

HOUSING (AMENDMENT) (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT

Organisational changes affecting registered social landlords

Section 7 – Registered social landlord becoming a subsidiary of another body

112. Part 8 of the 2010 Act also makes provision about an RSL that proposes to become a subsidiary of another body. Section 104A makes provision where the RSL is either a registered society or a registered company. Subsection (2) provides that an arrangement under which such an RSL is to become a subsidiary of a body of which it is not currently a subsidiary has effect only if the Regulator consents before the arrangement is completed. Subsection (3) provides that Chapter 3 of Part 10 has effect for the purposes of Regulator’s consent and that Chapter essentially applies Chapter 1 of Part 10 to the obtaining of that consent.
113. **Section 7** of the Act replaces section 104A with a new version, under which Regulator’s consent is no longer required. Instead, under section 104A(2), the RSL has a duty to comply with sections 115 to 120 of Chapter 1 of Part 10 directly, as applied by section 104A(3). In addition, for the arrangement under which the RSL will become a subsidiary to have effect, the conditions in section 104A(4) must be met. Those conditions are that the RSL 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 RSL becoming a subsidiary (see section 104A(4)).
114. Section 104A(5) re-enacts the provision currently in section 124A(2) under which the Regulator must determine that the duty to comply with the tenant consultation and tenant approval provisions of Chapter 1 of Part 10 do not apply (or should cease to apply) where the Regulator considers—
- that the RSL’s viability is in jeopardy for financial reasons,
 - that a person could take a step in relation to the RSL which would require to be notified to the Regulator under section 73 of the 2010 Act (being a step which could result in the insolvency of the RSL¹), and
 - that making a determination would substantially reduce the likelihood of the person taking that step.
115. Section 104A(6) places a duty on the RSL to give notice of the arrangement under which the RSL will become a subsidiary to the Regulator no later than 28 days after the arrangement takes effect.

¹ Such steps include presenting a petition for the winding up of the RSL and applying for the RSL to be put into administration (see section 73(1)(b)).

Chapter 3 of Part 10 of the 2010 Act

116. As with Chapter 2 of Part 10 of the 2010 Act, the amendments made to Part 8 of the 2010 Act – in particular, to section 104A – make Chapter 3 of Part 10 redundant. Section 124A of the 2010 Act applies Chapter 1 of Part 10 to arrangements under which RSLs will become subsidiaries as it applies to disposals of land. The substantive provisions of section 124A are now, as a result of the amendments in section 7(2) of the Act, in section 104A of the 2010 Act.
117. Section 124B 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 (as applied by section 124A) does not invalidate the Regulator’s consent to the arrangement. Regulator’s consent is no longer required. And the consequences for a failure by the RSL are dealt with by section 104A(2)(b) and (4) (as amended). So section 124B is no longer necessary.
118. Accordingly section 7(3) repeals Chapter 3 of Part 10.

Section 165 of the 2010 Act – definition of subsidiary

119. [Section 7\(4\)](#) of the Act amends the definition of “subsidiary” in section 165 of the 2010 Act so that it refers to the Co-operative and Community Benefit Societies Act 2014 rather than the Co-operative and Community Benefit Societies and Credit Unions Act 1968 (which has been repealed).