

HOUSING (AMENDMENT) (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT

Disposal of land etc. by registered social landlords

Sections 3 and 4 – Disposal of land or other assets by registered social landlord and Special procedure where disposal results in change of landlord

40. Sections 3 and 4 of the Act amend Part 9 and Chapter 1 of Part 10 of the 2010 Act.

Part 9 of the 2010 Act

41. That Part and that Chapter currently make provision about the circumstances in which an RSL can dispose of its land or other assets. In a number of cases, the disposal can proceed only where the RSL has obtained the consent of the Regulator to the disposal.¹ Where that consent is not required, the RSL must notify the Regulator of the disposal.² And in some of those cases, the RSL must also consult its tenants before making the disposal and must inform the Regulator of the result.³

Chapter 1 of Part 10 of the 2010 Act

42. Where a disposal that requires Regulator’s consent would result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL making the disposal, Chapter 1 of Part 10 applies.⁴

43. Under this Chapter, the Regulator may refuse consent under section 114 or direct the RSL to consult its tenants in accordance with section 115. Section 115 requires the RSL to carry out a two-step consultation process with its tenants. Following that consultation process, the Regulator may either refuse consent or, subject to “tenant authorisation” being obtained, give conditional consent to the disposal.⁵ “Tenant authorisation” is obtained where the Regulator directs the RSL, under section 116(2), to either—

- ballot the tenants who would be affected by the disposal, or
- seek the written agreement of those tenants to the disposal, and where the majority of those tenants agree to the disposal.

44. Section 118 governs the conduct of the ballot and section 119 how the RSL goes about seeking the written agreement of its tenants. Section 120 makes further provision about the tenants who need to be balloted or whose agreement needs to be sought, in that it

1 See section 107(1) of the 2010 Act. See also section 108 which lists disposals in relation to which the consent of the Regulator is not required.

2 See section 109 of the 2010 Act.

3 See section 110 of the 2010 Act.

4 See section 113 of the 2010 Act.

5 See section 116 of the 2010 Act.

provides that the RSL need not ballot or seek agreement from “unaffected tenants” – tenants who will have vacated their houses before the proposed disposal is made.

45. Where the majority of affected tenants agree to the disposal (either by ballot or by agreeing in writing), the Regulator must approve the disposal. See section 121. Where there is no such majority, the Regulator must withdraw its conditional consent⁶ and the disposal cannot proceed.

Amendments of Parts 9 and 10 of the 2010 Act

46. Essentially, the amendments to Part 9 and Chapter 1 of Part 10 of the 2010 Act made by sections 3 and 4 of the Act have the effect of removing any requirement for Regulator’s consent to a disposal of land or another asset by an RSL, while retaining various existing duties to give the Regulator notice of disposals, to carry out consultation with tenants and, in cases where the disposal would result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL making the disposal, requiring the RSL to seek the agreement of tenants affected by the disposal. The RSL can proceed with the disposal only where the affected tenants agree.
47. [Section 3\(3\)](#) replaces section 107 with a new version of that section. This section covers two types of disposal of land by an RSL.
48. Section 107(1) and (2) provide that an RSL may dispose of land, which isn’t a disposal by way of granting security over the land, and isn’t a disposal by virtue of which a tenant under a Scottish secure tenancy will cease to be a tenant of the RSL, provided the RSL complies with section 110. That section, as amended by section 3(8) of the Act, requires the RSL to consult the tenants of any houses included in the proposed disposal and such other persons as the Regulator directs, before making the proposed disposal. Under section 110(2)(b), the RSL must inform the Regulator of the results of the consultation. Under section 110(3), as inserted by section 3(8)(c) of the Act, the Regulator must issue guidance to RSLs about the tenant consultation under section 110(2) and, under new section 110(4), RSLs must have regard to any guidance issued by the Regulator.
49. In addition to consulting tenants before the disposal, the RSL must also notify the Regulator as soon as reasonably practicable after the disposal under section 109(1) (as substituted by section 3(6) of the Act).
50. Section 107 covers another type of disposal, namely, a disposal of land which will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL. See section 107(4).
51. An RSL may make such a disposal only if the RSL has complied with sections 115 to 120 of Chapter 1 of Part 10 of the 2010 Act (as amended by section 4 of the Act) and if the majority of the affected tenants agree to the disposal taking place. The RSL must also give notice to the Regulator of the actual disposal as soon as reasonably practicable after it has taken place and, in any case, no later than 28 days after that event (see section 109(1)).⁷
52. Finally, section 107(5) provides that section 107 does not apply to a disposal of a type mentioned in section 108, as is currently the case under section 107(1)(b) of the 2010 Act.
53. [Section 4](#) of the Act amends Chapter 1 of Part 10, which currently applies where an RSL proposes to dispose of land and where the disposal will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL (that is, in the circumstance now defined in section 107(4)).

⁶ See section 116(1)(b) as read with section 121(1)(b) of the 2010 Act.

⁷ Although section 109(2)(b) of the 2010 Act (as amended by section 3(6) of the Act) allows the Regulator to extend this period of 28 days.

*These notes relate to the Housing (Amendment) (Scotland)
Act 2018 (asp 13) which received Royal Assent on 6 July 2018*

54. The current role of the Regulator is largely removed so that consent is no longer required. Section 4(2) makes the necessary changes to section 113 of the 2010 Act to reflect these changes. As the Regulator no longer consents to the disposal, and no longer makes an initial decision, section 114 is no longer necessary and is repealed by section 4(3) of the Act.
55. Section 115 – the two-fold consultation with tenants on the proposed disposal – is retained but amended by section 4(4) to remove references to directions given by the Regulator under section 114. In addition, section 115(2)(a)(ii) is removed as objections by tenants no longer serve a purpose. Previously they would have been communicated to the Regulator and may have had an influence on the Regulator’s decision under section 116 of the 2010 Act.
56. As the Regulator’s role is being largely removed from Chapter 1 of Part 10 of the 2010 Act, and the RSL will now be required to seek the agreement of affected tenants to the disposal in all cases, section 116 no longer serves a purpose and is repealed by section 4(6) of the Act. The reduced role for the Regulator also means that the power in section 117 of the 2010 Act to require information from the RSL before the Regulator makes a decision is no longer needed and is also repealed.⁸
57. [Section 4\(5\)](#) of the Act inserts two new sections into Part 10 of the 2010 Act. Section 115A makes provision for the ballot of tenants and for seeking their written agreement. This replaces sections 118 and 119 which are repealed by section 4(6) of the Act. Section 4(5) also inserts new section 115B, which makes provision for guidance under this Chapter.
58. Section 115A(1) requires the RSL to conduct a ballot or seek the written agreement of its affected tenants. The decision is left to the RSL but the Regulator may issue guidance about this under section 115B by virtue of section 115B(2)(c). Under section 115A(2), the RSL must inform the Regulator of the result of the ballot or, where written agreement is sought, of the number of agreements sought and given.
59. Section 115B(1) requires the Regulator to issue guidance about tenant consultation under section 115 and about seeking tenant approval by ballot or written agreement under section 115A. An RSL must have regard to any such guidance when complying with its duties under sections 115 and 115A.
60. Section 120 of the 2010 Act makes provisions for when the RSL need not consult certain tenants under section 115 and need not ballot them or seek their written agreement to a proposed disposal under new section 115A. Section 4(7) amends section 120 to make changes necessary in consequence of other amendments of Chapter 1, although the effect of section 120 is essentially unchanged.
61. [Section 4\(8\)](#) of the Act repeals sections 121 and 122 of Chapter 1 of Part 10. Section 121 is no longer necessary given that the Regulator can no longer refuse or give consent to a disposal under this Chapter. Section 122 of the 2010 Act currently provides that any failure by the Regulator or an RSL to comply with a provision of Chapter 1 of Part 10 does not invalidate the Regulator’s consent to the disposal. Regulator’s consent is no longer required. And the consequences of a failure by the RSL are dealt with by section 107 and 111 (as amended by section 3 of the Act). So section 122 is no longer necessary and is repealed.
62. Turning back to the amendments made by section 3 of the Act, section 107(3) makes clear that the RSL has no power to dispose of land where doing so would result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL, unless the RSL has complied with sections 115 to 120 of the 2010 Act and a majority of the affected tenants agree to the disposal taking place.

⁸ See section 4(6) of the Act.

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63. In addition, section 111 of the 2010 Act covers the situation where a disposal has nevertheless gone ahead. Under this section as currently in force, the disposal is void if the Regulator did not consent. But the removal of the need for Regulator's consent means different provision has to be made. Section 111 affects a third party who has transacted with the RSL as well as affecting the RSL that made the disposal. The amendments of this section made by section 3(10) of the Act make clear that, in the case of a disposal to which section 107(2) applies, the disposal will be void if the RSL failed to consult its tenants and others under section 110(2)(a). In the case of a disposal to which section 107(4) applies, failure by the RSL to comply with all the provisions of sections 115 to 120 will not make a subsequent disposal void. Instead, only failure to comply with the most important of those provisions – consultation with tenants under section 115 and the seeking of agreement from the affected tenants under section 115A(1) – will result in the disposal being void. In addition, failure to obtain the agreement of the affected tenants to the disposal will also result in that disposal being void.
64. Finally on section 3 of the Act, subsection (2) amends section 78 of the 2010 Act in consequence of the changes made to Part 9 of the 2010 Act and the removal of the need for Regulator's consent and, in particular, as a consequence of the changes to section 108 made by section 3(4) of the Act.