



# Housing (Scotland) Act 2010

## 2010 asp 17

### PART 5

#### REGULATORY INTERVENTION

*Registered social landlords: removal, suspension and appointment of officers etc.*

#### 60 General power to remove officers

- (1) The Regulator may remove an officer of a registered social landlord if the officer—
- (a) is an undischarged bankrupt or is otherwise apparently insolvent,
  - (b) is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 (c.46) or equivalent legislation in Northern Ireland,
  - (c) is disqualified from being a charity trustee under section 69 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),
  - (d) is, because of a mental disorder, incapable of acting, or
  - [<sup>F1</sup>(e) is, because of absence or other failure to act, failing to ensure that the registered social landlord is complying with—
    - (i) a duty imposed by this Act or by any other enactment,
    - (ii) a requirement imposed on the landlord by the Regulator under this Act or any other enactment.]
- (2) Before removing an officer, the Regulator must give at least 14 days' notice of its intention to do so to—
- (a) the officer, and
  - (b) the registered social landlord.
- (3) In this section “apparently insolvent” [<sup>F2</sup> is to be construed in accordance with section 16 of the Bankruptcy (Scotland) Act 2016].

#### Textual Amendments

- F1** S. 60(1)(e) substituted (8.3.2019) by [Housing \(Amendment\) \(Scotland\) Act 2018 \(asp 13\)](#), **ss. 2(2)**, 11(2); [S.S.I. 2018/253](#), **reg. 2(2)** (with **reg. 3**)

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

**F2** Words in s. 60(3) substituted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), **sch. 8 para. 27(2)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2

#### Commencement Information

**I1** S. 60 in force at 1.4.2012 by S.S.I. 2012/39, art. 2, **Sch. 1** (with Sch. 2)

## 61 Suspension of officers etc. during or following inquiries

- (1) The Regulator, when making or having made inquiries, may suspend a responsible individual (pending decision on removal or otherwise) where it considers—
  - [<sup>F3</sup>(a) that the registered social landlord has failed, or is failing, to comply with—
    - (i) a duty imposed by this Act or by any other enactment, or
    - (ii) a requirement imposed on the landlord by the Regulator under this Act or any other enactment,
 relating to its housing activities or its financial or other affairs,]
  - (d) that the responsible individual—
    - (i) is, during a moratorium under section 75, obstructing the Regulator from performing its functions under Part 7, or
    - (ii) is not co-operating in accordance with section 84(2).
- (2) The Regulator, unless it considers the case to be one of urgency, must give at least 14 days' notice of its intention to suspend a responsible individual to—
  - (a) the responsible individual, and
  - (b) the registered social landlord.
- (3) A suspension ceases to have effect—
  - (a) if the Regulator removes the individual or lifts the suspension, or
  - (b) where the Regulator does not so act, on the day falling 6 months after the inquiries concerned are concluded.
- (4) The Regulator may give the registered social landlord directions about—
  - (a) the performance of a suspended individual's functions,
  - (b) any other matter arising from the suspension,
 and may appoint an individual, on such terms as it thinks fit, to perform the suspended individual's functions.
- (5) It is an offence for a suspended individual to take any action in relation to the management or control of—
  - (a) the registered social landlord concerned, or
  - (b) any other registered social landlord,
 without the Regulator's consent.
- (6) An individual guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Textual Amendments

**F3** S. 61(1)(a) substituted for s. 61(1)(a)-(c) (8.3.2019) by Housing (Amendment) (Scotland) Act 2018 (asp 13), **ss. 2(3), 11(2)**; S.S.I. 2018/253, reg. 2(2) (with reg. 4)

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#### Commencement Information

**I2** S. 61 in force at 1.4.2012 by [S.S.I. 2012/39](#), [art. 2](#), [Sch. 1](#) (with [Sch. 2](#))

## 62 Removal of officers etc. following inquiries

- (1) The Regulator may remove a responsible individual where, having made inquiries, it considers—
  - [<sup>F4</sup>(a) that the registered social landlord has failed, or is failing, to comply with—
    - (i) a duty imposed by this Act or by any other enactment, or
    - (ii) a requirement imposed on the landlord by the Regulator under this Act or any other enactment,relating to its housing activities or its financial or other affairs.]
  - (d) that the responsible individual—
    - (i) is, during a moratorium under section 75, obstructing the Regulator from performing its functions under Part 7, or
    - (ii) is not co-operating in accordance with section 84(2).
- (2) Before removing a responsible individual, the Regulator must give at least 14 days' notice of its intention to do so to—
  - (a) the responsible individual, and
  - (b) the registered social landlord.
- (3) It is an offence for a removed individual to take any action in relation to the management or control of—
  - (a) the registered social landlord concerned, or
  - (b) any other registered social landlord,without the Regulator's consent.
- (4) An individual 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.

#### Textual Amendments

**F4** S. 62(1)(a) substituted for s. 62(1)(a)-(c) (8.3.2019) by [Housing \(Amendment\) \(Scotland\) Act 2018](#) ([asp 13](#)), [ss. 2\(4\)](#), [11\(2\)](#); [S.S.I. 2018/253](#), [reg. 2\(2\)](#) (with [reg. 5](#))

#### Commencement Information

**I3** S. 62 in force at 1.4.2012 by [S.S.I. 2012/39](#), [art. 2](#), [Sch. 1](#) (with [Sch. 2](#))

## 63 Responsible individuals

“Responsible individual” (used in sections 61 and 62) means an officer or agent of a registered social landlord who appears to the Regulator—

- (a) to have been responsible for,
- (b) to have facilitated or otherwise contributed to, or
- (c) to have been privy to,

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the <sup>F5</sup>... failure or other problem concerned.

#### Textual Amendments

**F5** Words in s. 63 repealed (8.3.2019) by [Housing \(Amendment\) \(Scotland\) Act 2018 \(asp 13\)](#), **ss. 2(5)**, 11(2); [S.S.I. 2018/253](#), reg. 2(2)

#### Commencement Information

**I4** S. 63 in force at 1.4.2012 by [S.S.I. 2012/39](#), art. 2, **Sch. 1** (with [Sch. 2](#))

### 64 Appeals against suspension or removal

- (1) An individual may appeal to the Court of Session against the Regulator's decision to—
  - (a) remove the individual under section 60 or 62, or
  - (b) suspend the individual under section 61.
- (2) The Court may determine an appeal by—
  - (a) confirming the decision,
  - (b) quashing the decision,
  - (c) remitting the case to the Regulator for reconsideration,
 and the Court's determination of the matter is final.

#### Commencement Information

**I5** S. 64 in force at 1.4.2012 by [S.S.I. 2012/39](#), art. 2, **Sch. 1** (with [Sch. 2](#))

### 65 Appointment of new officers

- (1) The Regulator may appoint an individual as an officer of a registered social landlord—
  - (a) in place of an officer it removes under section 60 or 62,
  - (b) where there are no officers,
  - (c) where—
    - (i) the registered social landlord has an insufficient number of officers to be able to appoint an officer under its constitution, and
    - (ii) the constitution does not provide a mechanism for appointing an officer in such circumstances, or
  - (d) if the Regulator considers that an additional officer is needed [<sup>F6</sup>to rectify a failure by the registered social landlord to comply with—
    - (i) a duty imposed by this Act or by any other enactment, or
    - (ii) a requirement imposed on the landlord by the Regulator under this Act or any other enactment,
 relating to its] financial or other affairs.
- (2) It is for the Regulator to determine the terms on which an officer is appointed (including [<sup>F7</sup>, subject to subsection (2A),] as to period of appointment and remuneration and expenses).

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[<sup>F8</sup>(2A) Where the officer is appointed by virtue of subsection (1)(d) to rectify a failure to comply with a duty or requirement, the appointment is to be only for so long as is necessary to so rectify the failure.]

(3) The Regulator may require the registered social landlord to purchase and maintain personal indemnity insurance approved by the Regulator for the officer appointed.

“personal indemnity insurance” means insurance designed to indemnify against liability attaching to an individual in connection with any negligence, default, or breach of duty committed in the individual's capacity as officer but does not include insurance with a provision—

- (a) prohibited by section 68A(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),
- (b) prohibited by section 234(3) of the Companies Act 2006 (c.46), or
- (c) which would be prohibited if the registered social landlord was a registered company or a charity.

(4) [<sup>F9</sup>Subject to subsection (4A), the] Regulator may renew the appointment of an officer on expiry of any period of appointment so determined.

[<sup>F10</sup>(4A) Where the officer was appointed by virtue of subsection (1)(d), subsection (2A) applies to the renewal of the appointment as it applies to the appointment.]

(5) It is for the registered social landlord to pay the appointed officer's remuneration and expenses.

(6) An appointed officer is entitled—

- (a) to require a general meeting of the registered social landlord to be convened within 21 days of giving notice to the landlord's officers of a request to that effect,
- (b) to attend, speak and vote at such a general meeting (whether or not convened in pursuance of paragraph (a)),
- (c) to move a resolution at such a general meeting (whether or not so convened), and
- (d) to resign or retire in accordance with the registered social landlord's constitution.

(7) An appointment may be made despite any contrary restriction in the registered social landlord's constitution (and any such restriction contrary to anything done by virtue of this section is accordingly overridden in relation to the appointment concerned).

#### Textual Amendments

**F6** Words in s. 65(1)(d) substituted (8.3.2019) by [Housing \(Amendment\) \(Scotland\) Act 2018 \(asp 13\)](#), **ss. 2(6)(a)**, 11(2); S.S.I. 2018/253, reg. 2(2)

**F7** Words in s. 65(2) inserted (8.3.2019) by [Housing \(Amendment\) \(Scotland\) Act 2018 \(asp 13\)](#), **ss. 2(6)(b)**, 11(2); S.S.I. 2018/253, reg. 2(2)

**F8** S. 65(2A) inserted (8.3.2019) by [Housing \(Amendment\) \(Scotland\) Act 2018 \(asp 13\)](#), **ss. 2(6)(c)**, 11(2); S.S.I. 2018/253, reg. 2(2)

**F9** Words in s. 65(4) substituted (8.3.2019) by [Housing \(Amendment\) \(Scotland\) Act 2018 \(asp 13\)](#), **ss. 2(6)(d)**, 11(2); S.S.I. 2018/253, reg. 2(2)

**F10** S. 65(4A) inserted (8.3.2019) by [Housing \(Amendment\) \(Scotland\) Act 2018 \(asp 13\)](#), **ss. 2(6)(e)**, 11(2); S.S.I. 2018/253, reg. 2(2)

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#### **Commencement Information**

**16** S. 65 in force at 1.4.2012 by [S.S.I. 2012/39](#), [art. 2](#), [Sch. 1](#) (with [Sch. 2](#))

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