

Draft Regulations laid before the Scottish Parliament under section 191(5) of the Housing (Scotland) Act 2006 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

HOUSING

**The Registered Social Landlords (Repayment
Charges) (Scotland) Regulations 2018**

Made - - - - 2018

Coming into force - - 27th October 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 174A(1) and 191(2)(b) of the Housing (Scotland) Act 2006⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 174A(3) of that Act, the Scottish Ministers have consulted such bodies representing local authorities, such bodies representing registered social landlords and such other persons as they think fit.

In accordance with section 191(5) of that Act⁽²⁾, a draft of these Regulations has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Registered Social Landlords (Repayment Charges) (Scotland) Regulations 2018 and come into force on 27th October 2018.

(2) In these Regulations—

“the 2004 Act” means the Tenements (Scotland) Act 2004⁽³⁾;

“the 2006 Act” means the Housing (Scotland) Act 2006;

“flat” has the meaning given to it by section 29(1) (interpretation) of the 2004 Act;

“notice” means a notice given in accordance with rule 9 (giving of notice) of schedule 1 of the 2004 Act;

“repayable amount” means the sum the property concerned is charged with under a repayment charge made in accordance with regulation 2(1);

(1) [2006 asp 1](#) (“the 2006 Act”). Section 174A was inserted by section 85(3) of the Housing (Scotland) Act 2014 ([asp 14](#)) (“the 2014 Act”).

(2) Section 191(5) was relevantly amended by section 85(4) of the 2014 Act.

(3) [2004 asp 11](#).

“scheme costs” has the meaning given to it by rule 4.1 (meaning of “scheme costs”) of schedule 1 of the 2004 Act;

“scheme decision” has the meaning given to it by rule 1.4 (meaning of “scheme decision”) of schedule 1 of the 2004 Act; and

“tenement” has the meaning given to it by section 26 (meaning of tenement) of the 2004 Act.

Repayment charges

2.—(1) Subject to paragraph (2), a registered social landlord may make in favour of itself a charge (“a repayment charge”) to recover a sum which—

- (a) the registered social landlord is entitled to recover from an owner of a flat in a tenement; and
- (b) represents the owner’s share of scheme costs as determined in accordance with section 4A(3) of the 2004 Act.

(2) Paragraph (1) applies only where—

- (a) the registered social landlord—
 - (i) is the owner of at least one flat in the tenement; and
 - (ii) has paid an owner’s share of scheme costs by enforcing a scheme decision under rule 8.3 (enforceability of scheme decisions) of schedule 1 of the 2004 Act; and
- (b) the scheme costs are incurred as a result of a scheme decision in relation to any matter mentioned in rule 3.1 (basic scheme decisions) of schedule 1 of the 2004 Act, except costs for a common policy of insurance mentioned in rule 3.1(e).

Notice of payment of share

3. Before paying an owner’s share of scheme costs by enforcing a scheme decision under rule 8.3 of schedule 1 of the 2004 Act, the registered social landlord must give notice to the owner who has failed to pay a share of any scheme costs of the registered social landlord’s intention to make the payment.

Repayable amount

4.—(1) Subject to paragraph (2), the repayable amount is the lower of—

- (a) the amount recoverable under section 4A(5) of the 2004 Act; or
- (b) any lower amount determined by the registered social landlord.

(2) The repayable amount mentioned in paragraph (1) may not exceed £10,000.

Repayment period

5.—(1) The registered social landlord must—

- (a) determine—
 - (i) the number of equal annual instalments, being no fewer than 5 and no more than 30, in which the repayable amount is to be paid; and
 - (ii) the date in each year on which the instalment becomes due; and
- (b) notify the owner of its determination under paragraph (a).

(2) The registered social landlord may—

- (a) determine that an equal annual instalment mentioned in paragraph (1) may be made by 12 equal monthly payments beginning on the date determined under paragraph (1)(a)(ii) and—
 - (i) on the same day of each subsequent month; or
 - (ii) if a subsequent month has no such day, on the final day of the month; and
- (b) notify the owner of its determination under paragraph (a).

Early repayment

6.—(1) The owner of, or any other person interested in, any property subject to a repayment charge may at any time redeem the repayable amount early by paying to the registered social landlord—

- (a) such sum as the owner or other person may agree with the registered social landlord; or
 - (b) failing such agreement, such a sum as an arbiter may determine.
- (2) The arbiter will be appointed by the Scottish Arbitration Centre⁽⁴⁾.
- (3) The Arbitration (Scotland) Act 2010⁽⁵⁾ will govern any such arbitration.

Form of repayment charge and discharge

7. A repayment charge must be in the form set out in Part 1 of the schedule.
8. A discharge of a repayment charge must be in the form set out in Part 2 of the schedule.

Registration of a repayment charge or discharge

9.—(1) The registered social landlord must register a repayment charge in the appropriate land register.

(2) As soon as practicable after the repayable amount is paid, the registered social landlord must register a discharge of that repayment charge in the appropriate land register.

Effect of registering a repayment charge or discharge of a repayment charge etc.

10.—(1) A registered repayment charge is conclusive evidence that the charge specified in it has been created in respect of the property specified in it.

(2) A registered repayment charge constitutes a charge on the property specified in it and has priority over—

- (a) all future burdens and incumbrances on the same property; and
- (b) all existing burdens and incumbrances on the same property except any charges created or arising under—
 - (i) any local Act authorising a charge for recovery of expenses incurred by a local authority;
 - (ii) schedule 9 of the Housing (Scotland) Act 1987⁽⁶⁾;
 - (iii) section 172 of the 2006 Act⁽⁷⁾; or
 - (iv) any Act authorising advances of public money.

⁽⁴⁾ The Scottish Arbitration Centre is a company limited by guarantee, registered in Scotland with company number SC394779.

⁽⁵⁾ 2010 asp 1.

⁽⁶⁾ 1987 c.26.

⁽⁷⁾ Section 172 was amended by section 150(4) of the Housing (Scotland) Act 2010 (asp 17) and sections 85(2), 90(1) and 91(1) of the Housing (Scotland) Act 2014.

(3) A registered repayment charge is enforceable at the instance of the registered social landlord against any person deriving title to the charged property.

(4) A registered repayment charge is not enforceable against—

(a) a third party who acquires right to the charged property (whether title has been completed or not) in good faith and for value before the repayment charge is registered; or

(b) any person deriving title from such third party.

(5) A registered discharge of a repayment charge is conclusive evidence that the charge concerned has been discharged.

Fees and expenses

11. The registered social landlord may recover from the owner of the property concerned—

(a) the amount of any fee payable in respect of registering a repayment charge or a discharge of such a charge; and

(b) any administrative expenses incurred by it in connection with such registration.

Appeals

12.—(1) A person aggrieved by a determination under regulation 4(1)(b) or 5(1)(a) or (2)(a) may appeal to the sheriff.

(2) On an appeal under this regulation, the sheriff may make such order relating to the repayable amount, number of instalments or frequency of instalments as the sheriff thinks fit.

(3) The decision of the sheriff on appeal under this regulation is final.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 7

PART 1

Form of Repayment Charge

We¹....., in exercise of the power conferred on us by regulation 2 of the Registered Social Landlords (Repayment Charges) (Scotland) Regulations 2018, CHARGE the subjects described in the schedule with a repayable amount of²..... sterling, payable in³ equal annual instalments of⁴....., the first instalment being payable on⁵.....in 20..... and subsequent instalments on the same date in every succeeding calendar year. IN WITNESS WHEREOF⁶

SCHEDULE

DESCRIPTION OF SUBJECTS⁷

Notes for guidance

- 1 Insert the name and address of the registered social landlord.
- 2 Insert in words the repayable amount.
- 3 Insert the number of equal instalments, being no fewer than 5 and no more than 30.
- 4 Insert the amount of the annual instalment.
- 5 Insert a date after the making of the charge for the first instalment to be paid.
- 6 The deed should be executed here and at the end of the Schedule.
- 7 Insert a full description of the subjects by reference to the postal address and, as appropriate, either
 - (a) a competent conveyancing description to enable recording in the General Register of Sasines, or
 - (b) the registered title number to enable registration in the Land Register.

Regulation 8

PART 2

Form of Discharge of Repayment Charge

DISCHARGE OF REPAYMENT CHARGE

We¹..... DISCHARGE the Repayment Charge made by us on²..... over the subjects³..... and [either]⁴ registered in the Land Register under Title Number⁵..... on⁶..... [or]⁴ recorded in the Division of the General Register of Sasines for the County of⁷..... on⁸..... IN WITNESS WHEREOF⁹

Notes for guidance

- 1 Insert the name and address of the registered social landlord.
- 2 Insert the date of execution of the original Repayment Charge.
- 3 Insert postal address of subjects.
- 4 Delete as appropriate.
- 5 Insert Title Number in Land Register.
- 6 Insert date of registration of Repayment Charge.
- 7 Insert name of County in the General Register of Sasines.
- 8 Insert date of recording of Repayment Charge in the General Register of Sasines.
- 9 The deed should be executed here.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enable a registered social landlord (“RSL”) to make a repayment charge in favour of itself to recover a sum which the RSL has paid on behalf of an owner when enforcing a scheme decision under the Tenements (Scotland) Act 2004.

Regulation 2 sets out the conditions that must be met before an RSL can make a repayment charge and provides for what costs may be included in the owner’s share. Regulation 3 provides for a notice to the owner before the RSL pays that owner’s share.

Regulation 4 provides for the repayable amount, regulation 5 provides for the repayment period and regulation 6 provides for early repayment.

Regulations 7 and 8 introduce the Parts of the schedule. The schedule sets out the form of a repayment charge (Part 1) and the form of a discharge of a repayment charge (Part 2).

Regulation 9 provides for registration of a repayment charge or discharge and regulation 10 provides for the effect of registration in either case, including prioritisation of a repayment charge as against other charges and incumbrances on the same property. Regulation 11 provides for fees and expenses to be paid to the RSL.

Regulation 12 provides for appeals to the sheriff in relation to determinations of the repayable amount, the number of instalments and the frequency of instalments.

No business and regulatory impact assessment has been prepared for these Regulations as no impact on business, charities or the voluntary bodies is foreseen.