

HOUSING (AMENDMENT) (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT

Duration of regulation-making powers

Section 10 – Duration of powers conferred by sections 8(1) and 9(1)

125. As already noted, sections 8 and 9 of the Act confer power on the Scottish Ministers to make regulations further modifying the functions of the Scottish Housing Regulator and limiting or removing certain types of local authority influence over RSLs. Section 10 creates a time limit for the exercise of both of these powers. The powers may only be exercised in the 3 years beginning with the day after the Act received Royal Assent (subsection (1)). That is, the powers conferred by sections 8(1) and 9(1) are temporary.
126. The temporary nature of these powers means that, on their expiry, the provisions conferring the powers are effectively repealed.¹ The repeal of an enactment generally has the effect of automatically revoking any subordinate legislation made under that enactment. Section 15 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that such revocations do not affect certain things. For example, the validity of things done under regulations while they were in force is not affected by the revocation of the regulations. Textual amendments of other enactments also survive the revocation of the regulations which made the amendments. But section 15 does not generally provide for freestanding provision made by subordinate legislation to continue to have effect following revocation. Unless provision is made to the contrary, any freestanding provision made by regulations made under section 8 or 9 would be revoked at the end of the 3 year period provided for in subsection (1) of section 10.
127. To avoid this, subsection (2) provides that the subsection (1) does not affect the continuation in force of any regulations made during the 3 year period. So, although no further regulations can be made under section 8 or 9 after the expiry of the 3 year period, any regulations in force at the end of that period will remain in force indefinitely.² For example, if regulations are made under section 9(1) restricting the number of officers that a local authority can appoint to an RSL, that restriction will remain in place on the expiry of the 3 year period mentioned in subsection (1), rather than local authorities regaining their ability to appoint a greater number of officers. This will ensure that any ONS reclassification decision which depends on the provision made in the regulations is not jeopardised by the end of the 3 year period.

¹ See section 18 of ILRA.

² Power to make regulations includes power to amend or revoke them. Therefore, restricting the power to make regulations under sections 8 and 9 to the 3 year period mentioned in section 9A(1) also has the effect of restricting the power to amend or revoke any regulations made during that 3 year period to that 3 year period. The Scottish Ministers will not be able to amend or revoke any regulations continued in effect by section 9A(2) by subordinate legislation. If any such regulations need to be amended or revoked in future, primary legislation will be required.