

SCHEDULE 7 REGULATION OF REGISTERED SOCIAL LANDLORDS

PART 4

INQUIRY INTO AFFAIRS OF REGISTERED SOCIAL LANDLORDS

Inquiry

- 16 (1) The Scottish Ministers may appoint a person (not a person who is, or at any time has been, a member of the staff of the Scottish Administration, the registered social landlord or a subsidiary or associate of the registered social landlord) to conduct an inquiry into the affairs of a registered social landlord.
- (2) If the appointed person considers it necessary for the purposes of the inquiry, that person may also inquire into the business of any other body which, at a time which the appointed person considers material, is or was a subsidiary or associate of the registered social landlord.
- (3) The appointed person may, by notice in writing served on—
- (a) the registered social landlord,
 - (b) any person who is, or has been, an officer, agent or member of the landlord,
 - (c) any person who is, or has been, an officer, agent or member of a subsidiary or associate of the landlord, or
 - (d) any other person whom the appointed person has reason to believe is or may be in possession of information of relevance to the inquiry,
- impose on the landlord or person a requirement specified in sub-paragraph (4).
- (4) That requirement is a requirement to—
- (a) give to the appointed person, at a time and place and in the form and manner specified in the notice, such information relating to the affairs of the registered social landlord, or of any other such body as is referred to in sub-paragraph (2), as may be specified or described in the notice, and
 - (b) produce to the appointed person, 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.
- (5) An association or other person who fails without reasonable excuse to comply with the requirements of a notice under sub-paragraph (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) Where by virtue of sub-paragraph (3) any books, accounts or other documents are produced to the appointed person, that person may take copies of or make extracts from them.
- (7) The appointed person may, if that person thinks fit during the course of the inquiry, make one or more interim reports to the Scottish Ministers on such matters as appear to the appointed person to be appropriate.
- (8) On completion of the inquiry the appointed person must make a report to the Scottish Ministers on such matters and in such form as they may specify.
- (9) The Scottish Ministers may publish the report, or such part of it as they think fit.

Status: This is the original version (as it was originally enacted).

- (10) In this paragraph “agent” includes banker, solicitor and auditor.
- (11) Nothing in this paragraph authorises the appointed person to require—
- (a) the disclosure of anything which a person would be entitled to refuse to disclose on the ground 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 registered social landlord or a subsidiary or associate of a registered social landlord.

Extraordinary audit for purposes of inquiry

- 17 (1) For the purposes of an inquiry under paragraph 16 the Scottish Ministers may require the accounts and balance sheet of the registered social landlord concerned, or such of them as the Scottish Ministers may specify, to be audited by a qualified auditor appointed by the Scottish Ministers.
- (2) A person is a qualified auditor for this purpose if that person would be eligible for appointment as auditor of the ordinary accounts of the registered social landlord.
- (3) On completion of the audit the appointed auditor must make a report to the Scottish Ministers on such matters and in such form as they may specify.
- (4) The expenses of the audit, including the remuneration of the auditor, are to be paid by the Scottish Ministers.
- (5) An audit under this paragraph is additional to, and does not affect, any audit made or to be made under any other enactment.

General powers exercisable as a result of inquiry or audit

- 18 (1) Where the Scottish Ministers are satisfied, as the result of an inquiry under paragraph 16 or an audit under paragraph 17, that there has been misconduct or mismanagement in the affairs of a registered social landlord, they may—
- (a) remove any officer, agent or employee of the landlord who appears to the Scottish Ministers to have been responsible for or privy to the misconduct or mismanagement or to have by that person’s conduct contributed to it or facilitated it,
 - (b) suspend such a person for up to six months—
 - (i) pending determination whether the person should be removed, and
 - (ii) if it is determined that the person should be removed, pending the person’s removal,
 - (c) direct any bank or other person who holds money or securities on behalf of the landlord not to part with the money or securities without the approval of the Scottish Ministers,
 - (d) restrict the transactions which may be entered into, or the nature or amount of the payments which may be made, by or in the administration of the landlord without the approval of the Scottish Ministers.
- (2) If at any time the appointed person makes an interim report under paragraph 16(7) and, as a result of that interim report, the Scottish Ministers are satisfied that there has been misconduct or mismanagement as mentioned in sub-paragraph (1)—

Status: This is the original version (as it was originally enacted).

- (a) the Scottish Ministers may at that time exercise any of the powers conferred by paragraphs (b) to (d) of that sub-paragraph, and
 - (b) in relation to the exercise at that time of the power conferred by sub-paragraph (1)(b), the reference in that provision to a period of six months is to be construed as a reference to a period beginning at that time and ending six months after the date of the report under paragraph 16(8).
- (3) Before exercising their power under sub-paragraph (1)(a) the Scottish Ministers must give at least 14 days' notice of their intention to do so to the person they intend to remove and to the registered social landlord.
- (4) Notice under sub-paragraph (3) may be given by post, and if so given to the person whom the Scottish Ministers intend to remove may be addressed to that person's last known address in the United Kingdom.
- (5) A person who is removed under sub-paragraph (1)(a) or suspended under sub-paragraph (1)(b) may appeal to the Court of Session.
- (6) Where a person is suspended under sub-paragraph (1)(b), the Scottish Ministers may give directions with respect to the performance of the person's functions and otherwise as to matters arising from the suspension.
- (7) A person who fails to comply with a direction under sub-paragraph (1)(c) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months or both.

Power to direct transfer of land

- 19 (1) Where, as the result of an inquiry under paragraph 16 or an audit under paragraph 17, the Scottish Ministers are satisfied as regards a registered social landlord—
- (a) that there has been misconduct or mismanagement in its administration, or
 - (b) that the management of its land would be improved if some or all of its land were transferred in accordance with the provisions of this paragraph,
- the Scottish Ministers may direct the registered social landlord to make such a transfer to a specified registered social landlord.
- (2) The Scottish Ministers must, before making a direction under this paragraph, consult the tenants of any houses included in the proposed transfer; and, in making a direction, they must have regard to the views expressed by those consulted.
- (3) A transfer in pursuance of a direction under this paragraph is to be made on the terms that the transferee will pay or undertake to pay to the registered social landlord concerned such sum (if any) as will be necessary to defray all its proper debts and liabilities (including debts and liabilities secured on the land) after taking into account any money or other assets belonging to the landlord.
- (4) If it appears to the Scottish Ministers likely that the registered social landlord concerned will as a result of the transfer be dissolved under the Industrial and Provident Societies Act 1965 (c. 12) or wound up under the Insolvency Act 1986 (c. 45), the Scottish Ministers must secure that the costs of the dissolution or winding up are taken into account in determining the sum payable to the landlord under sub-paragraph (3).