

# HOUSING (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### THE STRUCTURE AND A SUMMARY OF THE ACT

#### Part Seven – Miscellaneous

##### Right to redeem heritable security after 20 years: power to exempt

189. [Part 7](#) of the Act contains a provision, section 93(1) which amends the “20-year security rule” – section 11 of the Land Tenure Reform (Scotland) Act 1974 (“the 1974 Act”).
190. Section 11 of the 1974 Act permits debtors to redeem a standard security over property used as, or as part of, a private dwelling house once 20 years from the date of creation of the security has elapsed, regardless of the fact that the security is for a longer contractual term. Social landlords, their connected bodies and rural housing bodies are able to renounce their right to redeem a standard security after 20 years.
191. [Section 93\(1\)](#) inserts subsection (3D) into section 11 of the 1974 Act to provide that the right to redeem a standard security, as permitted by section 11, will not be allowed in certain circumstances to be prescribed by the Scottish Ministers by order subject to the negative procedure.
192. [Section 93\(1\)](#) also inserts subsection (3E) into section 11, which provides that an order under subsection (3D) may disapply the right to redeem a standard security subject to certain conditions or restrictions. Such an order may restrict the disapplication of the right to redeem to specified descriptions of debt, to specified creditors or creditors of specified descriptions, to specified heritable securities or heritable securities of specified descriptions. It may prescribe circumstances in which the disapplication of the right to redeem is to apply or cease to apply. For example, an order under new section 11(3D) could exclude debtors who grant a standard security in favour of the Scottish Ministers as part of a Scottish Government shared equity scheme or equity release scheme from being able to exercise the right to redeem their security after 20 years.

##### First-tier Tribunal: disqualification of members from exercise of certain functions

193. [Section 94](#) provides that the holders of certain offices are disqualified from exercising functions of the First-tier Tribunal (FTT) in relation to the jurisdiction over private rented sector housing matters transferred from the jurisdiction of the sheriff by Part 3 and disputes involving letting agents conferred by Part 4 of the Act. This has the effect of disqualifying the holders of the offices listed at subsection (2) from being appointed to exercise those functions. It also has the effect of disqualifying any existing members of the FTT who hold the listed offices from exercising those functions.
194. [Section 94\(3\)](#) provides that the Scottish Ministers may amend the list of disqualified offices by order. This power could be used to add or remove offices and would be subject to affirmative procedure in the Scottish Parliament.

### **Private rented housing panel: disqualification from membership**

195. **Section 95** inserts new paragraph 1A into Schedule 4 to the Rent (Scotland) Act 1984. Paragraph 1A(1) inserted into Schedule 4 to the 1984 Act provides that the holders of certain offices are disqualified from being a member of the private rented housing panel (PRHP) and lists the offices. The PRHP also has functions conferred by the Property Factors (Scotland) Act 2011 and when carrying out these functions is known as the homeowner housing panel (HOHP). Members of the PRHP are also members of the HOHP. Therefore these disqualifications also affect the composition of the HOHP.
196. Paragraph 1A(2) inserted into Schedule 4 to the 1984 Act provides that the Scottish Ministers may amend the list of disqualified offices by order. This power could be used to add or remove offices and would be subject to affirmative procedure in the Scottish Parliament.

### **Delegation of certain functions**

197. **Section 96(1)** amends section 21 of the 2006 Act by introducing a new power for the president of the private rented housing panel to delegate functions under section 23 of the 2006 Act (to refer applications to the private rented housing panel or reject applications), to the vice-president of the panel or to another member of the panel as the president sees fit (new section 21(8A) of the 2006 Act). This is in addition to the existing powers enabling the transfer of the president's functions during times of absence or incapacity as provided for in section 21(8) of the 2006 Act. The provision is intended to increase flexibility to manage the multiple work strands undertaken by the panel. New section 21(8B) provides that such a delegation does not affect the president's responsibility for the carrying out of delegated functions or ability to carry out the delegated functions.
198. **Section 96(2)** inserts new subsections (8) and (9) into section 16 of the Property Factors (Scotland) Act 2011 to provide that the functions of the president of the homeowner housing panel under section 18 (to refer applications to the homeowner housing panel for a determination as to whether a property factor has failed to carry out the factor's duties or to comply with the property factor code of conduct or to reject applications) may be delegated to the vice-president of the panel or to such other member of the panel as the president sees fit. New subsection (9) provides that such a delegation does not affect the president's responsibility for the carrying out of delegated functions, or ability to carry out delegated functions.

### **Scottish Housing Regulator: transfer of assets following inquiries**

199. **Section 97** makes amendments to section 67 of the Housing (Scotland) Act 2010 ("the 2010 Act").
200. Paragraph (a) introduces new subsections (4A), (4B) and (4C) to section 67 of the 2010 Act.
201. Subsection (4A) has the effect of creating a narrow exception to the duty on the Scottish Housing Regulator (the Regulator), at section 67(4), always to consult and have regard to the views of tenants and secured creditors that hold securities over houses of a registered social landlord (RSL) before it directs a transfer of the RSL's assets. The exception would apply in circumstances where the Regulator considered that all of the conditions specified at (a) to (d) of the new subsection were satisfied. These relate to the RSL being in financial jeopardy and vulnerable to steps being taken towards its insolvency, winding up etc. Where the direction to transfer assets would reduce the risk of such steps being taken, if made without the delay that consultation with either the RSL's tenants or its secured creditors would cause, the Regulator could direct the transfer of a RSL's assets without such consultations. When the Regulator is considering whether to direct a transfer without such consultations, it must consider separately whether there is time for it to consult the tenants and time for it to consult

the secured creditors. If it concludes that there would be time to consult one group but not the other, it must consult that group. In all other circumstances, the duty to consult tenants and secured creditors that section 67(4) imposes on the Regulator would remain.

202. Subsection (4B) requires the Regulator to consult and issue guidance on the circumstances in which it would expect subsection (4A) to apply, the actions it would expect to take in circumstances where subsection (4A) applied, and how it would communicate with any tenants and their representatives, RSLs and their representatives, and secured creditors and their representatives affected by subsection (4A) being applied.
203. Subsection (4C) inserts a replacement provision for section 67(6)(a) of the 2010 Act, which paragraph (b) of section 79 of the Act repeals. Section 67(b)(a) requires the Regulator, when it is directing the transfer of some of the assets of a RSL, always to obtain an independent valuation of the assets to be transferred and to direct the transfer at a price that it considers the assets would fetch on the open market. Subsection (4C) reinstates the duty on the Regulator to obtain an independent valuation, but instead of requiring the Regulator to direct any transfer at an open market price, requires it to have regard to the valuation in directing the transfer.

### **Registered social landlord becoming a subsidiary of another body**

204. [Section 98](#) adds new sections after sections 104 and 124 of the 2010 Act.
205. Subsection (1) introduces new section 104A. The new section provides that arrangements under which a RSL would become the subsidiary of another body are subject to the consent of the Regulator in the same way as arrangements by which a RSL would transfer its assets to another RSL.
206. Subsection (2) introduces new sections 124A and 124B.
207. Subsection (1) of new section 124A provides that arrangements by which a RSL would become a subsidiary of another body are subject to the special procedures set out in sections 114 to 121 of the 2010 Act. This has the effect of making the Regulator's consent conditional on the tenants of the RSL having been consulted beforehand. Subsection (2) of the new section describes exceptional circumstances in which the special procedures at sections 114 to 121 of the 2010 Act are not to apply. They are the same circumstances in relation to financial jeopardy that section 97 introduces through new sections 67(4A)(a)-(c) of the 2010 Act. Subsection (3) provides that in these circumstances the Regulator can give or refuse its consent to a RSL becoming a subsidiary of another RSL without the tenants of the RSL having been consulted.
208. New section 124B makes purchaser protection provision (identical to that made by sections 122 and 124 for disposal and restructuring consents) in relation to the provision made by section 124A.
209. Subsections (3) and (4) make the definition of "subsidiary" currently provided for the purposes of section 164 of the 2010 Act apply more generally, to interpret its use in the new provisions. No change is made to the meaning; "subsidiary" continues to have the same meaning as in the Companies Act 2006 or, as the case may be, the Co-operative and Community Benefit Societies and Credit Unions Act 1968.

### **Repeal of defective designation provisions**

210. [Section 99](#) of the Act provides for the repeal of Part 14 of the Housing (Scotland) Act 1987 ("the 1987 Act") together with Schedules 20 and 21 of that Act. This removes the provisions of the 1987 Act which deal with the designation as defective of prescribed types of dwelling, the power to provide assistance to owners of such dwellings and the giving of notice to persons seeking to acquire a dwelling that is defective. These provisions are dependent on the Scottish Ministers or local authorities designating classes of buildings as defective, which was last done by the Scottish Ministers in 1984

*These notes relate to the Housing (Scotland) Act 2014  
(asp 14) which received Royal Assent on 1 August 2014*

and appears never to have been done by any local authority. The power to designate is, therefore, being repealed.

211. These provisions were originally set out in the Housing Defects Act 1984 and the provisions affecting Scotland were replaced by Part 14 of the 1987 Act. The designation of dwelling types was made by the Housing Defects (Prefabricated Reinforced Concrete Dwellings) (Scotland) Designations 1984. The period during which applications for assistance could be submitted in respect of these dwelling types has expired, making Part 14 obsolete.