



# Housing (Scotland) Act 2010

## 2010 asp 17

### PART 5

#### REGULATORY INTERVENTION

##### *Registered social landlords: asset protection*

#### **66 Restrictions on dealings during or following inquiries**

- (1) This section applies if the Regulator, when making or having made inquiries, considers—
  - (a) that there has been misconduct or mismanagement in a registered social landlord's financial or other affairs,
  - (b) that the interests of a registered social landlord's tenants need protection,
  - (c) that a registered social landlord's assets need protection, or
  - (d) that a registered social landlord's financial viability is in jeopardy.
- (2) The Regulator may—
  - (a) direct the registered social landlord not to—
    - (i) undertake particular transactions, or
    - (ii) make payments of a particular nature or amount,without the Regulator's consent, or
  - (b) direct a bank or other person not to dispose of any money, securities or other assets it holds for the registered social landlord without the Regulator's consent.
- (3) It is an offence for a person to fail to comply with a direction.
- (4) A person guilty of such an offence is liable on summary conviction to—
  - (a) imprisonment for a term not exceeding 3 months,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.

*Status: Point in time view as at 20/11/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Housing (Scotland) Act 2010, Cross Heading: Registered social landlords: asset protection. (See end of Document for details)*

### Commencement Information

**II** S. 66 in force at 1.4.2012 by S.S.I. 2012/39, art. 2, Sch. 1 (with Sch. 2)

## 67 Transfer of assets following inquiries

- (1) This section applies if the Regulator, having made inquiries, considers—
    - (a) that there has been misconduct or mismanagement in a registered social landlord's financial or other affairs, or
    - (b) that a registered social landlord's viability is in jeopardy for financial or governance reasons or because it cannot provide housing services to an acceptable standard.
  - (2) In either case the Regulator must also consider that a transfer of some or all of a registered social landlord's assets would improve the management of the assets.
  - (3) The Regulator may direct the registered social landlord to transfer some or all of its assets to another registered social landlord.
  - (4) The Regulator must—
    - (a) before making a direction, consult—
      - (i) the tenants of any houses it proposes to transfer, and
      - (ii) any secured creditor whom the Regulator knows to hold security over those houses, and
    - (b) when making a direction, have regard to any views expressed by those consulted by such time as the Regulator may specify.
- [<sup>F1</sup>(4A) A duty on the Regulator to consult in accordance with paragraph (i) or (ii) of subsection (4)(a) does not apply where the Regulator considers that—
- (a) the registered social landlord's viability is in jeopardy for financial reasons,
  - (b) a person could take a step in relation to the registered social landlord which would require to be notified to the Regulator under section 73,
  - (c) the direction would substantially reduce the likelihood of a person taking such a step, and
  - (d) there is insufficient time to comply with that duty and make a direction which would substantially reduce that likelihood.
- (4B) The Regulator must—
- (a) issue guidance on subsection (4A), such guidance to include—
    - (i) the circumstances in which it considers that subsection (4A) is likely to apply,
    - (ii) the actions it expects to take in those circumstances, and
    - (iii) how, in those circumstances, it intends to communicate with any of the persons mentioned in paragraph (b) who are affected by its actions, and
  - (b) before issuing or revising any guidance, consult—
    - (i) tenants of registered social landlords or their representatives,
    - (ii) registered social landlords or their representatives, and
    - (iii) secured creditors of registered social landlords or their representatives.

*Status: Point in time view as at 20/11/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Housing (Scotland) Act 2010, Cross Heading: Registered social landlords: asset protection. (See end of Document for details)*

- (4C) Where the Regulator proposes to direct a transfer of some (but not all) of a registered social landlord's assets, the Regulator must—
- (a) before making a direction, obtain an independent valuation of those assets, and
  - (b) when making a direction, have regard to that valuation.]
- (5) A transfer of assets under a direction must be made on terms specified in, or determined in accordance with, the direction.
- (6) Those terms must however—
- <sup>F2</sup>(a) . . . . .
  - (b) in the case of a transfer of all of a registered social landlord's assets, provide for the settlement or transfer of all the transferor's proper debts and liabilities in respect of the assets (whether secured or not).
- (7) The Regulator may direct the transfer of assets from a registered social landlord which is a charity only if the recipient registered social landlord is a charity which the Regulator, after consulting the Office of the Scottish Charity Regulator, considers has the same or similar charitable purposes (within the meaning of section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10)).
- (8) The Regulator may direct the transfer of assets which the registered social landlord is under a duty to apply in accordance with section 19(1) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) only if the Regulator—
- (a) consults with the Office of the Scottish Charity Regulator, and
  - (b) after doing so, considers that the recipient registered social landlord will secure the proper application of those assets for the purposes which were set out in the transferor registered social landlord's entry in the Scottish Charity Register immediately before its removal from that register.

**Textual Amendments**

**F1** S. 67(4A)-(4C) inserted (20.11.2014 for specified purposes) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), [ss. 97\(a\)](#), 104(3); S.S.I. 2014/264, art. 2, Sch.

**F2** S. 67(6)(a) and following word repealed (20.11.2014 for specified purposes) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), [ss. 97\(b\)](#), 104(3); S.S.I. 2014/264, art. 2, Sch.

**Commencement Information**

**I2** S. 67 in force at 1.4.2012 by S.S.I. 2012/39, art. 2, [Sch. 1](#) (with Sch. 2)

**Status:**

Point in time view as at 20/11/2014.

**Changes to legislation:**

There are currently no known outstanding effects for the Housing (Scotland) Act 2010, Cross Heading: Registered social landlords: asset protection.