

# HOUSING (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### STRUCTURE OF THE ACT

#### **Part 10 – Special Procedure for Disposals and Restructurings Resulting in Change of Landlord**

##### **Disposals by a registered social landlord**

127. **Chapter 1**, sections 113 to 122, replaces the provisions in Schedule 9 of the Housing (Scotland) Act 2001 in respect of registered social landlords. Chapter 1 sets out the special procedure for disposals resulting in a change of landlord. Where the special procedures apply, a registered social landlord must seek the regulator's initial consent. The regulator may refuse consent or direct for consultation with tenants. Thereafter consent may be given, but is subject to tenant authorisation via ballot or agreement. There is no requirement to follow the special procedure where the regulator directs the transfer of assets from one RSL to another or where the transfer is made during a moratorium (see section 113(1)(a) and section 108(1)).
128. **Section 113** provides that Chapter 1 of Part 10 applies to disposals of land by a registered social landlord where the regulator's consent is required under Part 9 and which result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL making the transfer.
129. Under section 114 the regulator, having regard to any information available to it, may refuse consent to the disposal or direct the RSL to consult with tenants in accordance with section 115.
130. **Section 115** requires a registered social landlord proposing to make a disposal, where given a direction under section 114, to serve a notice on the tenants of each house included in the proposal which specifies to whom the disposal is to be made, explains the likely consequences of such a disposal for the tenants, informs the tenants of their right to make representations to the RSL within such a reasonable period as specified (at least 28 days) and which includes any other details the RSL considers appropriate. After considering any representations made within the specified period, the RSL must then serve a further notice which informs tenants of any significant changes to the proposals, informs tenants of their right to object to the proposed disposal within such a reasonable period as specified (at least 28 days) and explains that the disposal requires the regulator's consent.
131. **Section 116** provides that following consultation under section 115, the regulator may refuse consent to the disposal or consent to the disposal subject to tenant authorisation. Tenant authorisation is given when the regulator directs the RSL to conduct a ballot under section 118, or directs the RSL to seek the written agreement of tenants in accordance with section 119, and then approves the outcome under section 121. In making its decision, the regulator must have regard to the results of the consultation and may have regard to any information available to it.

132. [Section 117](#) contains provisions to allow the regulator to obtain further information on a proposed disposal before deciding whether to approve under section 121. The SHR may require the registered social landlord to provide any information the regulator feels is relevant on the representations and objections made in relation to the proposed disposal and any other information relating to the proposed disposal. It may also direct the RSL to carry out, and provide information on, further consultation with tenants.
133. [Section 118](#) requires a registered social landlord proposing to make a disposal, where given a direction under section 116(2)(a)(i), to conduct a ballot of tenants who will be affected and inform the regulator of the outcome. The RSL must have regard to any guidance issued by Scottish Ministers when conducting the ballot or informing the regulator of the results of the ballot.
134. [Section 119](#) requires a registered social landlord proposing to make a disposal, where given a direction under section 116(2)(a)(ii), to seek the written agreement to the disposal from tenants of houses included in the proposed disposal. The RSL must provide the regulator with information about every written agreement sought.
135. The registered social landlord is not required to give notice under section 115 to, and may exclude from a ballot under section 118 or the agreement process under section 119, any tenant unaffected by the proposed disposal (section 120). A tenant will be unaffected if the RSL expects the tenant to have vacated the house before the disposal is made. The regulator can only consent to a proposed disposal where there are such unaffected tenants if the RSL has served notice on the regulator confirming that the unaffected tenants have all vacated the houses concerned.
136. [Section 121](#) provides that the regulator must approve the disposal if it is satisfied that a majority of tenants voting in a ballot conducted under section 118 wish the disposal to proceed; or it is satisfied that the landlord has obtained the written agreement of a majority of the tenants whose written agreement the landlord was required to seek under section 119. If the regulator is not satisfied that the majority of tenants agree then it must withdraw the conditional consent granted under section 116(1)(b). Before making its decision under this section, it can require the registered social landlord concerned to provide information about either the ballot or the written agreements.
137. [Section 122](#) offers protection to the purchaser in any disposal under Chapter 1 of Part 10 of this Act. The regulator's consent for such a disposal will not be invalidated by a failure of the regulator or registered social landlord to comply with any provision in this chapter.

### **Restructuring of a registered social landlord**

138. [Chapter 2](#) (section 123) applies the special procedure in sections 114 to 121 of Chapter 1 to restructurings by a registered social landlord where the regulator's consent is required under section 97 or 101, and which result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL proposing the restructuring. Section 123(2) exempts certain restructuring proposals from this requirement
139. [Section 124](#) offers protection to a purchaser following a restructuring where consent has been given but there is a failure of the regulator or RSL to comply with any provision of the special procedure.