

# HOUSING (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### STRUCTURE OF THE ACT

#### Part 5 – Regulatory Intervention

63. **Part 5** replaces the regulatory intervention powers in the Housing (Scotland) Act 2001. Section 52 lists the powers contained in this Part, which can include requiring a social landlord to comply with the Scottish Social Housing Charter, meet a performance improvement target or implement a performance improvement plan. For local authorities, the intervention powers are no longer solely linked to inspection.
64. There is no fixed sequence for the use of these powers and the regulator can use them individually or in combination. However, section 53 requires the regulator to consider the principle that social landlords should be responsible for determining how to provide housing services and manage their own affairs when deciding whether, and how, to intervene (while section 3(2) requires regulatory action to be targeted only where it is needed). Section 54 requires the regulator to consult on and publish a code of practice explaining how it will take decisions about use of its intervention powers.

#### Remedial action

65. **Section 55** replaces the Scottish Ministers' power (at section 74 of the 2001 Act) to require a local authority to produce a remedial plan with a power for the regulator to require any social landlord to submit a performance improvement plan. The regulator can require the submission if it considers that the landlord is failing, or at risk of failing, to achieve a standard or an outcome set in the Scottish Social Housing Charter or to meet a performance improvement target or a financial management or governance target. The regulator can also require an improvement plan if this is justified by the social landlord's conduct or, in the case of an RSL, if there has been misconduct or mismanagement in its financial or other affairs.
66. Under section 55(3) the regulator may require a landlord to involve people who are or who may become service users, or their representatives, in preparing a performance improvement plan. Section 55 (4) allows the regulator to require the landlord to provide evidence of service users' involvement in preparing the plan.
67. The regulator may accept, modify or reject a performance improvement plan. The social landlord must be notified of any intention to make changes to or reject a plan. If the plan is rejected the social landlord must submit a revised plan and, once accepted, must implement it. The landlord also has to publish the plan and send a copy of it to any registered tenants organisations associated with it.

#### Enforcement notices

68. **Section 56** allows the regulator to serve an enforcement notice on a social landlord if it considers that the social landlord is, or is at risk of, failing to achieve a standard or an outcome set in the Scottish Social Housing Charter, meet a performance improvement target, financial management or governance target, or implement an

approved performance improvement plan. The regulator may also serve an enforcement notice if it considers that:

- there has been misconduct or mismanagement in an RSL's affairs;
- a social landlord's tenants' interests need to be protected;
- an RSL's assets need protection;
- an RSL's financial viability is at risk; or
- any other conduct of a social landlord justifies the notice.

69. The enforcement notice requires the landlord to take action to put right or avoid a failure or other problem, or to protect its tenants or assets. The regulator must publish the notice and send a copy to any registered tenants organisation associated with the social landlord.

### **Appointment of a manager**

70. [Section 57](#) allows the regulator, if it considers it necessary, to appoint someone to manage a social landlord's services (or aspects of its services). There are two criteria, set out at subsection (1), that must be met before the regulator can make such an appointment. First, it considers (either following an inquiry or for some other reason) that the landlord is failing or at risk of failing to:

- achieve a standard or an outcome in the Social Housing Charter;
- meet a performance improvement target;
- implement an agreed improvement plan; or
- comply with an enforcement notice.

71. Secondly, it must consider such an appointment is needed to make sure the social landlord provides an appropriate standard of services. In the case of a local authority landlord there is a further requirement at subsection (3) for the regulator to consult the local authority, its representative body (COSLA), and the Accounts Commission before making an appointment.

72. There is no requirement to consult before making an appointment to a registered social landlord, although the criteria at section 57(1) must be met.

73. [Section 58](#) applies to registered social landlords only. It provides that, where it has established a need to do so, the regulator may appoint or require any RSL to appoint a manager for its financial or other affairs.

74. [Section 59](#) allows the regulator to determine a manager's terms and conditions and period of appointment. The manager will have general powers to do what is necessary to fulfil his or her functions, and may also be given specific powers by the regulator. The manager must comply with any direction given by the regulator (section 59(4)).

### **Removal, suspension and appointment of officers**

75. Under section 60, the regulator may remove an officer of a registered social landlord (a committee member of a registered society or a director of a company limited by guarantee) who is bankrupt or apparently insolvent; disqualified from being a company director or charity trustee; incapable of fulfilling their role because of a mental disorder; or is impeding the effective management of the RSL because of their absence or failure to act. The regulator must give the officer and the RSL 14 days' notice of its intention to remove the officer. "Officer" has the meaning given in the Interpretation section (165).

76. **Section 61** gives the regulator power to suspend a “responsible individual” (an officer or agent of an RSL) if it considers they have been responsible for, party to, or otherwise have contributed to misconduct or mismanagement of the registered social landlord’s financial or other affairs, or if it considers that the RSL’s tenants’ interests or its assets need to be protected, or that there is obstruction or non co-operation in relation to Part 7. Again, the regulator must give the individual and the RSL 14 days’ notice of its intention. The regulator may appoint an individual to perform the suspended individual’s functions and give the RSL directions about performing those functions or other matters arising from the suspension. Subsection (5) makes it an offence for a suspended individual to act, without the regulator’s consent, in the management or control of any registered social landlord.
77. **Section 62** allows the regulator to remove a responsible individual if it considers that there has been misconduct or mismanagement, or the RSL’s assets or tenants’ interests need to be protected, or that there is obstruction or non co-operation in relation to Part 7. Again, there is a requirement for the regulator to give 14 days’ notice. Subsection (3) makes it an offence for an individual who has been removed to act without the regulator’s consent in the management or control of any registered social landlord. A “responsible individual” is a person defined as such under section 63: an officer or agent of an RSL who appears to have been responsible for, facilitated or contributed to, or been privy to, the misconduct, mismanagement, failure etc.
78. A decision by the regulator under section 60, 61 or 62 can be appealed to the Court of Session under section 64.
79. Under section 65 the regulator has the power to appoint a new or additional officer to a registered social landlord. The regulator may use its power to appoint an officer:
- to replace an officer it has removed;
  - if the RSL has no officers;
  - if the number of officers has fallen below that required by the RSL’s constitution (and there is no mechanism in the constitution to remedy this); or
  - if it considers it necessary for the proper management of the registered social landlord’s financial or other affairs.
80. Subsection (3) provides for the regulator, in some circumstances, to require the RSL to take out personal indemnity insurance for the person appointed.

### **Protection of assets**

81. **Sections 66** and **67** allow the regulator to protect a registered social landlord’s assets during and following inquiries into its financial or other affairs. Section 66 allows it to restrict particular types of transactions or payments. The regulator can also direct a bank or other person not to part with any money, assets or securities it holds for the registered social landlord without its consent. Subsection (3) makes it an offence to fail to comply with a direction given under this section.
82. **Section 67** allows the regulator to transfer the RSL’s assets to another registered social landlord if, after making inquiries, it considers that there has been misconduct or mismanagement of the RSL’s affairs or that there is a risk to its financial viability or governance or it cannot provide housing services to an acceptable standard. In either case, the regulator must also be satisfied that a transfer of some or all of the assets would improve the management of those assets. Before doing this the regulator must consult, and consider the views of, the tenants of any houses it proposes to transfer, and any secured creditor the regulator knows to have security over those houses. The terms of transfer must, where not all of the RSL’s assets are being transferred, set the price the regulator considers, after obtaining an independent valuation, the assets would fetch if sold by a willing seller to a willing registered social landlord. Where there is a transfer

*These notes relate to the Housing (Scotland) Act 2010  
(asp 17) which received Royal Assent on 9 December 2010*

of all of the RSL's assets, the terms must provide for the settlement or transfer of the transferring landlord's debts and liabilities in relation to the transferred property.

83. In the case of a charitable registered social landlord, any transfer must be to another charitable RSL which has the same, or similar, charitable purposes, and the regulator must consult the Office of the Scottish Charity Regulator before directing a transfer. Under section 67(8), the regulator must also consult the Office of the Scottish Charity Regulator before directing a transfer of assets acquired by a non-charitable RSL at a time when it was a registered charity. This is to ensure that charitable assets continue to be used only for charitable purposes, as required by the Charities and Trustee Investment (Scotland) Act 2005.