

# HOUSING (AMENDMENT) (SCOTLAND) ACT 2018

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## EXPLANATORY NOTES

### THE ACT

#### *Organisational changes affecting registered social landlords*

##### *Section 6 – Restructuring, winding up and dissolution of registered social landlord*

67. Part 8 of the 2010 Act makes provision about various changes to RSLs, including about the restructuring, winding up and dissolution of RSLs that are registered societies<sup>1</sup> as well as about the restructuring of RSLs that are registered companies,<sup>2</sup> about the conversion of such companies into registered societies, about voluntary arrangements entered into by such companies under the Insolvency Act 1986 and about the voluntary winding up of such companies.
68. In the case of some of these organisational changes, the Regulator’s consent is required and the RSL must obtain the agreement of its affected tenants to the change under Chapter 2 of Part 10 of the 2010 Act (which applies Chapter 1 of that Part, on disposals of land under Part 9, to organisational changes under Part 8). In other cases, Regulator’s consent is required and there is a requirement for the RSL to consult its tenants in relation to the change (but there is no requirement for the agreement of the RSL’s tenants affected by the change).
69. [Section 6](#) of the Act amends these provisions in Part 8 to remove the requirement for the Regulator’s consent and makes consequential changes as a result. It also repeals Chapter 2 of Part 10 of the 2010 Act (see paragraphs 108 to 110 below).

#### **Restructuring of registered societies**

70. Section 96 of the 2010 Act makes provision for the restructuring,<sup>3</sup> winding up and dissolution of RSLs that are registered societies. Section 96(2) applies Chapter 2 of Part 10 to certain restructurings of a registered society as mentioned in section 97 of the 2010 Act. Chapter 2 applies the provisions of Chapter 1 of Part 10 (on disposal of land) to society restructurings to which section 97 applies. But restructurings where the RSL is converting into a registered company are not covered (see section 123(2)(a)).
71. Section 96(3) provides that the Regulator must not give consent in the following cases unless the society has consulted its tenants, namely—
- the winding up of a registered society (under section 98), and

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<sup>1</sup> As defined by section 165 of the 2010 Act: see also footnote 7.

<sup>2</sup> i.e. companies registered under the Companies Acts: see section 165 of the 2010 Act.

<sup>3</sup> The “restructurings” to which sections 96 and 97 of the 2010 Act apply are amalgamations of registered societies, the transfer of engagements between registered societies and the conversion into or amalgamation of a registered society with a registered company – see the definition of “restructuring provision” in section 97(1). See also the amended definition, updating references to the Co-operative and Community Benefit Societies and Credit Unions Act 1965 to references to the Co-operative and Community Benefit Societies Act 2014, in section 6(3) of the Act (see new section 96A(4)).

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- the dissolution of a registered society (under section 99).
72. Section 97(1) (and Chapter 2 of Part 10) applies to certain restructurings, namely those that will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the society but not those where the RSL is converting into a registered company (see section 123(2)(a)). It provides that the Financial Conduct Authority (“the FCA”) may register the special resolution relating to the restructuring only if the Regulator consents to the special resolution and the RSL sends a copy of that consent to the FCA with the copy special resolution. Chapter 1 of Part 10 governs the obtaining of Regulator consent. See paragraphs 42 to 45 for an explanation of the operation of Chapter 1.
73. In addition, section 97(1) applies to restructurings where the RSL is converting into a registered company. In such a case, Chapter 2 of Part 10 does not apply (and so Chapter 1 of that Part does not apply either). The FCA may register the special resolution only if the Regulator consents and the society sends a copy of that consent with the copy special resolution.
74. Section 97(2) applies to all restructurings and provides that a new body created, or to whom an RSL’s engagements are transferred, by virtue of a restructuring is to be included in the register of registered social landlords.<sup>4</sup>
75. Section 96 is amended by section 6(2) of the Act. That subsection repeals subsections (2) and (3) of section 96. These repeals are consequential on the removal of the need for Regulator’s consent. In addition, what was Chapter 2 of Part 10 is repealed (by section 6(15) of the Act)<sup>5</sup> as the requirements it imposed are now imposed directly in new section 96A and in the new version of section 97 (inserted by section 6(3) and (4) of the Act). In addition, the tenant consultation requirements are now incorporated directly into sections 98 and 99 (see further below).
76. **Section 6(3)** inserts a new section 96A into Part 8 of the 2010 Act. This new section applies where a registered society proposes to restructure<sup>6</sup> and, as a result of that restructuring, a tenant under a Scottish secure tenancy will cease to be a tenant of the society. This new section imposes a duty on the society to comply with sections 115 to 120 of Part 10 of the 2010 Act (as those sections are amended by section 4 of the Act). Those sections, which apply to certain disposals of land by an RSL, are applied to the restructuring of an RSL that is a registered society by virtue of section 96A(3) with the modification in that subsection.<sup>7</sup> Those sections require the RSL to consult the tenants affected by the restructuring and to then seek their agreement to it, either by ballot or by written agreement.<sup>8</sup>
77. **Section 6(4)** substitutes for section 97 of the 2010 Act a new version. This section applies to all restructurings by RSLs that are registered societies, not just those covered by section 96A.
78. Section 97(2) provides that, where an RSL proposes a restructuring to which section 96A applies,<sup>9</sup> the FCA may register the special resolution relating to the restructuring only if the RSL confirms it 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 restructuring (see new section 97(3)).

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<sup>4</sup> Established under Part 2 of the 2010 Act and maintained by the Regulator.

<sup>5</sup> See also paragraphs 108 to 110 below.

<sup>6</sup> But “restructure” here does not include the conversion of the registered society into a registered company.

<sup>7</sup> The modification relates to when notice of the results of the tenant ballot or the seeking of tenant’s written agreement is to be given to the Regulator under section 115A(2).

<sup>8</sup> See paragraphs 53 to 61 above for a full explanation of Chapter 1 of Part 10 and the amendments made to it by section 4 of the Act.

<sup>9</sup> And which therefore requires the RSL to seek the agreement of affected tenants.

79. In the case of all restructurings, and not just those to which section 96A applies, the RSL must also give the Regulator notice of the special resolution sent to the FCA. Where section 96A applies, that notice must be given no later than 28 days after the copy special resolution is sent to the FCA.
80. Section 97(5) re-enacts the provision in section 97(2) of the 2010 Act which provides that a new body created, or to whom an RSL's engagements are transferred, by virtue of a restructuring is to be included in the register of registered social landlords.

### **Voluntary winding up of registered societies**

81. Section 98 of the 2010 Act covers the voluntary winding up of RSLs that are registered societies and provides that a resolution relating to the winding up is not valid unless the Regulator consents and the society sends a copy of that consent to the FCA with the special resolution. By virtue of section 96(3) of the 2010 Act, the Regulator can give consent only where the RSL has consulted its tenants.
82. [Section 6\(5\)](#) of the Act replaces section 98 of the 2010 Act with a new version. Under this new section 98, the need for the Regulator's consent is removed. Instead, the RSL is obliged to consult its tenants on the proposed voluntary winding up. In addition, the resolution for the winding up is valid only if the RSL confirms to the FCA that it consulted its tenants when sending the copy resolution to the FCA.
83. Subsections (4) to (6) of new section 98 make provision additional to that currently made by section 98. Section 98(4) places the RSL under a duty to notify the Regulator of the voluntary winding up. Section 98(5) gives the Regulator a duty to issue guidance about tenant consultation under this section. And section 98(6) requires the RSL, when consulting its tenants, to have regard to that guidance.

### **Dissolution of registered societies**

84. Section 99 of the 2010 Act covers the dissolution of RSLs that are registered societies and provides that the FCA may register an instrument of dissolution and advertise the dissolution only if the Regulator consents and the society sends a copy of that consent to the FCA with the instrument. As for section 98, the Regulator can give consent only where the RSL has consulted its tenants on the dissolution (by virtue of section 96(3)).
85. [Section 6\(6\)](#) replaces section 99 of the 2010 Act with a new version. Under this new section 99, the need for the Regulator's consent is removed. Instead, the RSL is under a duty to consult its tenants on the proposed dissolution. In addition, the FCA may register the instrument of dissolution and advertise the dissolution only if the RSL confirms to the FCA that it consulted its tenants when sending the instrument to the FCA.
86. As for new section 98, subsections (4) to (6) of new section 99 make provision additional to that currently made. Section 99(4) places the RSL under a duty to notify the Regulator of the dissolution. Section 99(5) gives the Regulator a duty to issue guidance about tenant consultation under this section. And section 99(6) requires the RSL, when consulting its tenants, to have regard to that guidance.

### **Restructuring of companies**

87. Section 100 of the 2010 Act makes provision for the restructuring and winding up of RSLs that are registered companies (so serves a similar purpose to section 96 for RSLs that are registered societies). Section 100(2) applies Chapter 2 of Part 10 to the restructuring of a registered company as mentioned in section 101 of the 2010 Act. Chapter 2 applies the provisions of Chapter 1 of Part 10 (on disposal of land) to company restructurings to which section 101 applies.
88. Section 100(3) provides that the Regulator may not give consent in the following cases unless the society has consulted its tenants, that is—

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- the conversion of a company into a registered society (under section 102),
  - a voluntary arrangement relating to a company (under section 103), and
  - the voluntary winding up of a company (under section 104).
89. Section 100(2) and section 101 (and, therefore, Chapter 2 of Part 10) apply to certain company restructurings, namely—
- restructurings made following an order under section 899 of the Companies Act 2006 (“the 2006 Act”) and which are of a type mentioned in section 900(1) of that Act,<sup>10</sup> and
  - which will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL.
90. By virtue of section 123(2)(b) of the 2010 Act, restructurings where the RSL is being wound up or is in administration are not covered by Chapter 2 of Part 10 (although such restructurings still require consent under section 101).
91. Section 101(1) goes on to provide that the order under section 899 or 900 of the 2006 Act which will result in the company being restructured has effect only if the Regulator consents and the RSL sends a copy of that consent to the registrar of companies with the copy of the order (which section 900(6) of the 2006 Act requires).
92. Section 101(2) applies to all restructurings where an order is made under section 900 of the 2006 Act (so restructurings of a type mentioned in section 900(1)) and provides that where the whole or any part of the undertaking and property and liabilities of the RSL are transferred to another company, that other company is to be included in the register of registered social landlords.<sup>11</sup>
93. Section 100 is amended by section 6(7) of the Act. That subsection repeals subsections (2) and (3) of section 100. These repeals are consequential on the removal of the need for Regulator’s consent. In addition, what was Chapter 2 of Part 10 is repealed (by section 6(15) of the Act)<sup>12</sup> as the requirements it imposes are now imposed directly in new section 100A and in the new version of section 101 inserted by section 6(8) and (9) of the Act. In addition, the tenant consultation requirements are now incorporated directly into sections 102, 103 and 104 (see further below).
94. [Section 6\(8\)](#) inserts a new section 100A into Part 8 of the 2010 Act. This new section applies where a company which is an RSL proposes to restructure and, as a result of that restructuring, a tenant under a Scottish secure tenancy will cease to be a tenant of the company. Restructurings where the RSL is being wound up or is in administration are not, however, covered.
95. This new section imposes a duty on the RSL to comply with sections 115 to 120 of Part 10 of the 2010 Act. As explained above in relation to the restructuring of registered societies, those sections, which apply to certain disposals of land by an RSL, are applied to the restructuring of an RSL that is a registered company by virtue of section 100A(3) with the modification in that subsection.<sup>13</sup> These sections require the RSL to consult the tenants affected by the restructuring and to then seek their agreement to it, either by ballot or by written agreement.<sup>14</sup>

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**10** Section 900(1) relates to restructurings that involve a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and which will result in the whole or any part of the undertaking or the property of the company being transferred to another company.

**11** Established under Part 2 of the 2010 Act and maintained by the Regulator.

**12** See also paragraphs 108 to 110 below.

**13** The modification relates to when notice of the results of the tenant ballot or the seeking of tenant’s written agreement is to be given to the Regulator under section 115A(2).

**14** See paragraphs 53 to 61 above for a full explanation of Chapter 1 of Part 10 and the amendments made to it by section 4 of the Act.

96. [Section 6\(9\)](#) substitutes for section 101 of the 2010 Act a new version. This section applies to all restructurings by RSLs that are registered companies, not just those covered by section 100A.
97. Section 101(2) (read with section 101(3)) provides that, where an RSL proposes a restructuring to which section 100A applies,<sup>15</sup> the court order relating to the restructuring has effect only if the RSL confirms it 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 restructuring.
98. In the case of all restructurings, and not just those to which section 100A applies, the RSL must also give the Regulator notice of the restructuring. Where section 100A applies, that notice must be given no later than 28 days after the court order is made.
99. Section 101(5) re-enacts the provision in section 101(2) of the 2010 Act which provides that that where the whole or any part of the undertaking and property and liabilities of the RSL are transferred to another company, that other company is to be included in the register of registered social landlords.<sup>16</sup>

### **Conversion of company into a registered society**

100. The conversion of an RSL that is a company into an RSL that is a registered society is covered by section 102 of the 2010 Act. That section provides that the special resolution relating to the conversion has effect only if the Regulator consented to it before it was passed and the RSL sends a copy of that consent along with the resolution to the registrar of companies. By virtue of section 100(3), the Regulator may consent only where the RSL consulted its tenants on the conversion.
101. The existing section 102(2) makes provision for the inclusion in the register of registered social landlords of the new registered society created as a result.
102. [Section 6\(10\)](#) of the Act replaces section 102 with a new version. The main difference between the current version and the new one is the removal of the need for the Regulator's consent.
103. The new section 102(2) places a duty on the RSL to consult its tenants on the proposed conversion into a registered society. By virtue of subsection (3), the special resolution relating to the conversion has effect only if the RSL confirms it did so, and sends a copy of that confirmation to the registrar of companies with the resolution. Under section 102(4), the RSL must give the Regulator notice of the sending of the special resolution to the registrar. Section 102(5) re-enacts section 102(2) and provides for the inclusion of the new registered society in the register of registered social landlords. Finally, subsections (6) and (7) require the Regulator to issue guidance about tenant consultation and require the RSL to have regard to that guidance when consulting its tenants.

### **Company voluntary arrangement**

104. Section 103 of the 2010 Act applies to voluntary arrangements under Part 1 of the Insolvency Act 1986<sup>17</sup> by RSLs that are registered companies and provides that the arrangement does not take effect unless the Regulator consents. By virtue of section 100(3), the Regulator may consent only where the RSL consulted its tenants on the arrangement.
105. [Section 6\(11\)](#) of the Act replaces this section with a new version, the main change being the removal of the need for Regulator's consent. In place of that, section 103(2)

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<sup>15</sup> And which therefore requires the RSL to seek the agreement of affected tenants.

<sup>16</sup> Established under Part 2 of the 2010 Act and maintained by the Regulator.

<sup>17</sup> A "voluntary arrangement" is a proposal (made by either the directors or, if the company is being wound up or is in administration, by the liquidator or by the administrator) to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs.

places a duty on the RSL to consult its tenants on the voluntary arrangement. Under subsection (3), the arrangement does not take effect unless the RSL did so. The RSL must give the Regulator notice of the arrangement as soon as reasonably practicable after it takes effect (section 103(4)). Section 103(5) requires the Regulator to issue guidance about tenant consultation and section 103(6) requires the RSL to have regard to that guidance when consulting its tenants.

### **Voluntary winding up of companies**

106. Section 104 of the 2010 Act makes provision where an RSL that is a registered company is being voluntarily wound up under the Insolvency Act 1986 and provides that the special resolution for the winding up is valid only if the Regulator consents and the RSL sends a copy of the consent (with the required copy resolution) to the registrar of companies. By virtue of section 100(3), the Regulator may consent only where the RSL consulted its tenants on the winding up.
107. [Section 6\(12\)](#) of the Act (by substituting for section 104 a new version of that section) removes the need for Regulator's consent and, instead, places a direct duty on the RSL to consult its tenants before passing the special resolution relating to the winding up (section 104(2)). The special resolution is valid only if the RSL confirms it consulted its tenants and sends a copy of that confirmation to the registrar of companies along with the copy resolution. The RSL will also be required to notify the Regulator that the copy resolution has been sent to the registrar (see section 104(4)). Finally, subsections (5) and (6) of new section 104 require the Regulator to issue guidance on tenant consultation under that section and require the RSL to have regard to it.

### **Chapter 2 of Part 10 of the 2010 Act**

108. The amendments made to Part 8 of the 2010 Act make Chapter 2 of Part 10 redundant. Section 123 of the 2010 Act applies Chapter 1 of Part 10 to the restructuring of registered societies under section 97 and to the restructuring of companies under section 101. The substantive provisions of section 123 are now, as a result of the amendments in section 6(3), (4), (8) and (9) of the Act, in Part 8 of the 2010 Act.
109. Section 124 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 123) does not invalidate the Regulator's consent to the restructuring. Regulator's consent will no longer be required. And the consequences for a failure by the RSL will be dealt with by section 97(2) and (3) and section 101(2) and (3) (as amended). So section 124 is no longer necessary.
110. Accordingly section 6(15) repeals Chapter 2 of Part 10.

### **Section 165 of the 2010 Act – definition of “registered society”**

111. [Section 6\(16\)](#) of the Act amends the definition of “registered society” 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 1965 (which has been repealed).