

Status: Point in time view as at 01/11/2001.

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SCHEDULE 7

(introduced by section 63)

REGULATION OF REGISTERED SOCIAL LANDLORDS

Commencement Information

- II** Sch. 7 wholly in force at 1.11.2001, see s. 113 and S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3) (as amended by S.S.I. 2001/397, art. 7(b))

PART 1

CONTROL OF PAYMENTS TO MEMBERS ETC.

Payments by way of gift, dividend or bonus

- 1 (1) A registered social landlord must not make a gift or pay a sum by way of dividend or bonus to—
- a person who is or has been a member of the body,
 - a person who is a member of the family of a person within paragraph (a),
 - a company of which a person within paragraph (a) or (b) is a director, or
 - a firm of which a person within paragraph (a) or (b) is a member,
- except as permitted by this paragraph.
- (2) The following are permitted—
- the payment of a sum which, in accordance with the constitution or rules of the body, is paid as interest on capital lent to the body or subscribed by way of shares in the body,
 - the payment by a fully mutual housing association to a person who has ceased to be a member of the association of a sum which is due to the person either under a tenancy agreement with the association or under the terms of the agreement under which the person became a member of the association.
- (3) Where a landlord pays a sum or makes a gift in contravention of this paragraph, the landlord may recover the sum or the value of the gift, and proceedings for its recovery must be taken if the Scottish Ministers so direct.

Payments and benefits to officers and employees etc.

- 2 (1) A registered social landlord must not make a payment or grant a benefit to—
- an officer or employee of the landlord,
 - a person who at any time within the preceding twelve months has been a person within paragraph (a),
 - a close relative of a person within paragraph (a) or (b), or
 - a business trading for profit of which a person falling within paragraph (a), (b) or (c) is a principal proprietor or in the management of which such a person is directly concerned,
- except as permitted by this paragraph.
- (2) The following are permitted—

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- (a) payments made or benefits granted to an officer or employee of the landlord under that person's contract of employment with the landlord,
 - (b) the payment of expenses to an officer of the landlord who does not have a contract of employment with the landlord,
 - (c) any such payment as may be made in accordance with paragraph 1(2) (interest payable in accordance with the rules and certain sums payable by a fully mutual housing association to a person who has ceased to be a member),
 - (d) the grant or renewal of a tenancy by a co-operative housing association,
 - (e) where a tenancy of a house has been granted to, or to a close relative of, a person who later became an officer or employee, the grant to that tenant of a new tenancy whether of the same or another house,
 - (f) payments made or benefits granted with the approval of the Scottish Ministers (which approval may be given only in relation to a class or classes of case).
- (3) Where a landlord pays a sum or grants a benefit in contravention of this paragraph, the landlord may recover the sum or value of the benefit; and proceedings for its recovery must be taken if the Scottish Ministers so direct.

Maximum amounts payable by way of fees, expenses, etc.

- 3 (1) The Scottish Ministers may from time to time specify the maximum amounts which may be paid by a registered social landlord—
- (a) by way of fees or other remuneration, or by way of expenses, to a member of the landlord who is not an officer or employee of the landlord, or
 - (b) by way of expenses to an officer of the landlord who does not have a contract of employment with the landlord,
- and different amounts may be so specified for different purposes.
- (2) Where a landlord makes a payment in excess of the maximum permitted under this paragraph, the landlord may recover the excess, and proceedings for its recovery must be taken if the Scottish Ministers so direct.

PART 2

CONSTITUTION, CHANGE OF RULES, AMALGAMATION AND DISSOLUTION

General power to remove director, trustee etc.

- 4 (1) The Scottish Ministers may, in accordance with the following provisions, remove—
- (a) a committee member of a registered social landlord which is an industrial and provident society,
 - (b) a director of a registered social landlord which is a company registered under the Companies Act 1985 (c.6).
- (2) The Scottish Ministers may remove any such person if the person—
- (a) is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 (c.66),
 - (b) is subject to a disqualification order under the Company Directors Disqualification Act 1986 (c.46),

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- (c) is incapable of acting by reason of mental disorder,
 - (d) has not acted, or
 - (e) cannot be found or does not act and the person's absence or failure to act is impeding the proper management of the registered social landlord's affairs.
- (3) The Scottish Ministers must give at least 14 days' notice of their intention to remove a person to that person and to the registered social landlord.
- (4) That notice may be given by post, and if so given to the person whom the Scottish Ministers intend to remove may be addressed to that person's last known address in the United Kingdom.
- (5) A person who is removed under this paragraph may appeal to the Court of Session.
- (6) In this paragraph, "mental disorder" has the same meaning as in the Mental Health (Scotland) Act 1984 (c.36).

Industrial and provident society: power to appoint new committee member

- 5 (1) The Scottish Ministers may appoint a person to be a committee member of a registered social landlord which is an industrial and provident society—
- (a) in place of a person removed by them,
 - (b) where there are no members of the committee, or
 - (c) where they are of the opinion that it is necessary for the proper management of the society's affairs to have an additional committee member.
- (2) The power conferred by sub-paragraph (1)(c) may be exercised even if it will cause the maximum number of committee members permissible under the society's constitution to be exceeded.
- (3) A person may be so appointed whether or not that person is a member of the society and, if not, despite the rules of the society restricting appointment to members.
- (4) A person appointed under this paragraph holds office for such period and on such terms as the Scottish Ministers may specify; and on the expiry of the appointment the Scottish Ministers may renew the appointment for such period as they may specify; but this does not prevent such a person from retiring in accordance with the rules of the society.
- (5) A person appointed under this paragraph is entitled—
- (a) to attend, speak and vote at any general meeting of the society and to receive all notices of and other communications relating to any general meeting which a member of the society is entitled to receive,
 - (b) to move a resolution at any general meeting of the society, and
 - (c) to require a general meeting of the society to be convened within 21 days of a request to that effect made in writing to the committee of the society.

Company: power to appoint new director

- 6 (1) The Scottish Ministers may appoint a person to be a director of a registered social landlord which is a company registered under the Companies Act 1985 (c.6)—
- (a) in place of a director removed by them,
 - (b) where there are no directors, or

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- (c) where they are of the opinion that it is necessary for the proper management of the company's affairs to have an additional director.
- (2) A person may be so appointed whether or not that person is a member of the company and despite anything in the company's articles of association.
- (3) A person appointed under this paragraph holds office for such period and on such terms as the Scottish Ministers may specify, and on the expiry of the appointment the Scottish Ministers may renew the appointment for such period as they may specify; but this does not prevent such a person from retiring in accordance with the company's articles of association.
- (4) A person appointed under this paragraph is entitled—
 - (a) to attend, speak and vote at any general meeting of the company and to receive all notices of and other communications relating to any general meeting which a member of the company is entitled to receive,
 - (b) to move a resolution at any general meeting of the company, and
 - (c) to require an extraordinary general meeting of the company to be convened within 21 days of a request to that effect made in writing to the directors of the company.

Change of rules etc. by industrial and provident society

- 7 (1) This paragraph applies to an industrial and provident society whose registration as a social landlord has been recorded by the Financial Services Authority.
- (2) Notice must be sent to the Scottish Ministers of any change of the society's name or of the situation of its registered office.
- (3) Any other amendment of the society's rules is not valid without the consent of the Scottish Ministers given by notice in writing.
- (4) A copy of that consent must be sent with the copies of the amendment required by section 10(1) of the Industrial and Provident Societies Act 1965 (c.12) to be sent to the Financial Services Authority.
- (5) The Industrial and Provident Societies Act 1965 (c.12) applies in relation to the provisions of this paragraph as if they were contained in section 10 of that Act (amendment of registered rules).

Change of memorandum or articles of association of company

- 8 (1) This paragraph applies to a company registered under the Companies Act 1985 (c.6) which is registered as a social landlord.
- (2) Notice must be sent to the Scottish Ministers of any change of the company's name or of the address of its registered office.
- (3) Any other alteration of the company's memorandum or articles of which notice is required to be given to the registrar of companies is not valid without the consent of the Scottish Ministers given by notice in writing.

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Amalgamation and dissolution etc. of industrial and provident society

- 9 (1) This paragraph applies to an industrial and provident society whose registration as a social landlord has been recorded by the Financial Services Authority.
- (2) The Financial Services Authority must not register a special resolution which is passed for the purposes of—
- (a) section 50 of the Industrial and Provident Societies Act 1965 (c.12) (amalgamation of societies),
 - (b) section 51 of that Act (transfer of engagements between societies), or
 - (c) section 52 of that Act (power of a society to convert itself into, amalgamate with or transfer its engagements to a company registered under the Companies Act 1985 (c.6)),
- unless, together with the copy of the resolution, there is sent to the Authority a copy of the Scottish Ministers' consent to the amalgamation, transfer or conversion.
- (3) Any new body created by the amalgamation or conversion or, in the case of a transfer of engagements, the transferee, is deemed to be registered as a social landlord forthwith upon the amalgamation, conversion or transfer taking effect.
- (4) If the society resolves by special resolution that it be wound up voluntarily under the Insolvency Act 1986 (c.45), the resolution has no effect unless—
- (a) before the resolution was passed the Scottish Ministers gave their consent to its passing, and
 - (b) a copy of the consent is forwarded to the Financial Services Authority together with a copy of the resolution required to be so forwarded in accordance with the Companies Act 1985 (c.6).
- (5) If the society is to be dissolved by instrument of dissolution, the Financial Services Authority must not—
- (a) register the instrument in accordance with section 58(5) of the Industrial and Provident Societies Act 1965 (c.12), or
 - (b) cause notice of the dissolution to be advertised in accordance with section 58(6) of that Act,
- unless together with the instrument there is sent to the Authority a copy of the Scottish Ministers' consent to its making.
- (6) The Scottish Ministers must not give any consent required by this paragraph unless they are satisfied that the society has consulted its tenants on the proposal for which the consent is required.
- (7) References in this paragraph to the Scottish Ministers' consent are to consent given in writing.

Arrangement, reconstruction etc. of company

- 10 (1) This paragraph applies to a company registered under the Companies Act 1985 (c.6) which is registered as a social landlord.
- (2) An order of the court given for the purposes of section 425 (compromise or arrangement with creditors or members) of that Act is not effective unless the Scottish Ministers have given their consent.

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- (3) An order of the court given for the purposes of section 427 (transfer of undertaking or property for purposes of reconstruction or amalgamation) of that Act is not effective unless the Scottish Ministers have given their consent.
- (4) A resolution under section 53 (conversion of company into industrial and provident society) of the Industrial and Provident Societies Act 1965 (c.12) is not effective unless, before the resolution was passed, the Scottish Ministers gave their consent to its passing.
- (5) Where a director, administrator or liquidator of the company proposes to make a voluntary arrangement with the company's creditors under section 1 of the Insolvency Act 1986 (c.45), the arrangement does not take effect under section 5 (effect of approval by members and creditors) of that Act unless the Scottish Ministers have given their consent to the voluntary arrangement.
- (6) If the company resolves by special resolution that it be wound up voluntarily under the Insolvency Act 1986 (c.45), the resolution has no effect unless, before the resolution was passed, the Scottish Ministers gave their consent to its passing.
- (7) The Scottish Ministers must not give any consent required by this paragraph unless they are satisfied that the company has consulted its tenants on the proposal for which the consent is required.
- (8) References in this paragraph to the Scottish Ministers' consent are to consent given in writing.
- (9) Where sub-paragraph (3) or (4) applies, the transferee or, as the case may be, any new body created by the conversion is deemed to be registered as a social landlord forthwith upon the transfer or conversion taking effect.

Power of the Scottish Ministers to petition for winding up

- 11 The Scottish Ministers may present a petition for the winding up under the Insolvency Act 1986 (c.45) of a registered social landlord on the ground that—
- (a) the landlord is failing properly to carry out its purposes or objects,
 - (b) the landlord is unable to pay its debts within the meaning of section 123 of that Act.

Transfer of net assets on dissolution or winding up

- 12 (1) This paragraph applies—
- (a) where a registered social landlord which is an industrial and provident society is dissolved as mentioned in section 55(a) or (b) of the Industrial and Provident Societies Act 1965 (c.12) (winding up under the Insolvency Act 1986 or by instrument of dissolution), and
 - (b) where a registered social landlord which is a company registered under the Companies Act 1985 (c.6) is wound up under the Insolvency Act 1986 (c.45).
- (2) On such a dissolution or winding up, so much of the property of the society or company as remains after meeting the claims of its creditors and any other liabilities arising on or before the dissolution or winding up are to be transferred to such registered social landlord as the Scottish Ministers may direct.

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- (3) Sub-paragraphs (1) and (2) have effect despite anything in the Industrial and Provident Societies Act 1965 (c.12), the Companies Act 1985 (c.6) or the Insolvency Act 1986 (c.45) or in the rules of the society or, as the case may be, in the memorandum or articles of association of the company.
- (4) In order to avoid the necessity for the sale of land belonging to the registered social landlord and thereby secure the transfer of the land under this paragraph, the Scottish Ministers may, if it appears to them appropriate to do so, make payments to discharge such claims or liabilities as are referred to in sub-paragraph (2).
- (5) The Scottish Ministers must, before making a direction under sub-paragraph (2), consult the tenants of the houses included in the proposed transfer; and, in making a direction, they must have regard to the views expressed by those consulted.

PART 3

ACCOUNTS AND AUDIT

General requirements as to accounts and audit

- 13 (1) The Scottish Ministers may by order determine accounting requirements for registered social landlords with a view to ensuring that the accounts of every registered social landlord—
 - (a) are prepared in a proper form, and
 - (b) give a true and fair view of—
 - (i) the state of affairs of the landlord, so far as its housing activities are concerned, and
 - (ii) the disposition of funds and assets which are, or at any time have been, in its hands in connection with those activities.
- (2) The accounts of every registered social landlord must comply with the requirements determined under this paragraph.
- (3) The auditor's report must state, in addition to any other matters which it is required to state, whether in the auditor's opinion the accounts do so comply.
- (4) Every registered social landlord must submit to the Scottish Ministers a copy of its accounts and auditor's report within six months of the end of the period to which they relate.
- (5) An order under this paragraph must not apply to a period beginning before the day on which the order comes into force.

Appointment of auditors by industrial and provident societies

- 14 Section 4 (obligation to appoint qualified auditors to audit accounts and balance sheet for each year of account) of the Friendly and Industrial and Provident Societies Act 1968 (c.55) applies to every industrial and provident society which is a registered social landlord, without regard to the volume of its receipts and payments, the number of its members or the value of its assets.

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Responsibility for securing compliance with accounting requirements

- 15 (1) Every responsible person, that is to say, every person who—
- (a) is directly concerned with the conduct and management of the affairs of a registered social landlord, and
 - (b) is in that capacity responsible for the preparation and audit of accounts,
- must ensure that paragraph 13 is complied with by the landlord.
- (2) If—
- (a) paragraph 13(4) is not complied with, or
 - (b) the accounts submitted to the Scottish Ministers under that provision do not comply with the accounting requirements determined under paragraph 13(1),
- every responsible person, and the registered social landlord itself, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In proceedings for an offence under this paragraph it is a defence—
- (a) for a responsible person to prove that that person did everything that could reasonably have been expected of the person by way of discharging the relevant duty,
 - (b) for a registered social landlord to prove that every responsible person did everything that could reasonably have been expected of the person by way of discharging the relevant duty in relation to the registered social landlord.

PART 4

INQUIRY INTO AFFAIRS OF REGISTERED SOCIAL LANDLORDS

Inquiry

- 16 (1) The Scottish Ministers may appoint a person (not a person who is, or at any time has been, a member of the staff of the Scottish Administration, the registered social landlord or a subsidiary or associate of the registered social landlord) to conduct an inquiry into the affairs of a registered social landlord.
- (2) If the appointed person considers it necessary for the purposes of the inquiry, that person may also inquire into the business of any other body which, at a time which the appointed person considers material, is or was a subsidiary or associate of the registered social landlord.
- (3) The appointed person may, by notice in writing served on—
- (a) the registered social landlord,
 - (b) any person who is, or has been, an officer, agent or member of the landlord,
 - (c) any person who is, or has been, an officer, agent or member of a subsidiary or associate of the landlord, or
 - (d) any other person whom the appointed person has reason to believe is or may be in possession of information of relevance to the inquiry,
- impose on the landlord or person a requirement specified in sub-paragraph (4).
- (4) That requirement is a requirement to—

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- (a) give to the appointed person, at a time and place and in the form and manner specified in the notice, such information relating to the affairs of the registered social landlord, or of any other such body as is referred to in sub-paragraph (2), as may be specified or described in the notice, and
 - (b) produce to the appointed person, at a time and place specified in the notice, any documents relating to such affairs which are specified or described in the notice and are in that person's custody or under that person's control.
- (5) An association or other person who fails without reasonable excuse to comply with the requirements of a notice under sub-paragraph (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) Where by virtue of sub-paragraph (3) any books, accounts or other documents are produced to the appointed person, that person may take copies of or make extracts from them.
- (7) The appointed person may, if that person thinks fit during the course of the inquiry, make one or more interim reports to the Scottish Ministers on such matters as appear to the appointed person to be appropriate.
- (8) On completion of the inquiry the appointed person must make a report to the Scottish Ministers on such matters and in such form as they may specify.
- (9) The Scottish Ministers may publish the report, or such part of it as they think fit.
- (10) In this paragraph "agent" includes banker, solicitor and auditor.
- (11) Nothing in this paragraph authorises the appointed person to require—
 - (a) the disclosure of anything which a person would be entitled to refuse to disclose on the ground of confidentiality in proceedings in the Court of Session, or
 - (b) the disclosure by a banker of anything in breach of any duty of confidentiality owed by the banker to a person other than a registered social landlord or a subsidiary or associate of a registered social landlord.

Extraordinary audit for purposes of inquiry

- 17 (1) For the purposes of an inquiry under paragraph 16 the Scottish Ministers may require the accounts and balance sheet of the registered social landlord concerned, or such of them as the Scottish Ministers may specify, to be audited by a qualified auditor appointed by the Scottish Ministers.
- (2) A person is a qualified auditor for this purpose if that person would be eligible for appointment as auditor of the ordinary accounts of the registered social landlord.
- (3) On completion of the audit the appointed auditor must make a report to the Scottish Ministers on such matters and in such form as they may specify.
- (4) The expenses of the audit, including the remuneration of the auditor, are to be paid by the Scottish Ministers.
- (5) An audit under this paragraph is additional to, and does not affect, any audit made or to be made under any other enactment.

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General powers exercisable as a result of inquiry or audit

- 18 (1) Where the Scottish Ministers are satisfied, as the result of an inquiry under paragraph 16 or an audit under paragraph 17, that there has been misconduct or mismanagement in the affairs of a registered social landlord, they may—
- (a) remove any officer, agent or employee of the landlord who appears to the Scottish Ministers to have been responsible for or privy to the misconduct or mismanagement or to have by that person's conduct contributed to it or facilitated it,
 - (b) suspend such a person for up to six months—
 - (i) pending determination whether the person should be removed, and
 - (ii) if it is determined that the person should be removed, pending the person's removal,
 - (c) direct any bank or other person who holds money or securities on behalf of the landlord not to part with the money or securities without the approval of the Scottish Ministers,
 - (d) restrict the transactions which may be entered into, or the nature or amount of the payments which may be made, by or in the administration of the landlord without the approval of the Scottish Ministers.
- (2) If at any time the appointed person makes an interim report under paragraph 16(7) and, as a result of that interim report, the Scottish Ministers are satisfied that there has been misconduct or mismanagement as mentioned in sub-paragraph (1)—
- (a) the Scottish Ministers may at that time exercise any of the powers conferred by paragraphs (b) to (d) of that sub-paragraph, and
 - (b) in relation to the exercise at that time of the power conferred by sub-paragraph (1)(b), the reference in that provision to a period of six months is to be construed as a reference to a period beginning at that time and ending six months after the date of the report under paragraph 16(8).
- (3) Before exercising their power under sub-paragraph (1)(a) the Scottish Ministers must give at least 14 days' notice of their intention to do so to the person they intend to remove and to the registered social landlord.
- (4) Notice under sub-paragraph (3) may be given by post, and if so given to the person whom the Scottish Ministers intend to remove may be addressed to that person's last known address in the United Kingdom.
- (5) A person who is removed under sub-paragraph (1)(a) or suspended under sub-paragraph (1)(b) may appeal to the Court of Session.
- (6) Where a person is suspended under sub-paragraph (1)(b), the Scottish Ministers may give directions with respect to the performance of the person's functions and otherwise as to matters arising from the suspension.
- (7) A person who fails to comply with a direction under sub-paragraph (1)(c) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months or both.

Power to direct transfer of land

- 19 (1) Where, as the result of an inquiry under paragraph 16 or an audit under paragraph 17, the Scottish Ministers are satisfied as regards a registered social landlord—
- (a) that there has been misconduct or mismanagement in its administration, or

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- (b) that the management of its land would be improved if some or all of its land were transferred in accordance with the provisions of this paragraph, the Scottish Ministers may direct the registered social landlord to make such a transfer to a specified registered social landlord.
- (2) The Scottish Ministers must, before making a direction under this paragraph, consult the tenants of any houses included in the proposed transfer; and, in making a direction, they must have regard to the views expressed by those consulted.
- (3) A transfer in pursuance of a direction under this paragraph is to be made on the terms that the transferee will pay or undertake to pay to the registered social landlord concerned such sum (if any) as will be necessary to defray all its proper debts and liabilities (including debts and liabilities secured on the land) after taking into account any money or other assets belonging to the landlord.
- (4) If it appears to the Scottish Ministers likely that the registered social landlord concerned will as a result of the transfer be dissolved under the Industrial and Provident Societies Act 1965 (c.12) or wound up under the Insolvency Act 1986 (c.45), the Scottish Ministers must secure that the costs of the dissolution or winding up are taken into account in determining the sum payable to the landlord under subparagraph (3).

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