

EXECUTIVE NOTE

THE HOUSING (SCOTLAND) ACT (CONSEQUENTIAL MODIFICATIONS) ORDER 2012

SSI 2012/38

1. The above instrument is made in exercise of the powers conferred by Section 163(1)(b) and 2 of the Housing (Scotland) Act 2010.

Policy Objectives

2. The purpose of the instrument is to make consequential modifications in relation to the commencement of various provisions of the Housing (Scotland) Act 2010 (“the 2010 Act”).

3. The 2010 Act modernises the framework for regulating social landlords in Scotland. It establishes the Scottish Housing Regulator as an independent body with the objective of safeguarding and promoting the interests of persons who are or who may become homeless, tenants of social landlords, or recipients of services provided by social landlords.

4. This Order makes consequential modifications to primary and secondary legislation in connection with the commencement of Parts 1 to 12 of the Housing (Scotland) Act 2010 on the 1st April 2012.

Amendment of the Housing Associations Act 1985

5. The amendment at paragraph 1 of the Schedule updates the definitions in the 1985 Act of “registered housing association” and “unregistered” in relation to a housing association, to reflect the definitions in the 2010 Act.

Amendment of the Housing (Scotland) Act 1987

6. Section 21 of the 1987 Act requires registered social landlords (“RSLs”) to publish their allocation rules and send a copy to the Scottish Ministers. The amendment at paragraph 2 of the Schedule substitutes the Scottish Housing Regulator for the Scottish Ministers.

Amendment of the Land Reform (Scotland) Act 2003

7. In terms of the Land Reform (Scotland) Act 2003, landowners (or their creditors) are not permitted to transfer land in respect of which a community interest is registered except in accordance with Part 2 of the Act. Section 40(4) sets out a number of exceptions to this rule. One of these is transfers under s.65 of the Housing (Scotland) 2001 Act (“the 2001 Act”), transfers by a registered social landlord. Paragraph 3 of the Schedule to this Order substitutes a reference to transfers under section 107 of the 2010 Act for the reference to transfers under section 65.

Amendment of the Agricultural Holdings (Scotland) Act 2003

8. In terms of the Agricultural Holdings (Scotland) Act 2003, landowners (or their creditors) are generally required to give notice of any proposal to sell land where a tenant has registered their interest in acquiring the land (s.26). Section 27 sets out a number of exceptions to this rule. One of these is transfers under s.65 of the Housing (Scotland) 2001 Act, transfers by a registered social landlord. Paragraph 4 of the Schedule to this Order substitutes a reference to transfers under section 107 of the 2010 Act for the reference to transfers under section 65.

Amendment of the Scottish Secure Tenants (Compensation for Improvements) Regulations 2002

9. The 2002 Regulations provide that compensation is not payable where a tenancy ends and where a house was disposed of under section 65 of the Housing (Scotland) 2001 Act. The amendment at paragraph 5 substitutes the reference to disposal under section 65 of the 2001 Act with a reference to disposal under section 107 of the 2010 Act.

Amendment of the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004

10. The 2004 Regulations provide the mechanics for payment of certain grants under the 2001 Act, to RSLs and other persons. The amendment at paragraph 6 updates the definition of “RSL” in the Regulations, to reflect the definition in the 2010 Act.

Amendment of the Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005

11. The 2005 Regulations provide an exemption from the agent fee where the landlord is a local authority or RSL. The amendment at paragraph 7 of the Schedule updates the definition of “RSL” in the Regulations, to reflect the definition in the 2010 Act.

Amendment of the Charities Accounts (Scotland) Regulations 2006

12. The 2006 Regulations provide that RSLs which are charities should prepare their statements of account in accordance with RSL industry recommended practice. The amendment at paragraph 8 of the Schedule updates the definition of “RSL” in the Order, to reflect the definition in the 2010 Act.

Amendment of the Management of Offenders etc (Scotland) Act 2005 (Specification of Persons) Order 2007

13. The 2007 Order specifies registered social landlords for the purposes of section 10(3) of the Management of Offenders etc. (S) Act 2005 (persons with which arrangements are to be made for the assessment and management of the risks posed in an area by certain types of offender). The amendment at paragraph 9 of the Schedule updates the definition of “RSL” in the Order, to reflect the definition in the 2010 Act.

Amendment of the Home Energy Assistance Scheme (Scotland) Regulations 2009

14. Tenants of local authorities or RSLs are excluded from the definition of 'tenant' for the purposes of the 2009 Regulations. The amendment at paragraph 10 of the Schedule updates the definition of "RSL" in the Order, to reflect the definition in the 2010 Act.

Consultation

15. There was no statutory requirement to consult on this Order and we did not consider that consultation was necessary as the Order is intended solely to make provision consequential to the 2010 Act which was subject to full consultation.

Impact Assessments

16. An Equality Impact Assessment was prepared for the Housing (Scotland) Bill and shared with the Local Government and Communities Committee to assist their consideration of the Bill in its passage through Parliament. A separate Equality Impact Assessment was not considered necessary for this Order as it is intended solely to make provision consequential to the 2010 Act.

Financial Effects

17. The Order does not have any new financial effects that were not anticipated when the 2010 Act was enacted. A Financial Memorandum was produced for the Bill which sets out the financial implications of the Bill.

Scottish Government
Housing Regeneration Commonwealth Games Directorate
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