

Housing (Scotland) Act 2010

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PART 5

REGULATORY INTERVENTION

Introductory

52 Regulatory intervention

Regulatory intervention may consist of any combination of the Regulator—

- (a) requiring submission of a performance improvement plan (see section 55),
- (b) serving an enforcement notice (see section 56),
- (c) appointing, or requiring the appointment of, a manager (see sections 57 and 58),
- (d) removing, suspending or appointing a registered social landlord's officers or agents (see sections 60 to 65),
- (e) acting to protect a registered social landlord's assets (see sections 66 and 67).

53 Exercise of regulatory intervention powers

(1) This section applies where the Regulator is deciding—

- (a) whether to make a regulatory intervention,
- (b) which regulatory intervention to make, or
- (c) how to make a regulatory intervention.

(2) The Regulator must consider—

- (a) the desirability of social landlords being free to choose how to provide housing services and manage their financial and other affairs,
- (b) the speed with which the failure or other problem needs to be dealt with, and
- (c) its code of practice issued under section 54.

54 Code of practice: regulatory intervention

(1) The Regulator must issue a code of practice on regulatory interventions setting out how it intends to make decisions referred to in section 53(1).

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- (2) The code of practice may, in particular, set out examples of situations in which it may make a regulatory intervention.
- (3) The code of practice must be kept under review and must be re-issued (with any revisions which the Regulator thinks appropriate) at least once every 5 years.
- (4) Before issuing a code of practice, the Regulator must consult—
 - (a) Ministers,
 - (b) tenants of social landlords or their representatives,
 - (c) homeless persons or bodies representing the interests of homeless persons,
 - (d) recipients of housing services provided by social landlords or their representatives,
 - (e) social landlords or their representatives,
 - (f) secured creditors of registered social landlords or their representatives, and
 - (g) the Accounts Commission for Scotland.
- (5) The Regulator must make arrangements for bringing the issued code of practice to the attention of social landlords.

Remedial action

55 Performance improvement plans

- (1) This section applies where the Regulator, having made inquiries or otherwise, considers—
 - (a) that a social landlord is, or is at risk of, failing—
 - (i) to achieve a standard or an outcome set out in the Scottish Social Housing Charter, or
 - (ii) to meet a performance improvement target,
 - (b) that—
 - (i) a registered social landlord is, or is at risk of, failing to meet a financial management or governance target, or
 - (ii) there has been misconduct or mismanagement in a registered social landlord's financial or other affairs, or
 - (c) that any other conduct by a social landlord justifies requiring it to submit and implement a performance improvement plan.
- (2) The Regulator may require the social landlord to submit, by such time as the Regulator may specify, a performance improvement plan setting out how and by when the social landlord proposes to rectify or avoid the failure or other problem.
- (3) The Regulator may require the social landlord to involve in such a way as the Regulator may specify, persons (or representatives of persons) who are or who may become—
 - (a) homeless,
 - (b) tenants of the social landlord, or
 - (c) recipients of housing services provided by the social landlord,
 in preparing a performance improvement plan.

- (4) The Regulator may require the social landlord to provide information on how it has involved such persons (or their representatives) in the preparation of a performance improvement plan.
- (5) The Regulator may approve (with or without modifications or additional conditions) or reject a performance improvement plan submitted to it.
- (6) The Regulator must not—
 - (a) approve a performance improvement plan submitted by a social landlord with modifications or additional conditions, or
 - (b) reject a performance improvement plan submitted by a social landlord, unless it has given the social landlord notice of its intention to do so and has had regard to any views expressed by the social landlord within such period as the Regulator may specify.
- (7) An approved performance improvement plan must be implemented by the social landlord concerned.
- (8) The social landlord must—
 - (a) publish the approved performance improvement plan, and
 - (b) send a copy of it to any registered tenant organisation associated with the social landlord.
- (9) Where a performance improvement plan is rejected, the social landlord must submit a revised plan to the Regulator by such time as the Regulator may specify.

56 Enforcement notices

- (1) The Regulator may serve an enforcement notice if, having made inquiries or otherwise, it considers—
 - (a) that a social landlord is, or is at risk of, failing—
 - (i) to achieve a standard or an outcome set out in the Scottish Social Housing Charter,
 - (ii) to meet a performance improvement target, or
 - (iii) to implement an approved performance improvement plan,
 - (b) that—
 - (i) a registered social landlord is, or is at risk of, failing to meet a financial management or governance target, or
 - (ii) there has been misconduct or mismanagement in a registered social landlord's financial or other affairs,
 - (c) that the interests of a social landlord's tenants need protection,
 - (d) that a registered social landlord's assets need protection,
 - (e) that a registered social landlord's financial viability is in jeopardy, or
 - (f) that any other conduct by a social landlord justifies serving an enforcement notice.
- (2) An enforcement notice is a notice requiring the social landlord concerned to take action—
 - (a) to rectify or avoid a failure or other problem, or
 - (b) to protect its tenants or assets.

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- (3) An enforcement notice must—
 - (a) say why it has been served, and
 - (b) state by when the social landlord must take action.
- (4) The Regulator must—
 - (a) publish an enforcement notice, and
 - (b) send a copy of it to every registered tenant organisation associated with the social landlord concerned.

Managerial appointment

57 Appointment of manager for housing activities

- (1) This section applies where the Regulator, having made inquiries or otherwise, considers—
 - (a) that a social landlord is, or is at risk of, failing—
 - (i) to achieve a standard or an outcome set out in the Scottish Social Housing Charter,
 - (ii) to meet a performance improvement target,
 - (iii) to implement an approved performance improvement plan, or
 - (iv) to comply with an enforcement notice, and
 - (b) that a person needs to be appointed in order to ensure that the social landlord provides housing services to an appropriate standard.
- (2) The Regulator may appoint, or require the social landlord to appoint, a manager—
 - (a) to manage its housing activities generally, or
 - (b) to manage particular aspects of those activities.
- (3) Before appointing or requiring appointment of a manager for a local authority or a local authority landlord, the Regulator must—
 - (a) consult—
 - (i) the local authority or local authority landlord,
 - (ii) such bodies representing local authorities as it thinks fits, and
 - (iii) the Accounts Commission for Scotland, and
 - (b) have regard to views expressed by those consulted by such time as the Regulator may specify.

58 Appointment of manager for financial or other affairs

- (1) This section applies where the Regulator, having made inquiries or otherwise, considers that a person needs to be appointed in order to ensure that the registered social landlord manages its financial or other affairs to an appropriate standard.
- (2) The Regulator may appoint, or require the registered social landlord to appoint, a manager—
 - (a) to manage its financial and other affairs generally, or
 - (b) to manage particular aspects of those affairs.

59 Appointment of manager: supplementary

- (1) It is for the Regulator to determine the terms on which a manager is to be appointed under section 57 or 58 (including as to period of appointment and remuneration and expenses).
- (2) It is for the social landlord to pay the manager's remuneration and expenses.
- (3) A manager has—
 - (a) general powers to do anything required to perform the manager's functions (including power to enter into agreements or do anything else which the social landlord has power to do), and
 - (b) such specific powers as the Regulator may specify.
- (4) But a manager must comply with any direction by the Regulator about the performance of the manager's functions (and may be removed on failure to so comply).
- (5) A manager acts as the social landlord's agent and is accordingly not personally liable on an agreement entered into as manager.
- (6) Anyone dealing with a manager in good faith and for value need not inquire whether the manager is acting within the powers conferred by virtue of this section.

Registered social landlords: removal, suspension and appointment of officers etc.

60 General power to remove officers

- (1) The Regulator may remove an officer of a registered social landlord if the officer—
 - (a) is an undischarged bankrupt or is otherwise apparently insolvent,
 - (b) is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 (c.46) or equivalent legislation in Northern Ireland,
 - (c) is disqualified from being a charity trustee under section 69 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),
 - (d) is, because of a mental disorder, incapable of acting, or
 - (e) is impeding the proper management of the registered social landlord because of absence or other failure to act.
- (2) Before removing an officer, the Regulator must give at least 14 days' notice of its intention to do so to—
 - (a) the officer, and
 - (b) the registered social landlord.
- (3) In this section "apparently insolvent" has the meaning given by the Bankruptcy (Scotland) Act 1985 (c.66).

61 Suspension of officers etc. during or following inquiries

- (1) The Regulator, when making or having made inquiries, may suspend a responsible individual (pending decision on removal or otherwise) where it considers—
 - (a) that there has been misconduct or mismanagement in a registered social landlord's financial or other affairs,
 - (b) that the interests of a registered social landlord's tenants need protection,

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- (c) that a registered social landlord's assets need protection, or
 - (d) that the responsible individual—
 - (i) is, during a moratorium under section 75, obstructing the Regulator from performing its functions under Part 7, or
 - (ii) is not co-operating in accordance with section 84(2).
- (2) The Regulator, unless it considers the case to be one of urgency, must give at least 14 days' notice of its intention to suspend a responsible individual to—
- (a) the responsible individual, and
 - (b) the registered social landlord.
- (3) A suspension ceases to have effect—
- (a) if the Regulator removes the individual or lifts the suspension, or
 - (b) where the Regulator does not so act, on the day falling 6 months after the inquiries concerned are concluded.
- (4) The Regulator may give the registered social landlord directions about—
- (a) the performance of a suspended individual's functions,
 - (b) any other matter arising from the suspension,
- and may appoint an individual, on such terms as it thinks fit, to perform the suspended individual's functions.
- (5) It is an offence for a suspended individual to take any action in relation to the management or control of—
- (a) the registered social landlord concerned, or
 - (b) any other registered social landlord,
- without the Regulator's consent.
- (6) An individual guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

62 Removal of officers etc. following inquiries

- (1) The Regulator may remove a responsible individual where, having made inquiries, it considers—
- (a) that there has been misconduct or mismanagement in a registered social landlord's financial or other affairs,
 - (b) that the interests of a registered social landlord's tenants need protection,
 - (c) that a registered social landlord's assets need protection, or
 - (d) that the responsible individual—
 - (i) is, during a moratorium under section 75, obstructing the Regulator from performing its functions under Part 7, or
 - (ii) is not co-operating in accordance with section 84(2).
- (2) Before removing a responsible individual, the Regulator must give at least 14 days' notice of its intention to do so to—
- (a) the responsible individual, and
 - (b) the registered social landlord.
- (3) It is an offence for a removed individual to take any action in relation to the management or control of—

- (a) the registered social landlord concerned, or
 - (b) any other registered social landlord,
- without the Regulator’s consent.

- (4) An individual guilty of such an offence is liable, on summary conviction, to—
- (a) imprisonment for a term not exceeding 3 months,
 - (b) a fine not exceeding level 5 on the standard scale, or
 - (c) both.

63 Responsible individuals

“Responsible individual” (used in sections 61 and 62) means an officer or agent of a registered social landlord who appears to the Regulator—

- (a) to have been responsible for,
- (b) to have facilitated or otherwise contributed to, or
- (c) to have been privy to,

the misconduct, mismanagement, failure or other problem concerned.

64 Appeals against suspension or removal

- (1) An individual may appeal to the Court of Session against the Regulator’s decision to—
- (a) remove the individual under section 60 or 62, or
 - (b) suspend the individual under section 61.
- (2) The Court may determine an appeal by—
- (a) confirming the decision,
 - (b) quashing the decision,
 - (c) remitting the case to the Regulator for reconsideration,
- and the Court’s determination of the matter is final.

65 Appointment of new officers

- (1) The Regulator may appoint an individual as an officer of a registered social landlord—
- (a) in place of an officer it removes under section 60 or 62,
 - (b) where there are no officers,
 - (c) where—
 - (i) the registered social landlord has an insufficient number of officers to be able to appoint an officer under its constitution, and
 - (ii) the constitution does not provide a mechanism for appointing an officer in such circumstances, or
 - (d) if the Regulator considers that an additional officer is needed for the proper management of the registered social landlord’s financial or other affairs.
- (2) It is for the Regulator to determine the terms on which an officer is appointed (including as to period of appointment and remuneration and expenses).
- (3) The Regulator may require the registered social landlord to purchase and maintain personal indemnity insurance approved by the Regulator for the officer appointed.

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“personal indemnity insurance” means insurance designed to indemnify against liability attaching to an individual in connection with any negligence, default, or breach of duty committed in the individual’s capacity as officer but does not include insurance with a provision—

- (a) prohibited by section 68A(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),
 - (b) prohibited by section 234(3) of the Companies Act 2006 (c.46), or
 - (c) which would be prohibited if the registered social landlord was a registered company or a charity.
- (4) The Regulator may renew the appointment of an officer on expiry of any period of appointment so determined.
- (5) It is for the registered social landlord to pay the appointed officer’s remuneration and expenses.
- (6) An appointed officer is entitled—
- (a) to require a general meeting of the registered social landlord to be convened within 21 days of giving notice to the landlord’s officers of a request to that effect,
 - (b) to attend, speak and vote at such a general meeting (whether or not convened in pursuance of paragraph (a)),
 - (c) to move a resolution at such a general meeting (whether or not so convened), and
 - (d) to resign or retire in accordance with the registered social landlord’s constitution.
- (7) An appointment may be made despite any contrary restriction in the registered social landlord’s constitution (and any such restriction contrary to anything done by virtue of this section is accordingly overridden in relation to the appointment concerned).

Registered social landlords: asset protection

66 Restrictions on dealings during or following inquiries

- (1) This section applies if the Regulator, when making or having made inquiries, considers—
- (a) that there has been misconduct or mismanagement in a registered social landlord’s financial or other affairs,
 - (b) that the interests of a registered social landlord’s tenants need protection,
 - (c) that a registered social landlord’s assets need protection, or
 - (d) that a registered social landlord’s financial viability is in jeopardy.
- (2) The Regulator may—
- (a) direct the registered social landlord not to—
 - (i) undertake particular transactions, or
 - (ii) make payments of a particular nature or amount,
 without the Regulator’s consent, or

- (b) direct a bank or other person not to dispose of any money, securities or other assets it holds for the registered social landlord without the Regulator's consent.
- (3) It is an offence for a person to fail to comply with a direction.
- (4) A person guilty of such an offence is liable on summary conviction to—
- (a) imprisonment for a term not exceeding 3 months,
 - (b) a fine not exceeding level 5 on the standard scale, or
 - (c) both.

67 Transfer of assets following inquiries

- (1) This section applies if the Regulator, having made inquiries, considers—
- (a) that there has been misconduct or mismanagement in a registered social landlord's financial or other affairs, or
 - (b) that a registered social landlord's viability is in jeopardy for financial or governance reasons or because it cannot provide housing services to an acceptable standard.
- (2) In either case the Regulator must also consider that a transfer of some or all of a registered social landlord's assets would improve the management of the assets.
- (3) The Regulator may direct the registered social landlord to transfer some or all of its assets to another registered social landlord.
- (4) The Regulator must—
- (a) before making a direction, consult—
 - (i) the tenants of any houses it proposes to transfer, and
 - (ii) any secured creditor whom the Regulator knows to hold security over those houses, and
 - (b) when making a direction, have regard to any views expressed by those consulted by such time as the Regulator may specify.
- (5) A transfer of assets under a direction must be made on terms specified in, or determined in accordance with, the direction.
- (6) Those terms must however—
- (a) in the case of a transfer of some (but not all) of a registered social landlord's assets, set the price at not less than the amount which the Regulator, having obtained an independent valuation, considers the assets would fetch if sold by a willing seller to a willing registered social landlord, and
 - (b) in the case of a transfer of all of a registered social landlord's assets, provide for the settlement or transfer of all the transferor's proper debts and liabilities in respect of the assets (whether secured or not).
- (7) The Regulator may direct the transfer of assets from a registered social landlord which is a charity only if the recipient registered social landlord is a charity which the Regulator, after consulting the Office of the Scottish Charity Regulator, considers has the same or similar charitable purposes (within the meaning of section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10)).

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- (8) The Regulator may direct the transfer of assets which the registered social landlord is under a duty to apply in accordance with section 19(1) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) only if the Regulator—
- (a) consults with the Office of the Scottish Charity Regulator, and
 - (b) after doing so, considers that the recipient registered social landlord will secure the proper application of those assets for the purposes which were set out in the transferor registered social landlord's entry in the Scottish Charity Register immediately before its removal from that register.