

SCHEDULE 7 REGULATION OF REGISTERED SOCIAL LANDLORDS

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),
 - (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.

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- (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
 - (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.

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- (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.

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

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- (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.
 - (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.
- (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.