

# HOUSING (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### STRUCTURE OF THE ACT

#### Part 1 – the Scottish Housing Regulator

##### The Regulator

8. **Section 1** establishes the Scottish Housing Regulator (“the regulator” or “the SHR”) as a body corporate. Although not covered by the Act, it is intended that the SHR will become a non-Ministerial office holder of the Scottish Administration (in other words, a non-Ministerial Department) and that its employees will be civil servants. The formal mechanism for this will be by an order made by Westminster under the Scotland Act 1998. Section 2(1) gives the regulator the objective to safeguard and promote the interests of those who are, or who may become, tenants of social landlords, or homeless, or the recipients of housing services provided by social landlords. Section 2(2) requires the regulator to perform its functions in a way that is in line with its objective and which it considers most appropriate for the purpose of meeting that objective.
9. **Section 3(1)** sets out the regulator’s general functions. These are to keep a publicly available register of social landlords and to monitor, assess and regularly report on all social landlords’ performance of housing activities and on registered social landlords’ financial well-being and standards of governance. (“Social landlords” provide housing for people in housing need at rents below open market levels. They can include registered social landlords (“RSLs”) and local authorities that provide rented housing and other housing services. )
10. **Section 3(2)** requires the regulator to perform its functions in a proportionate, accountable and transparent way that is targeted only where action is needed and that is consistent with any other principle which appears to it to represent best regulatory practice. Under section 4, the regulator must prepare, consult on and publish a statement explaining how it will discharge its functions with regard to the groups covered by its section 2 objective, in a way that is also consistent with section 3(2).
11. **Section 5** requires the regulator to consult and involve bodies representing homeless people, tenants and other service users in its work where appropriate, and to publish a statement about how it intends to do this.
12. **Section 6** requires the regulator to consult the Accounts Commission for Scotland on how it will carry out its powers and duties in respect of local authority landlords. The regulator must publish a statement on how it will do so.
13. **Section 7** makes the regulator independent from Scottish Ministers by preventing them from directing or otherwise trying to control how the regulator carries out its functions (except where contrary provision is made).

## **Membership**

14. [Section 8](#) deals with the detailed membership of the regulator. Subsection (2) provides for members to be appointed by Scottish Ministers (after normal public appointment procedures). Ministers have discretion to appoint the number of members they think is appropriate for the regulator, but must appoint a minimum of three members.
15. [Section 9\(1\)](#) sets out the categories of person who are disqualified from being members. These are MSPs, MPs, MEPs, office holders of the Scottish Administration, local councillors, employees of local councils and employees and officers of any registered social landlord. Subsection (2) allows Scottish Ministers to remove a member from office if they are satisfied that the member is an undischarged bankrupt or has been absent from meetings for over six consecutive months, is unable to discharge the member's functions as a member or is unsuitable as a member. [Section 165](#) explains what is meant by an "undischarged bankrupt".
16. [Section 10](#) allows the regulator to reimburse its members' expenses incurred in carrying out their functions.

## **Chairing and Proceedings**

17. [Section 11](#) deals with the regulator's constitutional arrangements. Subsection (1) requires the Scottish Ministers to appoint one of the members to chair meetings of the regulator's board and allows Ministers to appoint another member to act as deputy chair.
18. [Section 12](#) provides for the SHR to regulate its own procedure and that of any committees that are established. Subsection (2) prevents any of the regulator's proceedings or acts being called into question in the event that there is a vacancy in its membership or if the process for appointing a member was carried out incorrectly.

## **Staff and property**

19. [Section 13](#) provides for the regulator to appoint as a member of staff a chief executive. The first chief executive will be directly appointed by Scottish Ministers after consulting the chair of the regulator's board (if that person has been appointed at the time of the chief executive's appointment). The regulator may appoint subsequent chief executives. Both the appointment of the chief executive and the terms of their appointment are subject to approval by Scottish Ministers.
20. [Section 14](#) provides for the regulator to appoint other members of staff and the terms of such staff are subject to the approval of Scottish Ministers. It introduces [schedule 1](#) which makes transitional provisions about the regulator's staff and property.

## **Powers**

21. [Section 15](#) sets out the regulator's general powers. Subsection (1) allows the regulator to do anything it thinks necessary or advisable for the purpose of or in connection with the performance of any function conferred on it by this Act. Subsection (2) prevents the regulator from borrowing money. The regulator must also have the consent or approval of Scottish Ministers before it can:
  - acquire or dispose of land;
  - give guarantees; or
  - determine the location of its office premises.
22. [Section 16](#) provides for the regulator, at its discretion, to authorise anyone to carry out any of its functions and to determine the extent to which they can carry out such a function. The regulator can authorise both members of its staff and people who are not members of its staff to carry out its functions.

## **Studies, co-operation and annual reports**

23. [Section 17](#) gives the regulator the power to commission studies or to carry them out itself to inform its approach towards meeting its objective. The regulator is able to, but is not required to, publish a report on any study or research.
24. [Section 18](#) requires the SHR to co-operate with other relevant regulators. Subsection (2) sets out the bodies that are considered to be relevant regulators. These are:
  - the Office for Tenants and Social Landlords (known as the Tenant Services Authority)
  - the Office of the Scottish Charity Regulator
  - Healthcare Improvement Scotland
  - Social Care and Social Work Improvement Scotland
  - the Scottish Public Services Ombudsman
  - the Financial Services Authority
  - the Registrar of Companies
  - the Accounts Commission for Scotland.
25. In relation to the Office of the Scottish Charity Regulator, section 137 of the Act expands the co-operation duties of the SHR and the Office of the Scottish Charity Regulator.
26. [Section 18\(3\)](#) allows the SHR to disclose any information to the relevant regulator for any purpose connected with the performance of its functions or in order to enable or assist the relevant regulator to perform any function.
27. [Section 19](#) stipulates that the SHR must annually prepare and publish a general report on how it has used its functions, lay a copy before the Scottish Parliament and send a copy to Scottish Ministers. Subsection (2) states that this report must include information about the use of the regulator's powers under Parts 4 (Inquiries and Information) and Part 5 (Regulatory Intervention) of this Act. Subsection (3) gives the regulator discretion to decide what other information should be in the report, what the report looks like and how it is to be published.