



# Housing (Scotland) Act 2001

## 2001 asp 10

### PART 3

#### REGULATION OF SOCIAL LANDLORDS

#### CHAPTER 1

#### REGISTERED SOCIAL LANDLORDS

##### *Registration*

#### **57 The register of social landlords**

- (1) The Scottish Ministers are to maintain a register of social landlords and are to keep it open for public inspection at all reasonable times.
- (2) A body to which subsection (3) applies is, by virtue of this subsection, registered as a social landlord.
- (3) This subsection applies to—
  - (a) every housing association which, immediately before the commencement of subsection (2), was registered in the register of housing associations maintained under section 3 of the Housing Associations Act 1985 (c.69), and
  - (b) any other body which, by order made by the Scottish Ministers, is to be treated as being a housing association so registered.
- (4) The Scottish Ministers must, not later than one month before the date on which subsection (2) is to come into force, notify every body appearing to them to be one to which that subsection will apply of that fact and of the effect of that subsection.

#### **Commencement Information**

- II** S. 57 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

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## 58 Eligibility for registration

- (1) A body is eligible for registration as a social landlord if it is—
  - (a) a society registered under the Industrial and Provident Societies Act 1965 (c.12) which has its registered office for the purposes of that Act in Scotland and satisfies the conditions in subsection (2), or
  - (b) a company registered under the Companies Act 1985 (c.6) which has its registered office for the purposes of that Act in Scotland and satisfies those conditions.
- (2) The conditions are that the body does not trade for profit and is established for the purpose of, or has among its objects and powers, the provision, construction, improvement or management of—
  - (a) houses to be kept available for letting,
  - (b) houses for occupation by members of the body, where the rules of the body restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by the body, or
  - (c) hostels,
 and that any additional purposes or objects are among those specified in subsection (3).
- (3) The permissible additional purposes or objects are—
  - (a) providing land, amenities or services, or providing, constructing, repairing or improving buildings, for its residents, either exclusively or together with other persons,
  - (b) acquiring, or repairing and improving, or creating by the conversion of houses or other property, houses to be disposed of on sale, on lease or on shared ownership terms,
  - (c) constructing houses to be disposed of on shared ownership terms,
  - (d) managing houses which are held on leases or other lettings (not being houses falling within subsection (2)(a) or (b)) or blocks of flats,
  - (e) providing services of any description for owners or occupiers of houses in—
    - (i) arranging or carrying out works of maintenance, repair or improvement, or encouraging or facilitating the carrying out of such works,
    - (ii) arranging property insurance,
  - (f) encouraging and giving advice on the formation of registered social landlords or providing services for, and giving advice on the running of, such landlords and other voluntary organisations concerned with housing, or matters connected with housing.
- (4) A body is not ineligible for registration by reason only that its powers include power—
  - (a) to acquire commercial premises or businesses as an incidental part of a project or series of projects undertaken for purposes or objects falling within subsection (2) or (3),
  - (b) to repair, improve or convert any commercial premises acquired as mentioned in paragraph (a) or to carry on for a limited period any business so acquired,
  - (c) to repair or improve houses, or buildings in which houses are situated, after the tenants have exercised, or claimed to exercise, acquisition rights.
- (5) The Scottish Ministers may by order amend the permissible purposes, objects and powers specified in subsections (3) and (4), but any such amendment which restricts

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or limits those purposes, objects or powers has no effect in relation to a body registered as a social landlord when the order was made.

(6) In this section—

“acquisition rights” means rights to purchase under section 61 of the 1987 Act,  
“block of flats” means a building containing two or more flats which are held on leases or other lettings and which are occupied or intended to be occupied wholly or mainly for residential purposes,

“disposed of on shared ownership terms” means disposed of under a shared ownership agreement (defined in section 83(3)),

“letting” includes the grant of a right or permission to occupy,

“residents”, in relation to a body, means persons occupying the houses or hostels provided or managed by the body,

“voluntary organisation” means an organisation whose activities are not carried on for profit.

#### Commencement Information

**I2** S. 58 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## 59 Registration

- (1) The Scottish Ministers may register as a social landlord any body which is eligible for such registration.
- (2) An application for registration must be made in such manner, and accompanied by such fee (if any), as the Scottish Ministers may determine.
- (3) As soon as may be after registering a body which is an industrial and provident society as a social landlord the Scottish Ministers must give notice of the registration to the Financial Services Authority, which must record the registration.
- (4) A body which at any time is, or was, registered as a social landlord is, for all purposes other than rectification of the register, to be conclusively presumed to be, or to have been, at that time a body eligible for registration as a social landlord.

#### Commencement Information

**I3** S. 59 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## 60 Removal from the register

- (1) A body which has been registered as a social landlord is not to be removed from the register except in accordance with this section.
- (2) If it appears to the Scottish Ministers that a body which is on the register of social landlords—
  - (a) is no longer a body eligible for such registration,
  - (b) has ceased to exist or does not operate, or

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- (c) meets the criteria for removal from the register established under section 61, the Scottish Ministers may, after giving the body at least 14 days' notice, remove it from the register.
- (3) In the case of a body which appears to the Scottish Ministers to have ceased to exist, or not to operate, notice under subsection (2) is deemed to be given to the body if it is served at the address last known to the Scottish Ministers to be the principal place of business of the body.
- (4) A body which is registered as a social landlord may request the Scottish Ministers to remove it from the register and the Scottish Ministers may do so if they are satisfied that the body meets the criteria for removal established under section 61.
- (5) As soon as may be after removing a body which is an industrial and provident society from the register of social landlords the Scottish Ministers must give notice of the removal to the Financial Services Authority, which must record the removal.

#### Commencement Information

- I4** S. 60 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## 61 Criteria for registration or removal from register

- (1) The Scottish Ministers must establish (and may from time to time vary) criteria to be satisfied by a body seeking registration as a social landlord; and in deciding whether to register a body the Scottish Ministers must have regard to whether those criteria are met.
- (2) The Scottish Ministers must establish (and may from time to time vary) criteria to be satisfied where a body seeks to be removed from the register of social landlords; and in deciding whether to remove a body from the register the Scottish Ministers must have regard to whether those criteria are met.
- (3) Before establishing or varying any such criteria the Scottish Ministers must consult—
- (a) such bodies representing registered social landlords,
  - (b) such bodies representing tenants of registered social landlords, and
  - (c) such other persons,
- as they think fit.
- (4) The Scottish Ministers must publish the criteria for registration and the criteria for removal in such manner as they think fit.

#### Commencement Information

- I5** S. 61 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## 62 Appeal against decision on registration or removal

- (1) A body which is aggrieved by a decision of the Scottish Ministers—

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- (a) not to register it as a social landlord, or
  - (b) to remove or not to remove it from the register of social landlords,
- may appeal against the decision to the Court of Session.
- (2) If an appeal is brought against a decision relating to the removal of a body from the register, the Scottish Ministers must not remove the body from the register until the appeal has been finally determined or is withdrawn.
- (3) As soon as may be after an appeal is brought against a decision relating to the removal of a body which is an industrial and provident society from the register, the Scottish Ministers must give notice of the appeal to the Financial Services Authority.

#### Commencement Information

- I6** S. 62 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

### Regulation

#### 63 Regulation of registered social landlords

Schedule 7, which makes provision about the regulation of registered social landlords, has effect.

#### Commencement Information

- I7** S. 63 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

#### 64 Insolvency etc. of registered social landlords

Schedule 8, which makes provision about the insolvency etc. of registered social landlords, has effect.

#### Commencement Information

- I8** S. 64 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

### Disposal of land and related matters

#### 65 Power of registered social landlord to dispose of land

- (1) A registered social landlord has power by virtue of this section, but not otherwise, to dispose, in such manner as it thinks fit, of land held by it.
- (2) Subsection (1)—
- (a) is without prejudice to Part III (the right to buy) of the 1987 Act,

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- (b) has effect subject to sections 66 to 68 and 76 of, and schedules 7 and 9 to, this Act.

**Commencement Information**

**I9** S. 65 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

**66 Consent required for disposal of land by registered social landlord**

- (1) The written consent of the Scottish Ministers is required for any disposal of land by a registered social landlord under section 65.
- (2) The consent of the Scottish Ministers may be given—
  - (a) generally to all registered social landlords or to a particular landlord or description of landlords,
  - (b) in relation to particular land or a particular description of land,
  - (c) in relation to a particular disposal or a particular description of disposal,
 and may be given subject to conditions.
- (3) In considering whether to give consent under this section the Scottish Ministers must have regard to the views expressed by those consulted under section 68.
- (4) A disposal by a landlord which requires consent under this section is valid in favour of a person claiming under the landlord despite that consent not having been given; and a person dealing with the landlord, or with a person claiming under the landlord, is not concerned to see or inquire whether any such consent has been given.
- (5) Where at the time of its removal from the register of social landlords a body owns land, this section continues to apply to that land after the removal as if the body concerned continued to be a registered social landlord.
- (6) In this section, “disposal” means sale, lease, heritable security, charge or any other disposal.

**Commencement Information**

**I10** S. 66 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

**67 Disposals not requiring consent**

- (1) Section 66 does not apply to a disposal by a registered social landlord by way of—
  - (a) a lease under a Scottish secure tenancy, or what would be a Scottish secure tenancy but for schedule 1,
  - (b) a lease under a short Scottish secure tenancy,
  - (c) a lease under an assured tenancy or an assured agricultural occupancy,
  - (d) a lease under what would be an assured tenancy but for any of paragraphs 3 to 8 and 12 of Schedule 4 to the 1988 Act, or
  - (e) a disposal under Part III (the right to buy) of the 1987 Act.

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- (2) The Scottish Ministers may by order specify additional disposals to which section 66 does not apply.
- (3) In this section, “assured agricultural occupancy” has the same meaning as in Part I of the Housing Act 1988 (c.50).

#### Commencement Information

**111** S. 67 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

### 68 Disposals of land: consultation with tenants

- (1) This section applies where a registered social landlord proposes to make a disposal of land under section 65 other than—
  - (a) a disposal which does not require the consent of the Scottish Ministers under section 66,
  - (b) a disposal to which schedule 9 applies, or
  - (c) a disposal of an interest by way of security for a loan.
- (2) Where this section applies, the landlord must consult—
  - (a) the tenants of those of its houses included in the disposal, and
  - (b) such other persons as the Scottish Ministers may require,and must inform the Scottish Ministers of the views expressed by those consulted.

#### Commencement Information

**112** S. 68 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## *Housing management*

### 69 Inspections

- (1) The Scottish Ministers may appoint a person to carry out an inspection of the management of the affairs of a registered social landlord in relation to the provision of housing accommodation and related services.
- (2) A person appointed to carry out an inspection under subsection (1) (an “inspector”) has a right of access at all reasonable times to—
  - (a) any premises of the registered social landlord, and
  - (b) any document relating to the landlord which appears to the inspector to be necessary for the purposes of the inspection.
- (3) An inspector may—
  - (a) require a person holding or accountable for any such document to provide the inspector with such information and explanation as the inspector thinks necessary,

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- (b) require that person to attend before the inspector in person to give the information or explanation or to produce the document.
- (4) The registered social landlord must provide an inspector with every facility and all information which the inspector may reasonably require for the purposes of the inspection.
- (5) An inspector must, if so required, produce written authorisation for the carrying out of the inspection.
- (6) A person who fails, without reasonable excuse, to comply with a requirement of an inspector under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Commencement Information

**I13** S. 69 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## 70 Inspection reports

- (1) Where an inspection has been carried out under section 69, the Scottish Ministers must issue and publish a report and send a copy of it to the registered social landlord and any registered tenant organisation.
- (2) The report must identify any respects in which, as a result of the inspection, the management of the affairs of the registered social landlord in relation to the provision of housing accommodation and related services was found to be unsatisfactory.

#### Commencement Information

**I14** S. 70 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## 71 Appointment of manager

- (1) Where the Scottish Ministers consider it necessary or expedient in order to ensure that the management of its affairs by a registered social landlord is of an appropriate standard (either generally or in relation to a particular matter), they may—
  - (a) appoint a manager, or
  - (b) require the landlord to appoint a manager,
 to conduct the affairs of the landlord, or such of the affairs as the Scottish Ministers may specify.
- (2) A manager appointed under subsection (1)(a) or in pursuance of a requirement under subsection (1)(b)—
  - (a) is to be appointed for such period and on such terms and conditions as the Scottish Ministers may determine,
  - (b) has, by virtue of the appointment, power generally to do all such things as are necessary for carrying out the manager's functions, and



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- (c) has such specific powers (which may include power to do anything which the landlord has power to do) as the Scottish Ministers may specify.
- (3) The remuneration and expenses of the manager are to be paid by the landlord.
- (4) The Scottish Ministers may give directions in relation to the carrying out of the manager's functions; and the manager must comply with any such direction.
- (5) In carrying out functions the manager acts as the landlord's agent; and the manager is not personally liable on a contract entered into as manager.
- (6) A person dealing with the manager in good faith and for value is not concerned to inquire whether the manager is acting within the powers conferred by virtue of this section.

#### Commencement Information

**I15** S. 71 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## CHAPTER 2

### LOCAL AUTHORITY HOUSING MANAGEMENT

#### 72 Inspections

- (1) The Scottish Ministers may appoint a person to carry out an inspection of the exercise of the functions of a local authority in relation to the provision of housing accommodation and related services.
- (2) A person appointed to carry out an inspection under subsection (1) (an "inspector") has a right of access at all reasonable times to—
  - (a) any premises of the local authority, and
  - (b) any document relating to the authority which appears to the inspector to be necessary for the purposes of the inspection.
- (3) An inspector may—
  - (a) require a person holding or accountable for any such document to provide the inspector with such information and explanation as the inspector thinks necessary,
  - (b) require that person to attend before the inspector in person to give the information or explanation or to produce the document.
- (4) The local authority must provide an inspector with every facility and all information which the inspector may reasonably require for the purposes of the inspection.
- (5) An inspector must, if so required, produce written authorisation for the carrying out of the inspection.
- (6) A person who fails, without reasonable excuse, to comply with a requirement of an inspector under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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#### Commencement Information

**I16** S. 72 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

### 73 Inspection reports

- (1) Where an inspection has been carried out under section 72, the Scottish Ministers must issue and publish a report and send a copy of it to the local authority and any registered tenant organisation.
- (2) The report must identify any respects in which, as a result of the inspection, the exercise of the functions of the local authority in relation to the provision of housing accommodation and related services was found to be unsatisfactory.

#### Commencement Information

**I17** S. 73 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

### 74 Remedial plans

- (1) The Scottish Ministers may require a local authority to prepare, and to submit to the Scottish Ministers by such time as they may direct, a plan (a “remedial plan”) setting out the authority’s proposals for dealing with the matters identified in the report in pursuance of section 73(2), or such of those matters as are specified in the requirement.
- (2) Before making a requirement under subsection (1) the Scottish Ministers must send a draft of the requirement to the authority and must specify a period within which the authority may make comments to the Scottish Ministers on the proposed requirement.
- (3) In deciding whether to make a requirement under subsection (1) and what its terms should be the Scottish Ministers must have regard to any comments received from the authority under subsection (2).
- (4) On receipt of a remedial plan from an authority the Scottish Ministers may—
  - (a) approve it (with or without modifications), or
  - (b) reject it.
- (5) Where the Scottish Ministers approve a remedial plan, they may impose conditions as to its adoption and implementation by the authority.
- (6) The Scottish Ministers must not—
  - (a) approve a remedial plan with modifications,
  - (b) reject a remedial plan, or
  - (c) impose conditions under subsection (5),
 unless they have given the authority notice of their intention to do so and have had regard to any comments received from the authority within such period as the Scottish Ministers may specify.
- (7) Where a plan is approved under subsection (4)(a), the authority must adopt and implement it in accordance with any conditions imposed under subsection (5).

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- (8) Where a plan is rejected under subsection (4)(b), the authority must prepare a revised plan and submit it to the Scottish Ministers by such time as they may direct.

#### Commencement Information

**I18** S. 74 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## 75 Remedial plans: appointment of manager

- (1) The Scottish Ministers may carry out an inspection of the implementation of a remedial plan by a local authority.
- (2) Subsections (2) to (6) of section 72 apply in relation to such an inspection as they apply in relation to an inspection under subsection (1) of that section.
- (3) Where, as a result of an inspection under subsection (1) of this section, the Scottish Ministers consider that the remedial plan is not being implemented satisfactorily, they may appoint a manager to exercise such functions of the authority in relation to the provision of housing accommodation and related services as the Scottish Ministers may specify.
- (4) Before appointing a manager under subsection (3) the Scottish Ministers must consult—
- the authority,
  - such bodies representing local authorities as they think fit, and
  - the Accounts Commission for Scotland,
- and must have regard to any comments received from them within such period as the Scottish Ministers may specify.
- (5) A manager appointed under subsection (3)—
- is to be appointed for such period and on such terms and conditions as the Scottish Ministers may determine,
  - has, by virtue of the appointment, power generally to do all such things as are necessary for carrying out the manager's functions, and
  - has such specific powers (which may include power to do anything which the authority has power to do) as the Scottish Ministers may specify.
- (6) The remuneration and expenses of the manager are to be paid by the authority.
- (7) The Scottish Ministers may give directions in relation to the carrying out of the manager's functions; and the manager must comply with any such direction.
- (8) In carrying out functions the manager acts as the agent of the authority; and the manager is not personally liable on a contract entered into as manager.
- (9) A person dealing with the manager in good faith and for value is not concerned to inquire whether the manager is acting within the powers conferred by virtue of this section.

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#### Commencement Information

**I19** S. 75 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## CHAPTER 3

### COMMON PROVISIONS

#### *Disposals of tenanted houses: consultation and consent*

#### **76 Disposals of tenanted houses: consultation and consent**

- (1) Schedule 9 (which makes provision for consultation with tenants, including a ballot, where a disposal by a local authority landlord or a registered social landlord would result in a change of landlord for a tenant under a Scottish secure tenancy) has effect.
- (2) Where a disposal to which that schedule applies is to a person other than a registered social landlord, the Scottish Ministers must not give consent to the disposal under section 12(7) of the 1987 Act or, as the case may be, section 66 of this Act unless they are satisfied that a disposal to a registered social landlord is not appropriate.

#### Commencement Information

**I20** S. 76 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

#### *Information*

#### **77 Power to obtain information**

- (1) The Scottish Ministers may, for any purpose mentioned in subsection (2), serve on a person a notice requiring the person—
  - (a) to provide the Scottish Ministers, or a person authorised by them, at a time and place and in the form and manner specified in the notice, with such information relating to the affairs of a local authority or, as the case may be, a registered social landlord in connection with the provision of housing accommodation and related services as may be specified or described in the notice, or
  - (b) to produce to the Scottish Ministers, or a person authorised by them, at a time and place specified in the notice, any documents relating to such affairs which are specified or described in the notice and are in that person's custody or under that person's control.
- (2) The purposes referred to in subsection (1) are any purpose connected with the provision of housing accommodation and related services by the authority or, as the case may be, the landlord.

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- (3) A notice in pursuance of subsection (1) in relation to a local authority may be served on—
- (a) the authority,
  - (b) an officer or employee of the authority,
  - (c) any other person whom the Scottish Ministers have reason to believe is or may be in possession of relevant information.
- (4) No notice is to be served on a person falling within paragraph (b) or (c) of subsection (3) unless—
- (a) a notice has been served on the local authority and has not been complied with, or
  - (b) the Scottish Ministers believe that the information or documents in question are not in the possession of the authority.
- (5) A notice in pursuance of subsection (1) in relation to a registered social landlord may be served on—
- (a) the landlord,
  - (b) any person who is, or has been, an officer, member, employee or agent of the landlord,
  - (c) a subsidiary or associate of the landlord,
  - (d) any person who is, or has been, an officer, member, employee or agent of a subsidiary or associate of the landlord,
  - (e) any other person whom the Scottish Ministers have reason to believe is or may be in possession of relevant information.
- (6) No notice is to be served on a person falling within paragraphs (b) to (e) of subsection (5) unless—
- (a) a notice has been served on the registered social landlord and has not been complied with, or
  - (b) the Scottish Ministers believe that the information or documents in question are not in the possession of the landlord.

#### **Commencement Information**

**I21** S. 77 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## **78 Power to obtain information: further provision**

- (1) In section 77, “agent” includes banker, solicitor and auditor.
- (2) Nothing in that section authorises the Scottish Ministers to require—
- (a) the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session, or
  - (b) the disclosure by a banker of anything in breach of any duty of confidentiality owed by the banker to a person other than a local authority or, as the case may be, a registered social landlord or a subsidiary or associate of a registered social landlord.

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- (3) References in that section to a document are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.
- (4) Where by virtue of that section documents are produced to any person, that person may take copies of or make extracts from them.
- (5) A person who fails, without reasonable excuse, to do anything required of that person by a notice under that section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person who intentionally alters, suppresses or destroys a document which that person has been required by a notice under that section to produce is guilty of an offence and is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

#### **Commencement Information**

**I22** S. 78 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

### *Guidance*

#### **79 Issue of guidance by the Scottish Ministers**

- (1) The Scottish Ministers may issue guidance with respect to the provision of housing accommodation and related services by local authorities and registered social landlords.
- (2) Guidance under this section may, in particular, be issued with respect to—
  - (a) the housing needs for which provision should be made and the means of meeting those needs,
  - (b) the prevention and alleviation of homelessness,
  - (c) the provision and management of sites for persons of nomadic habit of life, whatever their race or origin,
  - (d) the acquisition and disposal of housing accommodation,
  - (e) the allocation of housing accommodation,
  - (f) the terms of tenancies and the principles upon which levels of rent should be determined,
  - (g) standards of maintenance and repair and the means of achieving those standards,
  - (h) the prevention of anti-social behaviour and conduct, and conduct amounting to harassment, by tenants and other persons whose actions and conduct are the subject of paragraph 7 of schedule 2 (“anti-social”, “conduct” and “harassment” having the meanings given in sub-paragraph (2) of that paragraph),
  - (i) the provision of services for owners and occupiers of houses,
  - (j) consultation and communication with tenants and bodies representing tenants,

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- (k) the participation of tenants and bodies representing tenants in the formulation of proposals concerning housing accommodation and related services,
  - (l) procedures for dealing with disputes between tenants and local authorities or registered social landlords,
  - (m) standards of governance and financial accountability.
- (3) The power to issue guidance under this section does not include power to issue guidance in respect of the functions conferred on local authorities by Part XIII (improvement and repairs grants) of the 1987 Act.
- (4) Before issuing any guidance under this section the Scottish Ministers must consult such persons as they think fit.
- (5) The Scottish Ministers must issue the guidance in such manner as they consider appropriate for bringing it to the notice of the local authorities or, as the case may be, the registered social landlords concerned.
- (6) Guidance under this section may make different provision in relation to different cases and, in particular, in relation to different areas, different descriptions of housing accommodation and different descriptions of local authority or registered social landlord.
- (7) In considering whether action needs to be taken to secure the proper management of the provision of housing accommodation and related services by a local authority or a registered social landlord or whether there has been mismanagement, the Scottish Ministers may have regard (among other matters) to the extent to which any guidance under Part 1 of this Act, section 37 (guidance on homelessness) of the 1987 Act or this section is being or has been followed.

#### Commencement Information

**I23** S. 79 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

#### *Code of good practice*

### **80 Code of good practice**

- (1) The Scottish Ministers must publish a statement setting out how they propose to exercise their functions under this Part.
- (2) The Scottish Ministers must keep the statement under review and—
- (a) may from time to time,
  - (b) must, not more than 5 years from the date of publication of the statement and at least once every five years thereafter,
- publish a further such statement.

#### Commencement Information

**I24** S. 80 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))



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### *Charges for regulatory functions*

## 81 Charges for regulatory functions of the Scottish Ministers

- (1) The Scottish Ministers may, after consultation with a local authority or, as the case may be, a registered social landlord, direct the authority or landlord to pay to them an amount specified in, or calculated in accordance with, the direction in respect of the expenses specified in subsection (2); and the authority or landlord must comply with any such direction.
- (2) The expenses referred to in subsection (1) are the expenses of the Scottish Ministers in exercising in relation to the authority or landlord their functions under—
  - (a) this Part,
  - (b) sections 17A and 17B (publication of housing management information) of the 1987 Act, and
  - (c) any other enactment relating to the provision of housing accommodation or related services by local authorities or registered social landlords.

#### **Commencement Information**

**I25** S. 81 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

## CHAPTER 4

### INTERPRETATION OF PART 3

## 82 Meaning of “subsidiary” and “associate”

- (1) In this Part “subsidiary”, in relation to a registered social landlord, means a company with respect to which one of the following conditions is fulfilled—
  - (a) the landlord is a member of the company and controls the composition of the board of directors,
  - (b) the landlord holds more than half in nominal value of the company’s equity share capital,
  - (c) the company is a subsidiary, within the meaning of the Companies Act 1985 (c.6) or the Friendly and Industrial and Provident Societies Act 1968 (c.55), of another company which, by virtue of paragraph (a) or (b), is itself a subsidiary of the landlord.
- (2) For the purposes of subsection (1)(a), the composition of a company’s board of directors is deemed to be controlled by a registered social landlord if, but only if, the landlord, by the exercise of some power exercisable by the landlord without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships.
- (3) In relation to a company which is an industrial and provident society—
  - (a) any reference in this section to the board of directors is a reference to the committee of management of the society,



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- (b) the reference in subsection (2) to the holders of all or a majority of the directorships is a reference—
  - (i) to all or a majority of the members of the committee, or
  - (ii) if the landlord is a member of the committee, such number as together with the landlord would constitute a majority.
- (4) In the case of a registered social landlord which is a body of trustees, references in this section to the landlord are to the trustees acting as such.
- (5) In this Part “associate”, in relation to a registered social landlord, means—
  - (a) any body of which the landlord is a subsidiary, and
  - (b) any other subsidiary of such a body.
- (6) In subsection (5) “subsidiary” has the same meaning as in the Companies Act 1985 (c.6) or the Friendly and Industrial and Provident Societies Act 1968 (c.55) or, in the case of a body which is itself a registered social landlord, has the meaning given by subsection (1).

#### Commencement Information

**I26** S. 82 wholly in force at 1.11.2001, see s. 113 and [S.S.I. 2001/336, art. 2\(3\)](#), [Sch. Pt. II](#) (subject to transitional provisions in [art. 3](#)) (as amended by [S.S.I. 2001/397, art. 7\(b\)](#))

### 83 Interpretation of Part 3

- (1) References in this Part to an officer of a registered social landlord are—
  - (a) in the case of an industrial and provident society, to any officer of the society as defined in section 74 of the Industrial and Provident Societies Act 1965 (c.12), including a co-opted member of the committee of the society, and
  - (b) in the case of a company registered under the Companies Act 1985 (c.6), to any director or other officer of the company within the meaning of that Act.
- (2) In this Part, in relation to an industrial and provident society—
  - (a) “committee” means the committee of management or other directing body of the society,
  - (b) “co-opted member”, in relation to the committee, includes any person co-opted to serve on the committee, whether the person is a member of the society or not,
  - (c) any reference to a member of the committee includes a co-opted member.
- (3) In this Part—
  - “co-operative housing association” has the meaning given in section 300(1)(b) of the 1987 Act,
  - “housing activities” means, in relation to a registered social landlord, all its activities in pursuance of the purposes, objects and powers mentioned in section 58,
  - “housing association” and, in relation to a housing association, “fully mutual” have the meanings given in section 1 of the Housing Associations Act 1985 (c.69),
  - “provision of housing accommodation and related services” includes—
    - (a) the prevention and alleviation of homelessness,

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- (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 persons of nomadic habit of life, whatever their race or origin,
- “shared ownership agreement” means an agreement whereby—
- (a) a pro indiviso right in a house is sold, and the remaining pro indiviso rights therein are leased, to a person subject to the person being entitled, from time to time, to purchase those remaining rights until that person has purchased the entire house, or
  - (b) pro indiviso rights in houses are conveyed to trustees to hold on behalf of persons each of whom, by purchasing a share in those houses, becomes entitled to exclusive occupancy of one of the houses but with any such person who wishes to sell or otherwise dispose of that person’s share being required to do so through the agency of the trustees,
- or such other agreement as may be approved by the Scottish Ministers whereby a person acquires a pro indiviso right in a house or houses and thereby becomes entitled to exclusive occupancy of the house or, as the case may be, one of the houses.

#### **Commencement Information**

**I27** S. 83 wholly in force at 1.11.2001, see s. 113 and [S.S.I. 2001/336, art. 2\(3\)](#), [Sch. Pt. II](#) (subject to transitional provisions in [art. 3](#)) (as amended by [S.S.I. 2001/397, art. 7\(b\)](#))

**Status:**

Point in time view as at 30/09/2002.

**Changes to legislation:**

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