Access to Justice team has indicated that it is unlikely there will be any cost implications for the Legal Aid Fund.

### **Enforcement, sanctions and monitoring**

The amending Regulations will not introduce any new enforcement powers or sanctions, though they will vary an existing sanction (paragraph 13 of Schedule 1 to the 2004 Regulations).

### **Implementation and delivery plan**

Our proposed timetable is as follows: Regulations laid in Scottish Parliament on the in September 2012 and brought into force in November 2012. The measures set out in the Regulations would be implemented from the date that they are brought into force.

### **Post-implementation review**

Post implementation review will be an ongoing exercise through discussions with the relevant local authorities.

## **Summary and recommendation**

Although there were only 7 respondents to the public consultation on the draft Amendment Regulations, the majority of the responses show that there is good support for the introduction of the draft Amendments Regulations. Although we received comments from respondents, these were out with the scope of the Amendment Regulations.

We do not propose to make any changes to the draft Amendment Regulations.

### **PSR**

We propose Option 1 for all references to GRO grants in the 2004 Regulations to be replaced with PSR. This will ensure that the 2004 Regulations, as amended, will apply to future PSR applications and will bring some consistency to administration of PSR grant by local authorities.

### **Innovation and Investment Fund**

We propose Option 1 to introduce Innovation and Investment Fund to the categories of grant assistance under the 2004 Regulations. This will ensure that certain procedures are followed by local authorities and certain terms and conditions are attached to IIF grants made by local authorities.

### **Housing (Scotland) Act 2010**

We propose Option 1 to remove and replace reference to 'performance grading' of a registered social landlord in the 2004 Regulations (HAG provisions) so that local authorities can now consider certain information (in terms of sections 41, 46, 55 & 56 of the 2010 Act) published by the Scottish Housing Regulator about the performance of the grant applicant or their ability to deliver the project. We also propose that if the Scottish Housing Regulator appoints a manager in relation to the grant applicant's housing activities under Section 57 or in relation to the grant applicant's financial or other affairs, in terms of section 58 of the 2010 Act this can also be taken into account by the local authority in determining the appropriate funding route or in considering whether or not the project agreement should be terminated.

### **Summary costs and benefits table**

There should be little or no increased administration costs on local authorities who already need to be currently proactive to check the performance grading of a grant recipient when determining funding. Local authorities will continue to be proactive about checking whether or not any information of a kind referred to above exists or whether any of the steps set out in sections 57 and 58 of the 2010 Act have been taken.

### **PSR**

We propose Option 1 so that all reference GRO grants in the 2004 Regulations are



replaced with PSR and the regulations will apply to future PSR applications. This proposed change will bring some consistency to administration of PSR grant by local authorities.

### **Innovation and Investment Fund**

We propose Option 1 so that the introduction of Innovation and Investment Fund to the categories of grant assistance under the 2004 Regulations will ensure that certain procedures are followed by local authorities and certain terms and conditions are attached to IIF grants made by local authorities.

### **The Housing (Scotland) Act 2010**

We propose Option 1 so that local authorities will be able to consider certain information produced in terms of the 2010 Act about the performance of the grant applicant in determining funding routes or in deciding whether to terminate a programme agreement. In addition, if the Scottish Housing Regulator appoints a manager in relation to the grant applicant's housing activities under Section 57 or in relation to the grant applicant's financial or other affairs, in terms of section 58 of the 2010 Act this can also be taken into account by the local authority in determining the appropriate funding route or in considering whether or not the project agreement should be terminated.

<b>PSR</b>	<b>Costs</b>	<b>Benefits</b>
<b>Option 1:</b>	£0	Provides a measure of consistency in administration of PSR by local authorities.
<b>Option 2:</b>	£0	There are no clear benefits here. If we did nothing, the 2004 Regulations would refer to, and make provision for, a type of grant that has been replaced.

<b>Innovation and Investment Fund</b>	<b>Costs</b>	<b>Benefits</b>
<b>Option 1:</b>	£0	Will ensure that certain procedures are followed by local authorities and certain

		terms and conditions are attached to IIF grants made by local authorities.
<b>Option 2:</b>	£0	There could potentially be differences to certain procedures followed by local authorities and to certain terms and conditions to IIF grant made by local authorities.

<b>Housing (Scotland Act) 2010</b>	<b>Costs</b>	<b>Benefits</b>
<b>Option 1:</b>	£0	Will allow for a local authority to take account of certain produced in terms of the 2010 Act about a grant applicant's performance or their ability to deliver a project in determining funding routes. This information can also be considered if it raises concerns about the ability of the grant recipient to complete a programme to the satisfaction of the local authority. In addition, if the Scottish Housing Regulator appoints a manager in relation to the grant applicant's housing activities under Section 57 or in relation to the grant applicant's financial or other affairs, in terms of section 58 of the 2010 Act this can also be taken into account by the local authority.
<b>Option 2:</b>	£0	While grants could still be provided by local authorities to registered social landlords,

		the only matter that the local authority could take into account when determining funding would be the record of the registered social landlord in delivered programmes and projects which that local authority considers to represent good value for money. In addition, grant agreements could only be terminated by the local authority if the grant recipient fails to deliver the programme to the reasonable satisfaction of that local authority.	
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**Declaration and publication**

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:**

**Margaret Burgess, Minister for Housing and Welfare**

**Scottish Government Contact point:**

John Mcorrie, Housing Supply Division, Highlander House, 58  
Waterloo Street, Glasgow, G2 7DA  
([john.mcorrie@scotland.gsi.gov.uk](mailto:john.mcorrie@scotland.gsi.gov.uk) )