HOUSING (AMENDMENT) (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT

Organisational changes affecting registered social landlords

Section 6 – Restructuring, winding up and dissolution of registered social landlord

Restructuring of companies

- 87. Section 100 of the 2010 Act makes provision for the restructuring and winding up of RSLs that are registered companies (so serves a similar purpose to section 96 for RSLs that are registered societies). Section 100(2) applies Chapter 2 of Part 10 to the restructuring of a registered company as mentioned in section 101 of the 2010 Act. Chapter 2 applies the provisions of Chapter 1 of Part 10 (on disposal of land) to company restructurings to which section 101 applies.
- 88. Section 100(3) provides that the Regulator may not give consent in the following cases unless the society has consulted its tenants, that is—
 - the conversion of a company into a registered society (under section 102),
 - a voluntary arrangement relating to a company (under section 103), and
 - the voluntary winding up of a company (under section 104).
- 89. Section 100(2) and section 101 (and, therefore, Chapter 2 of Part 10) apply to certain company restructurings, namely—
 - restructurings made following an order under section 899 of the Companies Act 2006 ("the 2006 Act") and which are of a type mentioned in section 900(1) of that Act, and
 - which will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL.
- 90. By virtue of section 123(2)(b) of the 2010 Act, restructurings where the RSL is being wound up or is in administration are not covered by Chapter 2 of Part 10 (although such restructurings still require consent under section 101).
- 91. Section 101(1) goes on to provide that the order under section 899 or 900 of the 2006 Act which will result in the company being restructured has effect only if the Regulator consents and the RSL sends a copy of that consent to the registrar of companies with the copy of the order (which section 900(6) of the 2006 Act requires).

Section 900(1) relates to restructurings that involve a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and which will result in the whole or any part of the undertaking or the property of the company being transferred to another company.

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

- 92. Section 101(2) applies to all restructurings where an order is made under section 900 of the 2006 Act (so restructurings of a type mentioned in section 900(1)) and provides that where the whole or any part of the undertaking and property and liabilities of the RSL are transferred to another company, that other company is to be included in the register of registered social landlords.²
- 93. Section 100 is amended by section 6(7) of the Act. That subsection repeals subsections (2) and (3) of section 100. These repeals are consequential on the removal of the need for Regulator's consent. In addition, what was Chapter 2 of Part 10 is repealed (by section 6(15) of the Act)³ as the requirements it imposes are now imposed directly in new section 100A and in the new version of section 101 inserted by section 6(8) and (9) of the Act. In addition, the tenant consultation requirements are now incorporated directly into sections 102, 103 and 104 (see further below).
- 94. Section 6(8) inserts a new section 100A into Part 8 of the 2010 Act. This new section applies where a company which is an RSL proposes to restructure and, as a result of that restructuring, a tenant under a Scottish secure tenancy will cease to be a tenant of the company. Restructurings where the RSL is being wound up or is in administration are not, however, covered.
- 95. This new section imposes a duty on the RSL to comply with sections 115 to 120 of Part 10 of the 2010 Act. As explained above in relation to the restructuring of registered societies, those sections, which apply to certain disposals of land by an RSL, are applied to the restructuring of an RSL that is a registered company by virtue of section 100A(3) with the modification in that subsection. These sections require the RSL to consult the tenants affected by the restructuring and to then seek their agreement to it, either by ballot or by written agreement.
- 96. Section 6(9) substitutes for section 101 of the 2010 Act a new version. This section applies to all restructurings by RSLs that are registered companies, not just those covered by section 100A.
- 97. Section 101(2) (read with section 101(3)) provides that, where an RSL proposes a restructuring to which section 100A applies, ⁶ the court order relating to the restructuring has effect only if the RSL confirms it complied with its duty to consult its affected tenants under section 115, that it sought the agreement of those tenants under section 115A(1) and that a majority of these tenants agreed to the restructuring.
- 98. In the case of all restructurings, and not just those to which section 100A applies, the RSL must also give the Regulator notice of the restructuring. Where section 100A applies, that notice must be given no later than 28 days after the court order is made.
- 99. Section 101(5) re-enacts the provision in section 101(2) of the 2010 Act which provides that that where the whole or any part of the undertaking and property and liabilities of the RSL are transferred to another company, that other company is to be included in the register of registered social landlords.⁷

² Established under Part 2 of the 2010 Act and maintained by the Regulator.

³ See also paragraphs 108 to 110 below.

⁴ The modification relates to when notice of the results of the tenant ballot or the seeking of tenant's written agreement is to be given to the Regulator under section 115A(2).

⁵ See paragraphs 53 to 61above for a full explanation of Chapter 1 of Part 10 and the amendments made to it by section 4 of the Act

⁶ And which therefore requires the RSL to seek the agreement of affected tenants.

⁷ Established under Part 2 of the 2010 Act and maintained by the Regulator.