

# HOUSING (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### STRUCTURE OF THE ACT

7. The Act is in 17 Parts.
- **Part 1** establishes the Scottish Housing Regulator as an independent regulator with the objective of safeguarding and promoting the interests of tenants, prospective tenants, homeless people and others using housing services provided by social landlords.
  - **Part 2** requires the Scottish Housing Regulator to keep a register of social landlords and sets out the criteria for registration and the circumstances in which a body may be removed from the register.
  - **Part 3** provides for Scottish Ministers to specify the standards and outcomes social landlords must aim to achieve in a Social Housing Charter, and for the Scottish Housing Regulator to set performance improvement targets and assess and report on their performance. Part 3 also requires the Scottish Housing Regulator to set out standards of governance and financial viability for registered social landlords.
  - **Part 4** provides the Scottish Housing Regulator with powers to carry out inquiries and obtain information from social landlords.
  - **Part 5** gives the Scottish Housing Regulator a range of powers to intervene where it has concerns about a social landlord's performance, governance arrangements or financial viability. It also requires the regulator to issue a code of practice explaining how it will use its intervention powers.
  - **Part 6** provides for the Scottish Housing Regulator to set accounting requirements for registered social landlords.
  - **Part 7** provides the Scottish Housing Regulator with powers to deal with an insolvent registered social landlord.
  - **Part 8** deals with the constitution, rule changes, amalgamation and dissolution of registered social landlords.
  - **Part 9** sets out controls on the disposal of land by registered social landlords.
  - **Part 10** sets out a special procedure for certain disposals by and restructurings of registered social landlords where there is a change of landlord.
  - **Part 11** makes special provision, including approval by tenants, for a change of landlord from a local authority landlord.
  - **Part 12** makes provision for regulation of charitable registered social landlords.
  - **Part 13** makes provision for long leases and heritable securities where a social landlord or a rural housing body is, or is to be, the lessee or the debtor in the security.
  - **Part 14** reforms the Right to Buy.

- **Part 15** amends the Housing (Scotland) Act 2006. The changes relate to local authority maintenance powers, charging orders and repayment charges, the scheme of assistance and enforcement powers.
- **Part 16** includes miscellaneous amendments to existing legislation.
- **Part 17** sets out supplementary and final provisions.

## **Part 1 – the Scottish Housing Regulator**

### **The Regulator**

8. **Section 1** establishes the Scottish Housing Regulator (“the regulator” or “the SHR”) as a body corporate. Although not covered by the Act, it is intended that the SHR will become a non-Ministerial office holder of the Scottish Administration (in other words, a non-Ministerial Department) and that its employees will be civil servants. The formal mechanism for this will be by an order made by Westminster under the Scotland Act 1998. Section 2(1) gives the regulator the objective to safeguard and promote the interests of those who are, or who may become, tenants of social landlords, or homeless, or the recipients of housing services provided by social landlords. Section 2(2) requires the regulator to perform its functions in a way that is in line with its objective and which it considers most appropriate for the purpose of meeting that objective.
9. **Section 3(1)** sets out the regulator’s general functions. These are to keep a publicly available register of social landlords and to monitor, assess and regularly report on all social landlords’ performance of housing activities and on registered social landlords’ financial well-being and standards of governance. (“Social landlords” provide housing for people in housing need at rents below open market levels. They can include registered social landlords (“RSLs”) and local authorities that provide rented housing and other housing services. )
10. **Section 3(2)** requires the regulator to perform its functions in a proportionate, accountable and transparent way that is targeted only where action is needed and that is consistent with any other principle which appears to it to represent best regulatory practice. Under section 4, the regulator must prepare, consult on and publish a statement explaining how it will discharge its functions with regard to the groups covered by its section 2 objective, in a way that is also consistent with section 3(2).
11. **Section 5** requires the regulator to consult and involve bodies representing homeless people, tenants and other service users in its work where appropriate, and to publish a statement about how it intends to do this.
12. **Section 6** requires the regulator to consult the Accounts Commission for Scotland on how it will carry out its powers and duties in respect of local authority landlords. The regulator must publish a statement on how it will do so.
13. **Section 7** makes the regulator independent from Scottish Ministers by preventing them from directing or otherwise trying to control how the regulator carries out its functions (except where contrary provision is made).

### **Membership**

14. **Section 8** deals with the detailed membership of the regulator. Subsection (2) provides for members to be appointed by Scottish Ministers (after normal public appointment procedures). Ministers have discretion to appoint the number of members they think is appropriate for the regulator, but must appoint a minimum of three members.
15. **Section 9(1)** sets out the categories of person who are disqualified from being members. These are MSPs, MPs, MEPs, office holders of the Scottish Administration, local councillors, employees of local councils and employees and officers of any registered

social landlord. Subsection (2) allows Scottish Ministers to remove a member from office if they are satisfied that the member is an undischarged bankrupt or has been absent from meetings for over six consecutive months, is unable to discharge the member's functions as a member or is unsuitable as a member. Section 165 explains what is meant by an "undischarged bankrupt".

16. [Section 10](#) allows the regulator to reimburse its members' expenses incurred in carrying out their functions.

### **Chairing and Proceedings**

17. [Section 11](#) deals with the regulator's constitutional arrangements. Subsection (1) requires the Scottish Ministers to appoint one of the members to chair meetings of the regulator's board and allows Ministers to appoint another member to act as deputy chair.
18. [Section 12](#) provides for the SHR to regulate its own procedure and that of any committees that are established. Subsection (2) prevents any of the regulator's proceedings or acts being called into question in the event that there is a vacancy in its membership or if the process for appointing a member was carried out incorrectly.

### **Staff and property**

19. [Section 13](#) provides for the regulator to appoint as a member of staff a chief executive. The first chief executive will be directly appointed by Scottish Ministers after consulting the chair of the regulator's board (if that person has been appointed at the time of the chief executive's appointment). The regulator may appoint subsequent chief executives. Both the appointment of the chief executive and the terms of their appointment are subject to approval by Scottish Ministers.
20. [Section 14](#) provides for the regulator to appoint other members of staff and the terms of such staff are subject to the approval of Scottish Ministers. It introduces schedule 1 which makes transitional provisions about the regulator's staff and property.

### **Powers**

21. [Section 15](#) sets out the regulator's general powers. Subsection (1) allows the regulator to do anything it thinks necessary or advisable for the purpose of or in connection with the performance of any function conferred on it by this Act. Subsection (2) prevents the regulator from borrowing money. The regulator must also have the consent or approval of Scottish Ministers before it can:
  - acquire or dispose of land;
  - give guarantees; or
  - determine the location of its office premises.
22. [Section 16](#) provides for the regulator, at its discretion, to authorise anyone to carry out any of its functions and to determine the extent to which they can carry out such a function. The regulator can authorise both members of its staff and people who are not members of its staff to carry out its functions.

### **Studies, co-operation and annual reports**

23. [Section 17](#) gives the regulator the power to commission studies or to carry them out itself to inform its approach towards meeting its objective. The regulator is able to, but is not required to, publish a report on any study or research.
24. [Section 18](#) requires the SHR to co-operate with other relevant regulators. Subsection (2) sets out the bodies that are considered to be relevant regulators. These are:

*These notes relate to the Housing (Scotland) Act 2010  
(asp 17) which received Royal Assent on 9 December 2010*

- the Office for Tenants and Social Landlords (known as the Tenant Services Authority)
  - the Office of the Scottish Charity Regulator
  - Healthcare Improvement Scotland
  - Social Care and Social Work Improvement Scotland
  - the Scottish Public Services Ombudsman
  - the Financial Services Authority
  - the Registrar of Companies
  - the Accounts Commission for Scotland.
25. In relation to the Office of the Scottish Charity Regulator, section 137 of the Act expands the co-operation duties of the SHR and the Office of the Scottish Charity Regulator.
26. [Section 18\(3\)](#) allows the SHR to disclose any information to the relevant regulator for any purpose connected with the performance of its functions or in order to enable or assist the relevant regulator to perform any function.
27. [Section 19](#) stipulates that the SHR must annually prepare and publish a general report on how it has used its functions, lay a copy before the Scottish Parliament and send a copy to Scottish Ministers. Subsection (2) states that this report must include information about the use of the regulator's powers under Parts 4 (Inquiries and Information) and Part 5 (Regulatory Intervention) of this Act. Subsection (3) gives the regulator discretion to decide what other information should be in the report, what the report looks like and how it is to be published.

## **Part 2 – Registered Social Landlords**

### **The register of social landlords**

28. [Section 20](#) places a duty on the regulator to maintain an accessible register of social landlords. Subsection (2) prevents local authorities and local authority landlords from being included in the register. Subsection 4 specifies the information that must be held in the register.
29. [Section 21](#) provides for the transition from the previous register of social landlords maintained by the Scottish Housing Regulator on behalf of Scottish Ministers to the new register created by this Act. The new register will include all those bodies on the Scottish Housing Regulator's register at the date of commencement of the section.
30. [Section 22](#) provides the regulator with powers to determine the way in which an application must be made and the type of information the body applying for registration must provide.
31. [Section 23](#) places the regulator under a duty to include in the register every applicant body which it considers meets the registration criteria. Subsection (2) states that the registration criteria are made up of the legislative registration criteria and the regulatory registration criteria. Subsection (3) provides that as long as a body is on the register then it should be presumed that it is eligible for registration even if it is subsequently removed from the register.

### **Registration criteria**

32. [Section 24](#) sets out the criteria (the 'legislative registration criteria') that a body must meet before it can be registered as a social landlord. The criteria are that a body does

not trade for profit; that it is established for the purpose of, or has among its objects and powers, the provision, construction, improvement or management of houses to be kept available for letting or for occupation by its members, or of hostels. The body must operate, or intend to operate, in Scotland. Section 24(1)(d) prescribes a number of additional purposes or objects that a body is able to carry out in addition to the criteria at 24(1)(a), (b) and (c).

33. [Section 24\(3\)\(a\)](#) provides Ministers with the power by order to amend the additional purposes, objects and powers specified in section 24(1)(d) and 24(2). [Section 24\(3\)\(b\)](#) gives Ministers the power to make, amend or modify a provision in the Act which they consider to be appropriate to adapt the Act so that it applies to bodies that have a status other than that of a registered society or registered company. Ministers are required to consult the regulator and tenants, social landlords and secured creditors of RSLs (or representatives of these groups), and to have regard to the interests of people who may become homeless or who are on social landlords' waiting lists, before making an order under this section. An order that restricts or limits purposes or objects in section 24(1)(d) has no effect in relation to a body registered as a social landlord when the order was made.
34. [Section 25](#) provides the regulator with powers to set regulatory registration criteria about a body's financial situation, the arrangements for its governance and financial management and the manner in which it provides housing services. The regulator is able to set different criteria for different types of bodies. The regulator must consult interested parties before setting, revising or withdrawing any criteria.
35. [Section 26](#) requires the regulator to issue guidance on how it will assess whether a body meets the registration criteria and to make this available to those with an interest in the guidance. Before issuing, revising or withdrawing guidance the regulator must consult Scottish Ministers, registered social landlords or their representatives, tenants of RSLs or their representatives, and secured creditors of RSLs or their representatives.

### **Removal from register**

36. [Section 27](#) provides that the regulator may remove a body from the register if it considers that the body no longer meets the registration criteria, has never met those criteria, has ceased to carry out activities or has ceased to exist (it could also remove a body on receipt of an application under section 27). Under subsection (2) the regulator may require the body to provide information to demonstrate that it meets any of the registration criteria. Before it removes a body from the register, the regulator must give the body at least 14 days notice and have regard to any views expressed by the body in that period.
37. [Section 28](#) requires the regulator to set criteria for voluntary de-registration and to remove from the register, at its request, a landlord that meets those criteria. The regulator must consult Scottish Ministers, tenants of registered social landlords or their representatives, registered social landlords or their representatives and secured creditors of registered social landlords or their representatives and inform those affected of any change or replacement of de-registration criteria.

### **Appeals**

38. [Section 29](#) provides an appeal mechanism for bodies aggrieved by a decision of the regulator not to register it as a social landlord or to remove it, or not to remove it, from the register. The appeal is to the Court of Session. Subsection (2) provides for the actions that the Court may take to decide an appeal. Under subsection (3), where the appeal is against the decision relating to the removal of a body from the register, the regulator must not remove the body from the register until the appeals process is complete.

## **Communication with other regulators**

39. [Section 30](#) requires the regulator to notify other regulators of its decision to register or de-register a body and of the outcome of any appeal against such a decision.

## **Part 3 – Performance of Social Landlords**

40. [Part 3](#) of the Act requires the Scottish Ministers to set out the standards and outcomes social landlords should be aiming to achieve. Part 3 also requires the regulator to assess and report on social landlords' performance of housing activities and gives it the power to set performance improvement targets. The SHR must also set standards of financial management and governance for RSLs.

## **The Scottish Social Housing Charter**

41. [Sections 31 to 33](#) provide for the Scottish Ministers to publish a Scottish Social Housing Charter setting out what social landlords should aim to achieve (standards and outcomes) in performing housing activities. Once it is published, Ministers must review the Charter from time to time. Section 33 requires Ministers to consult or have regard to the interests of certain parties before publishing the Charter for the first time and each time it is reviewed. Those to be consulted are listed at section 33(2)(b). Ministers must submit the Charter to the Scottish Parliament for approval and it only comes into effect once it has been approved.
42. [Section 32](#) gives examples of the kind of service areas the Charter might cover. The examples are for illustrative purposes and are not necessarily the areas that will be covered by the Charter, as these will be developed in consultation with stakeholders under section 33.

## **Performance improvement targets**

43. The Charter will provide a framework for the regulator to assess and report on social landlords' performance. Section 34 allows the regulator to set performance improvement targets for social landlords. Subsection (2) allows it to set targets for an individual landlord or a group of landlords if, for example, their performance falls below that of the sector generally. Before setting, revising or withdrawing targets that apply to social landlords, the regulator must consult Scottish Ministers and the other interested parties specified in subsection (3). The requirement to consult does not apply if the target affects only one landlord, or if the regulator considers there is an urgent need to set the performance improvement target.

## **Guidance, targets and code of conduct**

44. [Section 35](#) provides for the regulator to publish guidance about how it will assess social landlords' performance against the Charter and the indicators it will use to measure progress. There is a requirement for the regulator to consult specified interested parties before issuing, revising or withdrawing this guidance.
45. [Section 36](#) requires the regulator to publish a code of conduct setting out the standards of governance and financial management RSLs are expected to meet. It must also publish guidance on the code of conduct. Before it publishes, revises or withdraws the code of conduct or guidance, subsection (4) requires the regulator to consult RSLs and their tenants (or organisations representative of these groups), and lenders or their representative organisation (the Council of Mortgage Lenders).
46. [Section 37](#) allows the SHR to set financial management or governance targets for RSLs. These targets may be set for an individual landlord or for a group of RSLs. Unless they apply only to an individual registered social landlord - or there is an urgent need to set a target - the regulator must consult those specified in subsection (3) before setting the targets.



47. Under Section 38 the regulator may also publish guidance setting out the indicators or other measures it will use to assess RSLs' progress against any governance or financial management targets it has set.

### **Encouragement of equal opportunities**

48. [Section 39](#) requires social landlords to provide housing services in a way that encourages equal opportunity and is consistent with the law on equal opportunities.

### **Assessing and reporting**

49. [Section 3\(1\)\(b\)](#) provides for the regulator to monitor, assess and report on social landlords' performance of housing activities and on RSLs' financial health and governance standards. Section 40 prescribes what the regulator must consider when assessing social landlords' housing activities. Generally, this includes the level and quality of service provided viewed in the context of the rents being charged; the Charter; and relevant performance improvement targets and guidance. When assessing RSLs' financial management and governance, the regulator must consider the standards set out in the code of conduct and guidance issued under section 36, and any relevant targets and guidance under section 38.
50. [Section 41](#) sets out reporting requirements for the regulator. It must publish, at least once a year, a report on landlords' performance in achieving the standards and outcomes set in the Charter and in meeting performance improvement targets. Subsection (2) allows the regulator to include in its reports information about its use of regulatory intervention powers, the financial health of RSLs, and any other information it considers likely to be useful to social landlords, their tenants, prospective tenants or other service users.

## **Part 4 – Inquiries and Information**

51. [Part 4](#) provides the regulator with powers to carry out inquiries and obtain information from social landlords.

### **Inquiries**

52. [Sections 42 to 46](#) replace the inspection powers in sections 69, 70, 72 and 73, and paragraphs 16 to 18 of Schedule 7, in the Housing (Scotland) Act 2001 with more flexible powers of inquiry, consistent with the principles of a proportionate and risk-based approach to regulation.
53. [Section 42\(1\)](#) allows the regulator to make inquiries into bodies connected with a social landlord, such as subsidiaries or associates, as well as the social landlord itself. Subsection (2) allows the regulator to determine the purpose and timing of inquiries. For example, it may decide to carry out an inquiry unannounced or at short notice, or an inquiry into a group of landlords, a specific theme or specific geographical area.
54. Inquiries can relate to a social landlord's housing activities (which are defined in the Interpretation section, 165). The regulator may also make inquiries into registered social landlords' financial or other affairs ([section 42\(3\)\(b\)](#)). An inquiry can be carried out by the regulator's own staff, or the regulator may appoint someone else (an "inquirer") to carry it out.
55. [Section 43](#) gives the regulator right of access at reasonable times to a social landlord's premises and to any relevant information, including documents stored electronically. The landlord (and anyone on the landlord's premises) must ensure the regulator is given any facilities or assistance it may reasonably request for its inquiries. The regulator has the power to obtain, copy or take away any relevant information held by a social landlord. This section also makes it a criminal offence to fail to assist, or in any way obstruct, the regulator in carrying out its inquiries.

56. [Section 44](#) allows the regulator to arrange for a social landlord's housing to be surveyed if it suspects the landlord is failing, or at risk of failing, to achieve an outcome in the Social Housing Charter, meet a performance, financial management or governance target or implement a performance improvement plan. Subsection (9) makes it a criminal offence to obstruct a survey. It is also an offence for a landlord to fail to give at least seven days' notice of the survey to residents in the houses due to be surveyed.
57. [Section 45](#) allows the regulator to have an "exceptional" audit carried out as part of its inquiries into a registered social landlord's affairs. Under this section a qualified auditor may be appointed by the regulator to audit the RSL's accounts and balance sheet and report back to the regulator on any specified matters. This is separate from, and does not affect, the audit requirements contained in either Part 6 of this Act or any other legislation.
58. [Section 46](#) gives the regulator the power to publish a report of any inquiries it makes, but it is not obliged to publish a report on every inquiry. It must, however, publish and bring to the attention of interested parties a statement setting out the types of inquiries on which it will publish reports. Whenever it prepares an inquiry report the regulator must send a copy to the social landlord concerned. Where it publishes an inquiry report, it must send a copy to every registered tenants' organisation associated with that landlord.

## **Information**

59. [Section 47](#) requires the regulator to provide a means for tenants to bring to its attention significant performance failures by social landlords. The regulator must publish a statement explaining what is meant by "significant performance failures" and the arrangements it will make for dealing with them.
60. [Section 48](#) gives the regulator the power, when making inquiries or for any other purpose related to its regulatory functions, to obtain any information it needs about a social landlord or a connected body. A request for information can be made to any person. However, subsection (3) provides that the regulator's initial request must be directed to the social landlord or the connected body. It can only be directed elsewhere if the landlord or connected body fails, or is unable, to provide the information required. It is a criminal offence under section 49 to fail without reasonable excuse to provide (or knowingly or recklessly provide false or misleading) information. It is also a criminal offence to alter, suppress or destroy information required under section 48.
61. [Section 50](#) requires the regulator to issue guidance for landlords on how they should involve people who are or who may become homeless, tenants or other service users (or their representatives) in preparing information which the regulator has requested the social landlord provide. Subsection (2) allows the regulator to require a social landlord to provide information on how it has involved such persons (or their representatives) in providing the information to which the guidance relates. Guidance may be given generally or for particular purposes. Subsections (4) and (5) specify those people the regulator must consult before issuing or revising the guidance, and require the regulator to bring the guidance to the attention of affected social landlords.
62. [Section 51](#) places a duty on the regulator to issue a code of practice on inquiries, setting out how it will make inquiries and perform functions under Part 4 of the Act. There is a similar duty on the regulator in section 54 covering regulatory intervention under Part 5.

## **Part 5 – Regulatory Intervention**

63. [Part 5](#) replaces the regulatory intervention powers in the Housing (Scotland) Act 2001. Section 52 lists the powers contained in this Part, which can include requiring a social landlord to comply with the Scottish Social Housing Charter, meet a performance improvement target or implement a performance improvement plan. For local authorities, the intervention powers are no longer solely linked to inspection.



64. There is no fixed sequence for the use of these powers and the regulator can use them individually or in combination. However, section 53 requires the regulator to consider the principle that social landlords should be responsible for determining how to provide housing services and manage their own affairs when deciding whether, and how, to intervene (while section 3(2) requires regulatory action to be targeted only where it is needed). Section 54 requires the regulator to consult on and publish a code of practice explaining how it will take decisions about use of its intervention powers.

### **Remedial action**

65. [Section 55](#) replaces the Scottish Ministers' power (at section 74 of the 2001 Act) to require a local authority to produce a remedial plan with a power for the regulator to require any social landlord to submit a performance improvement plan. The regulator can require the submission if it considers that the landlord is failing, or at risk of failing, to achieve a standard or an outcome set in the Scottish Social Housing Charter or to meet a performance improvement target or a financial management or governance target. The regulator can also require an improvement plan if this is justified by the social landlord's conduct or, in the case of an RSL, if there has been misconduct or mismanagement in its financial or other affairs.
66. Under section 55(3) the regulator may require a landlord to involve people who are or who may become service users, or their representatives, in preparing a performance improvement plan. Section 55 (4) allows the regulator to require the landlord to provide evidence of service users' involvement in preparing the plan.
67. The regulator may accept, modify or reject a performance improvement plan. The social landlord must be notified of any intention to make changes to or reject a plan. If the plan is rejected the social landlord must submit a revised plan and, once accepted, must implement it. The landlord also has to publish the plan and send a copy of it to any registered tenants organisations associated with it.

### **Enforcement notices**

68. [Section 56](#) allows the regulator to serve an enforcement notice on a social landlord if it considers that the social landlord is, or is at risk of, failing to achieve a standard or an outcome set in the Scottish Social Housing Charter, meet a performance improvement target, financial management or governance target, or implement an approved performance improvement plan. The regulator may also serve an enforcement notice if it considers that:
- there has been misconduct or mismanagement in an RSL's affairs;
  - a social landlord's tenants' interests need to be protected;
  - an RSL's assets need protection;
  - an RSL's financial viability is at risk; or
  - any other conduct of a social landlord justifies the notice.
69. The enforcement notice requires the landlord to take action to put right or avoid a failure or other problem, or to protect its tenants or assets. The regulator must publish the notice and send a copy to any registered tenants organisation associated with the social landlord.

### **Appointment of a manager**

70. [Section 57](#) allows the regulator, if it considers it necessary, to appoint someone to manage a social landlord's services (or aspects of its services). There are two criteria, set out at subsection (1), that must be met before the regulator can make such an

appointment. First, it considers (either following an inquiry or for some other reason) that the landlord is failing or at risk of failing to:

- achieve a standard or an outcome in the Social Housing Charter;
- meet a performance improvement target;
- implement an agreed improvement plan; or
- comply with an enforcement notice.

71. Secondly, it must consider such an appointment is needed to make sure the social landlord provides an appropriate standard of services. In the case of a local authority landlord there is a further requirement at subsection (3) for the regulator to consult the local authority, its representative body (COSLA), and the Accounts Commission before making an appointment.
72. There is no requirement to consult before making an appointment to a registered social landlord, although the criteria at section 57(1) must be met.
73. [Section 58](#) applies to registered social landlords only. It provides that, where it has established a need to do so, the regulator may appoint or require any RSL to appoint a manager for its financial or other affairs.
74. [Section 59](#) allows the regulator to determine a manager's terms and conditions and period of appointment. The manager will have general powers to do what is necessary to fulfil his or her functions, and may also be given specific powers by the regulator. The manager must comply with any direction given by the regulator (section 59(4)).

### **Removal, suspension and appointment of officers**

75. Under section 60, the regulator may remove an officer of a registered social landlord (a committee member of a registered society or a director of a company limited by guarantee) who is bankrupt or apparently insolvent; disqualified from being a company director or charity trustee; incapable of fulfilling their role because of a mental disorder; or is impeding the effective management of the RSL because of their absence or failure to act. The regulator must give the officer and the RSL 14 days' notice of its intention to remove the officer. "Officer" has the meaning given in the Interpretation section (165).
76. [Section 61](#) gives the regulator power to suspend a "responsible individual" (an officer or agent of an RSL) if it considers they have been responsible for, party to, or otherwise have contributed to misconduct or mismanagement of the registered social landlord's financial or other affairs, or if it considers that the RSL's tenants' interests or its assets need to be protected, or that there is obstruction or non co-operation in relation to Part 7. Again, the regulator must give the individual and the RSL 14 days' notice of its intention. The regulator may appoint an individual to perform the suspended individual's functions and give the RSL directions about performing those functions or other matters arising from the suspension. Subsection (5) makes it an offence for a suspended individual to act, without the regulator's consent, in the management or control of any registered social landlord.
77. [Section 62](#) allows the regulator to remove a responsible individual if it considers that there has been misconduct or mismanagement, or the RSL's assets or tenants' interests need to be protected, or that there is obstruction or non co-operation in relation to Part 7. Again, there is a requirement for the regulator to give 14 days' notice. Subsection (3) makes it an offence for an individual who has been removed to act without the regulator's consent in the management or control of any registered social landlord. A "responsible individual" is a person defined as such under section 63: an officer or agent of an RSL who appears to have been responsible for, facilitated or contributed to, or been privy to, the misconduct, mismanagement, failure etc.

78. A decision by the regulator under section 60, 61 or 62 can be appealed to the Court of Session under section 64.
79. Under section 65 the regulator has the power to appoint a new or additional officer to a registered social landlord. The regulator may use its power to appoint an officer:
- to replace an officer it has removed;
  - if the RSL has no officers;
  - if the number of officers has fallen below that required by the RSL's constitution (and there is no mechanism in the constitution to remedy this); or
  - if it considers it necessary for the proper management of the registered social landlord's financial or other affairs.
80. Subsection (3) provides for the regulator, in some circumstances, to require the RSL to take out personal indemnity insurance for the person appointed.

### **Protection of assets**

81. [Sections 66](#) and [67](#) allow the regulator to protect a registered social landlord's assets during and following inquiries into its financial or other affairs. Section 66 allows it to restrict particular types of transactions or payments. The regulator can also direct a bank or other person not to part with any money, assets or securities it holds for the registered social landlord without its consent. Subsection (3) makes it an offence to fail to comply with a direction given under this section.
82. [Section 67](#) allows the regulator to transfer the RSL's assets to another registered social landlord if, after making inquiries, it considers that there has been misconduct or mismanagement of the RSL's affairs or that there is a risk to its financial viability or governance or it cannot provide housing services to an acceptable standard. In either case, the regulator must also be satisfied that a transfer of some or all of the assets would improve the management of those assets. Before doing this the regulator must consult, and consider the views of, the tenants of any houses it proposes to transfer, and any secured creditor the regulator knows to have security over those houses. The terms of transfer must, where not all of the RSL's assets are being transferred, set the price the regulator considers, after obtaining an independent valuation, the assets would fetch if sold by a willing seller to a willing registered social landlord. Where there is a transfer of all of the RSL's assets, the terms must provide for the settlement or transfer of the transferring landlord's debts and liabilities in relation to the transferred property.
83. In the case of a charitable registered social landlord, any transfer must be to another charitable RSL which has the same, or similar, charitable purposes, and the regulator must consult the Office of the Scottish Charity Regulator before directing a transfer. Under section 67(8), the regulator must also consult the Office of the Scottish Charity Regulator before directing a transfer of assets acquired by a non-charitable RSL at a time when it was a registered charity. This is to ensure that charitable assets continue to be used only for charitable purposes, as required by the Charities and Trustee Investment (Scotland) Act 2005.

### **Part 6 – Accounts and Audit**

84. [Part 6](#) provides the regulator with the power to set requirements for registered social landlords' accounts and audit arrangements. This part of the Act replaces similar powers of the Scottish Ministers in Part 3 of Schedule 7 of the 2001 Act.
85. [Section 68](#) allows a determination of accounting requirements by the regulator. The requirements should ensure that registered social landlords' accounts are properly prepared and provide a true and fair picture of their affairs. The regulator's determination may be general or for a particular purpose and can apply to different

RSLs or different cases. The regulator may revise or withdraw a determination and must bring any determination to the attention of any affected registered social landlords. A determination cannot relate to an accounting period before it was published. Subsection (3) requires the regulator to consult before making any determination.

86. [Section 69](#) places a duty on registered social landlords to comply with the regulator's accounting requirements. The auditor's report on a registered social landlord must state if, in the auditor's opinion, its accounts comply with the requirements. Under section 70, the RSL must provide the regulator with a copy of its accounts and auditor's report within six months of the end of the accounting period to which they relate. Section 71 makes it an offence for a registered social landlord to fail to comply with either of these requirements.
87. [Section 72\(2\)](#) places a duty on reporting accountants and auditors appointed to prepare accounts or carry out internal audits for a registered social landlord to disclose to the regulator any matter they believe is of material significance to the regulator's functions, under section 3, of monitoring, assessing and reporting on social landlords' performance, financial wellbeing and standards of governance. This includes both significant matters relating to the affairs of the RSL and to the affairs of a parent or subsidiary body connected with the RSL.
88. [Section 72\(3\)](#) empowers accountants and auditors to report any matter they do not consider is of material significance under section 72(2), but which they think could be relevant to the exercise of any of the regulator's functions. The duty and the power to report matters to the regulator both continue after someone has stopped acting in the capacity of auditor or reporting accountant to the registered social landlord.

## **Part 7 – Insolvency Etc**

89. This Part of the Act sets out the action to be taken in the event of a registered social landlord becoming, or at risk of becoming, insolvent.
90. Throughout this Part of the Act references to notifying and consulting secured creditors are qualified to refer only to those creditors the regulator is able to contact after making reasonable inquiries.

## **Arrangements for and effect of a moratorium**

91. [Section 73](#) sets out in a table who is required, and in what circumstances, to notify the regulator that certain steps are being taken to enforce a security over land. Notice is required both before and after taking one of the actions specified. Subsection (2) allows the regulator to define what is meant by a step "to enforce a security over a registered social landlord's land".
92. [Section 74\(1\)](#) provides that a step will have no effect unless the person taking it has notified the regulator in advance of their intention. However, failure to notify the regulator *after* the step has been taken will not make the step invalid (section 74(2)).
93. Taking one of the steps specified at section 73 automatically triggers a stop (a moratorium) on the disposal of land held by the registered social landlord (section 75). Section 91 defines land as including "any existing or future interest of the landlord in rent or other receipts arising from land". Taking another specified step during the period the moratorium is in place will not result in a new moratorium or affect the length of the existing one. Any moratorium must, unless cancelled or extended, end 56 days after notice is given that the specified step has been taken (section 76).
94. [Section 76](#) also provides for the regulator, with the consent of all the RSL's secured creditors (who can be located after reasonable enquiries), to extend the moratorium from time to time. Notice of such an extension must be given to the RSL and any liquidator, administrative receiver, receiver or administrator appointed in relation to the RSL or its land. Where the regulator considers the proper management of the

RSL's land can be secured without making a proposal under section 80 - and following consultation with the person whose step triggered the moratorium - the regulator can cancel the moratorium. The regulator must notify the RSL and its secured creditors when a moratorium ends. Where a moratorium has ended, other than by cancellation, the notice given must also provide an explanation of section 77.

95. Under section 77 if, after a moratorium has ended (other than by cancellation), a specified step is taken against the same RSL within three years, a new moratorium will not be triggered. The regulator may, with the consent of the RSL's secured creditors, renew the original moratorium for a specified time. The regulator must give notice of the renewal to the RSL and any liquidator, administrative receiver, receiver or administrator appointed in relation to the RSL or its land.
96. [Section 78](#) ensures that, under a moratorium, the RSL's land cannot be disposed of without the regulator's consent (unless the regulator's consent is not required under section 108 of this Act). The regulator may consent to a disposal before the moratorium begins and it may place conditions on its consent.
97. [Section 79](#) gives the regulator powers to appoint, or require a registered social landlord to appoint, an interim manager with powers to manage some or all of its affairs during a moratorium. The interim manager must, however, comply with any direction given by the regulator and may not dispose of land or grant security over land.

### **Making proposals for future ownership and management**

98. During the moratorium the regulator can make proposals for the future ownership and management of the RSL's land in an attempt to ensure the land's future and proper management by a registered social landlord (section 80). Before making proposals it must consult those people listed at subsection (2). The regulator must consider the interests of all the RSL's creditors and must aim to avoid worsening the position of any unsecured creditors. The proposals may provide for the appointment and remuneration of a manager to implement the proposals. The proposals must not result in non-preferential debts being paid before preferential ones or preferential creditors being paid different proportions of preferential debt, unless they have agreed to being paid a smaller proportion. (The term "preferential debt" refers to money owed to Her Majesty's Revenue and Customs for income tax deducted at source, VAT, car tax, betting and gaming duties, social security and pension scheme contributions, and remuneration of employees.)
99. The regulator must submit its proposals to all those of the RSL's secured creditors who can be located after reasonable enquiries have been made; the RSL and its committee or board; and any liquidator, receiver or administrator. The regulator must also arrange to make the RSL's members, tenants and unsecured creditors aware of its proposals (section 81).
100. [Section 82](#) allows secured creditors to either agree (with or without changes) or reject proposals about future management and ownership of a registered social landlord. The regulator must agree any changes to the proposals before those changes have effect. Subsection (3) lists those whom the regulator must notify about the agreed proposals.
101. The regulator may, under section 83, and with the agreement of the RSL and the secured creditors to whom the original proposals were submitted, modify agreed proposals from time to time. Sections 80 on the formulation of proposals and 82(3) on giving notice of agreed proposals apply equally to any such modifications.

### **Implementing the proposals**

102. Once agreed the proposals are binding on the regulator, the registered social landlord, the RSL's secured and unsecured creditors and any liquidator, administrator or receiver appointed in respect of the RSL's land (section 84). The RSL's officers must co-operate



in implementing the proposals but they are not required or allowed to do anything in breach of their duty as a trustee or other duty owed by them (section 84(2)).

103. The regulator must appoint a manager to implement the agreed proposals if these provide for such an appointment (section 85). The manager can do anything that is needed to implement the proposals and a number of specific powers are set out in section 86. A manager must, so far as practicable, consult a registered social landlord's tenants on anything likely to affect them and explain the effect such a thing is likely to have.
104. A manager appointed to a registered social landlord that is a registered society is also able to transfer the engagements of that RSL to, or amalgamate it with, another RSL that is a registered society (section 87).
105. [Section 88](#) provides that the regulator may give financial or other assistance to the landlord to preserve its position while proposals are being designed and agreed, and to an officer of a registered social landlord or a manager appointed to implement the agreed proposals. The regulator may, in particular, lend staff and arrange payment of a manager's remuneration and expenses. But the regulator cannot pay grants, make loans, indemnify an officer or manager, make payments or give guarantees connected with loans without the consent of the Scottish Ministers.
106. [Section 89](#) applies where the RSL or any creditor applies to the Court of Session on the basis that they believe the manager is not acting within the agreed proposals. If it finds that this is the case then the Court has the power to confirm, modify or reduce any decision or other act of the manager, give directions to the manager or make any other order it sees as necessary.
107. [Section 90](#) allows anyone bound by the agreed proposals to apply to the Court of Session if he or she believes another person who is also bound by them is not acting in accordance with them. The Court can then confirm, modify or declare the action ineffective; or make any order it thinks appropriate by way of interdict, award of damages or otherwise.

## **Part 8 – Registered Social Landlords: Organisational Change**

108. [Part 8](#) concerns changes to a registered social landlord's name, office, or constitution. It replaces the previous requirements in Part 2 of Schedule 7 to the Housing (Scotland) Act 2001 dealing with the constitution, change of rules, amalgamation and dissolution of registered social landlords.
109. [Sections 92 to 95](#) replace paragraphs 7 and 8 of Part 2 of schedule 7 to the 2001 Act. Section 92 requires RSLs to notify the regulator of a change of name or a change in registered office within 28 days of the change being made.
110. Under section 93, registered social landlords must obtain the regulator's consent for any other change to their constitution - for example changes to their rules, memorandum or articles. If the RSL is a registered society and obtains consent under section 93 to amend its rules, section 94 requires the RSL to send a copy of the consent along with the copies of the amendment sent to the Financial Services Authority under section 10(1) of the Co-operative and Community Benefit Societies and Credit Unions Act 1965. Section 95 requires registered company RSLs to send a copy of the regulator's consent to the registrar of companies, along with the copy resolution sent in accordance with the Companies Act 2006.
111. The provisions in sections 96 to 106 replace those in paragraphs 9 to 12 of Part 2 of schedule 7 to the 2001 Act that relate to arrangements for restructuring, winding-up or dissolution of a registered social landlord.
112. [Sections 96 to 99](#) apply to registered societies whose inclusion in the register of social landlords has been recorded by the Financial Services Authority. Under section 96, the



regulator cannot give consent for the purposes of these sections unless it is satisfied the society has consulted its tenants about the matter requiring consent. This condition covers cases where the special consent, consultation and ballot procedures in Chapter 2 of Part 10 do not apply. The Financial Services Authority can only register resolutions for the restructuring (section 97), voluntary winding up (section 98) or dissolution (section 99) of a society if the regulator consents to the resolution and a copy of the consent accompanies any documents required to be sent to the Financial Services Authority.

113. **Sections 100 to 104** apply to RSLs that are registered companies. Section 100 provides that the regulator cannot give consent for the purposes of these sections unless it is satisfied the company has consulted its tenants on the matter requiring consent. This condition covers cases where the special consent, consultation and ballot procedures in Chapter 2 of Part 10 do not apply. Under section 101, a court order under sections 899 (court sanction for compromise or arrangement) or 900 (powers of court to facilitate reconstruction or amalgamation) of the Companies Act 2006 can only be made if the regulator consents, and a copy of the consent accompanies the copy of the order required to be sent to the registrar of companies. If the whole or part of the company is transferred to another company under section 900 of the Companies Act 2006, the other company will be included in the register of social landlords.
114. Under section 102 a special resolution by a company under section 53 of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 has effect only if the regulator consents to the resolution before it is passed. Again, a copy of the consent must accompany the resolution required to be sent to the registrar of companies. The new registered society created in pursuance of that resolution is to be included in the register of social landlords.
115. Under section 103, the regulator must consent to a voluntary arrangement in relation to a company under section 5 of the Insolvency Act 1986, before it will take effect. Under section 104 of this Act, the regulator must consent to a special resolution being passed under the Insolvency Act 1986 for the voluntary winding up of the company, and a copy of the consent must be sent to the registrar of companies, for it to be valid.
116. **Section 105** applies to RSLs that are registered societies or registered companies. Under this section, the regulator may present a petition for the winding up of the registered social landlord under the Insolvency Act 1986 on the ground that the RSL is failing to properly carry out its objects or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986. Section 105(2)(c) introduces a third ground, in addition to those previously available under Part 2, Schedule 7 of the Housing Scotland Act 2001, that the regulator has directed the RSL under section 67 of this Act to transfer all its assets to another registered social landlord.
117. **Section 106** applies to an RSL that is also a registered society which has been dissolved in accordance with section 55 of the Co-operative and Community Benefit Societies and Credit Unions Act 1965, or a registered company which has been wound up under the Insolvency Act 1986. Under this section the regulator can direct that any surplus assets, available after the RSL's liabilities have been discharged, can be transferred to another registered social landlord. The regulator must consult the tenants of the houses to be included in such a transfer and have regard to their views before making such a direction. The regulator may also discharge any liability of the RSL to ensure that assets, which would otherwise need to be sold, can be transferred to another registered social landlord. The regulator may only direct the transfer of assets from a registered social landlord which is a charity to another charity which has the same, or similar, charitable purposes (under section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005). Before directing a transfer from a charitable RSL, the regulator must consult the Office of the Scottish Charity Regulator. And, under section 106 (6), the SHR must consult the Office of the Scottish Charity Regulator before directing a transfer of assets acquired by a non-charitable RSL at a time when it was a registered charity. These

provisions ensure that charitable assets continue to be used only for charitable purposes, as required by the Charities and Trustee Investment (Scotland) Act 2005.

## **Part 9 – Disposal of Land Or Assets by Registered Social Landlords**

118. This Part of the Act sets out the provisions governing registered social landlords that want to dispose of land, including houses or other assets. The meaning of “disposal” is given in the interpretation section of the Act (section 165) as any disposal of property or any interest in it, including sale or lease of the property or interest, granting security over the property or interest, and granting an option or otherwise entering into a contract for disposal.
119. This Part provides the regulator with powers similar to those of the Scottish Ministers under sections 65 to 68 of the 2001 Act (which are repealed by paragraph 7 of Schedule 2 to the Act).
120. **Section 107**, which replaces section 66 of the 2001 Act, provides the basic power for an RSL to dispose of its land (or any other asset by granting security over it). This power is subject to the regulator’s consent unless this is not required under section 108 of this Act. Consent may be given generally, to certain disposals, or for particular purposes. The regulator may place conditions on the consent.
121. **Section 108** specifies those disposals that do not require the regulator’s consent (principally the granting of a tenancy or the sale of a property under the right to buy). Subsection (1)(e) includes an occupancy arrangement as a new category of disposal that does not need the regulator’s consent. Subsections (1)(g) to (j) provide that consent is not required under section 108 in certain cases where the regulator’s consent is required under another section of the Act, or where the disposal is directed by the SHR.
122. Under section 108(1)(k) the regulator may determine further disposals not requiring its consent, following consultation with Scottish Ministers, registered social landlords or their representatives and secured creditors of RSLs or their representatives. The SHR must bring any determination to the attention of those affected by it.
123. If consent is not required for a disposal, the registered social landlord must notify the regulator as soon as practicable after making such a disposal. Section 109 sets out provisions allowing the regulator to dispense with notification, either generally or for a particular purpose.
124. The registered social landlord may be required to consult tenants before it disposes of land and a ballot or other special procedure may be required if a disposal results in a change of landlord. Section 110 and Part 10 set out the circumstances in which both consultations and ballots or other special procedures are to take place.
125. **Section 110** applies to all disposals of land by a registered social landlord which require the regulator’s consent that are not covered by Part 10. For such disposals the RSL must consult the tenants of the houses included in the disposal and anyone else the regulator requires it to consult. The RSL must inform the regulator of the views expressed by those consulted.
126. **Section 111** states that the disposal of land by a registered social landlord, where the regulator’s consent is required, is void unless the regulator has given the required consent in advance.

## **Part 10 – Special Procedure for Disposals and Restructurings Resulting in Change of Landlord**

### **Disposals by a registered social landlord**

127. **Chapter 1**, sections 113 to 122, replaces the provisions in Schedule 9 of the Housing (Scotland) Act 2001 in respect of registered social landlords. Chapter 1 sets out the

*These notes relate to the Housing (Scotland) Act 2010  
(asp 17) which received Royal Assent on 9 December 2010*

special procedure for disposals resulting in a change of landlord. Where the special procedures apply, a registered social landlord must seek the regulator's initial consent. The regulator may refuse consent or direct for consultation with tenants. Thereafter consent may be given, but is subject to tenant authorisation via ballot or agreement. There is no requirement to follow the special procedure where the regulator directs the transfer of assets from one RSL to another or where the transfer is made during a moratorium (see section 113(1)(a) and section 108(1)).

128. [Section 113](#) provides that Chapter 1 of Part 10 applies to disposals of land by a registered social landlord where the regulator's consent is required under Part 9 and which result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL making the transfer.
129. Under section 114 the regulator, having regard to any information available to it, may refuse consent to the disposal or direct the RSL to consult with tenants in accordance with section 115.
130. [Section 115](#) requires a registered social landlord proposing to make a disposal, where given a direction under section 114, to serve a notice on the tenants of each house included in the proposal which specifies to whom the disposal is to be made, explains the likely consequences of such a disposal for the tenants, informs the tenants of their right to make representations to the RSL within such a reasonable period as specified (at least 28 days) and which includes any other details the RSL considers appropriate. After considering any representations made within the specified period, the RSL must then serve a further notice which informs tenants of any significant changes to the proposals, informs tenants of their right to object to the proposed disposal within such a reasonable period as specified (at least 28 days) and explains that the disposal requires the regulator's consent.
131. [Section 116](#) provides that following consultation under section 115, the regulator may refuse consent to the disposal or consent to the disposal subject to tenant authorisation. Tenant authorisation is given when the regulator directs the RSL to conduct a ballot under section 118, or directs the RSL to seek the written agreement of tenants in accordance with section 119, and then approves the outcome under section 121. In making its decision, the regulator must have regard to the results of the consultation and may have regard to any information available to it.
132. [Section 117](#) contains provisions to allow the regulator to obtain further information on a proposed disposal before deciding whether to approve under section 121. The SHR may require the registered social landlord to provide any information the regulator feels is relevant on the representations and objections made in relation to the proposed disposal and any other information relating to the proposed disposal. It may also direct the RSL to carry out, and provide information on, further consultation with tenants.
133. [Section 118](#) requires a registered social landlord proposing to make a disposal, where given a direction under section 116(2)(a)(i), to conduct a ballot of tenants who will be affected and inform the regulator of the outcome. The RSL must have regard to any guidance issued by Scottish Ministers when conducting the ballot or informing the regulator of the results of the ballot.
134. [Section 119](#) requires a registered social landlord proposing to make a disposal, where given a direction under section 116(2)(a)(ii), to seek the written agreement to the disposal from tenants of houses included in the proposed disposal. The RSL must provide the regulator with information about every written agreement sought.
135. The registered social landlord is not required to give notice under section 115 to, and may exclude from a ballot under section 118 or the agreement process under section 119, any tenant unaffected by the proposed disposal (section 120). A tenant will be unaffected if the RSL expects the tenant to have vacated the house before the disposal is made. The regulator can only consent to a proposed disposal where there are

such unaffected tenants if the RSL has served notice on the regulator confirming that the unaffected tenants have all vacated the houses concerned.

136. **Section 121** provides that the regulator must approve the disposal if it is satisfied that a majority of tenants voting in a ballot conducted under section 118 wish the disposal to proceed; or it is satisfied that the landlord has obtained the written agreement of a majority of the tenants whose written agreement the landlord was required to seek under section 119. If the regulator is not satisfied that the majority of tenants agree then it must withdraw the conditional consent granted under section 116(1)(b). Before making its decision under this section, it can require the registered social landlord concerned to provide information about either the ballot or the written agreements.
137. **Section 122** offers protection to the purchaser in any disposal under Chapter 1 of Part 10 of this Act. The regulator's consent for such a disposal will not be invalidated by a failure of the regulator or registered social landlord to comply with any provision in this chapter.

### **Restructuring of a registered social landlord**

138. **Chapter 2** (section 123) applies the special procedure in sections 114 to 121 of Chapter 1 to restructurings by a registered social landlord where the regulator's consent is required under section 97 or 101, and which result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL proposing the restructuring. Section 123(2) exempts certain restructuring proposals from this requirement
139. **Section 124** offers protection to a purchaser following a restructuring where consent has been given but there is a failure of the regulator or RSL to comply with any provision of the special procedure.

### **Part 11 – Change of Landlord – Secure Tenants**

140. This Part of the Act replaces the provisions in Part III (sections 56 to 64) of the Housing (Scotland) Act 1988 (the "1988 Act") that deal with a change of secure tenants' landlord (known as "tenant's choice"). Those provisions will be repealed by paragraph 3(3) of schedule 2 to the Act. Section 125 provides for a person that is approved by the regulator under section 126 of the Act to acquire certain houses from local authority landlords. Section 127 sets the criteria that determine which houses are eligible to be acquired.
141. Section 56 of the 1988 Act provides for approved landlords to acquire eligible houses from a public sector landlord defined as one of a number of bodies including islands or district councils, development corporations within the meaning of the New Towns (Scotland) Act 1968, the Scottish Special Housing Association, the Housing Corporation and Scottish Homes. Section 125 replaces "public sector landlord" with "local authority landlord" because the other bodies have been wound up.
142. Under section 126 the regulator has the power to grant approved status to a person that is not a local authority landlord. Subsection (2) provides that the regulator may give approval for particular reasons, acquisitions, areas or purposes. Different approvals may be given for different cases to enable that person to acquire a house from a local authority. The regulator may grant approval subject to conditions and may vary or revoke an approval.
143. **Section 127** provides that an eligible house is a house owned by a local authority and occupied by a qualifying tenant. A qualifying tenant is a tenant with a Scottish secure tenancy where an order for recovery of possession has not been granted under section 16(2) of the Housing (Scotland) Act 2001.
144. **Section 127(3)** makes certain houses exempt from sale to an approved landlord. These are a house that is one of a group which has been provided with facilities (including a call system and the services of a warden); a house that has been specially designed or adapted for elderly or disabled people whose special needs require accommodation

of the kind provided by the house; and houses owned by islands councils for the purposes of their functions as education authority, that are required as accommodation for someone employed for those purposes (and where the council is not likely to be able to reasonably provide other suitable accommodation for that person). Section 56(5)(c) of the 1988 Act also provides that an area determined by Scottish Ministers as a rural area is not eligible to be acquired by an approved person. Scottish Ministers' order making power to determine a rural area is repealed by paragraph 3(3) of schedule 2 to the Act.

145. **Section 128** sets out the requirements an approved person must meet when they apply to a local authority to acquire a house. Section 129 requires the local authority landlord to make an offer to sell the house, or to refuse the application, within two months of the date on which an application is made under section 128.
146. **Section 130** sets out the process for determining the market value of an eligible house. The local authority must instruct the district valuer or a qualified valuer nominated by the local authority and accepted by the applicant to determine the market value. The valuer must have regard to the price which the house would realise if sold on the date on which the application was made on the open market by a willing seller as well as a number of other assumptions. Where a valuer determines that the house would not realise any price if offered for sale on the open market they can take the price to be either a negative value, equal to the amount which would require to be paid to an approved person in order that the approved person would willingly acquire the house, or where an approved person would willingly acquire the house for no consideration, nil, and the market value of the house may accordingly be determined to be a negative value or nil value.
147. **Section 131** sets out the conditions of sale of an eligible house to an approved person. It provides for the applicant to be able to request an amendment to the offer to sell if they consider a condition to be unreasonable or wish to have a new condition included in the offer. The applicant may refer the matter to the Lands Tribunal if a local authority landlord refuses a request or fails to respond within one month of the refusal. The Lands Tribunal can uphold, strike out or vary, or insert a new condition in the offer. Where a Lands Tribunal determination results in a variation of the offer to sell, it must order the local authority landlord to make an amended offer to sell to the applicant within two months of its determination.
148. **Section 132** sets out requirements in relation to the acceptance of an offer to sell. The applicant may accept an offer to sell within two months of the date on which the offer was made, or the date on which the latest amended offer was made, or the date of a determination by the Lands Tribunal which does not require the local authority to make an amended offer. Where notice of acceptance is not given within the required period, the offer to sell and the application lapse. A notice of acceptance has no effect unless the qualifying tenant and the applicant have concluded a lease of the house for a period immediately after the acquisition of the house. Giving a notice of acceptance constitutes a sale of the house between the local authority landlord and the applicant on the terms contained in the offer.
149. **Section 133** provides for a local authority landlord to refuse an application on the basis that it disputes the applicant's right to acquire the property or it considers any information in the application to be materially incorrect. It specifies the process for giving notice of refusal and allows the applicant to refer the matter to the Lands Tribunal for a finding in respect of its right to acquire.
150. Where a local authority landlord fails to comply with provisions on the offer to sell provision (section 129), an order made by the Lands Tribunal under section 131(9) or fails to progress an application under any finding made by the Lands Tribunal under section 133(3), the applicant may refer the matter to the Lands Tribunal. Subsection (2) provides that the Lands Tribunal may make an offer to sell to the applicant and this has the same effect as if it is done by the local authority landlord.



151. **Section 135** requires a person who acquires property under Part 11 to seek the regulator’s consent for the subsequent disposal of that property. Consent may be given generally, to certain disposals, or for particular purposes. The regulator may place conditions on the consent. Before consenting to a disposal the regulator must be satisfied that the person seeking the consent has consulted tenants of the houses included in the disposal and any other person that the regulator requires the person to consult. This section does not apply to a disposal by a registered social landlord which is required to seek consent under Part 9 of the Act.
152. **Section 136** provides for the extension of time periods referred to in Part 11 of the Act where the applicant or local authority give notice of the extension before the end of the time period.

### **Part 12 – Charitable Registered Social Landlords**

153. **Section 137** requires the SHR and the Office of the Scottish Charity Regulator to agree how they will work together in relation to, exchange information about, and avoid unnecessary duplication in their inquiries about charitable RSLs, when carrying out their respective regulatory functions. This agreement must be set out in a memorandum, which must be publicised.

### **Part 13 - Social Landlords: Long Leases and Heritable Securities**

154. **Sections 138 and 139** amend the “20 year rules” - sections 8 and 11 of the Land Tenure Reform (Scotland) Act 1974 - as they apply to social landlords and their “connected bodies” (all as defined in sections 164 and 165 of this Act) and rural housing bodies (as defined in the Title Conditions (Scotland) Act 2003).
155. **Section 138** amends the “lease rule”. It exempts social landlords, their connected bodies and rural housing bodies from the 20 year limit on residential leases. This means that residential property leases to these bodies can be for more than 20 years. Residential leases by social landlords, their connected bodies and rural housing bodies to other non-exempt bodies will remain subject to the 20 year limit.
156. Section 11 of the Land Tenure Reform (Scotland) Act 1974, the “security rule”, allows for the redemption, by the debtor, of a heritable security over residential property after 20 years have elapsed, regardless of any longer contractual term having been entered into. The amendment by section 139 gives social landlords, their connected bodies and rural housing bodies the option to waive their right to redeem the security early, should they wish to do so. For example, a social landlord might wish to participate in a long-term fixed interest bond issue, which relies on the bond holder retaining security over the underlying housing assets for more than 20 years. In order to participate in this sort of bond issue, the social landlord can waive their right of redemption under section 11.

### **Part 14 – Right to Buy: Reforms**

157. This part amends existing provisions on right to buy in the Housing (Scotland) Act 1987 (the “1987 Act”) and inserts some new provisions. In general, tenants who currently have the right to buy will continue to do so on existing terms. Part 14 ends the right to buy for new supply social housing and new tenants, reforms existing pressured area designation provisions and limits the purchase of police houses.

#### **Re-accommodated persons: protection of right to buy**

158. The amendment made by section 140 to section 61 of the 1987 Act ensures that, under the circumstances provided for, the right to buy entitlements of tenants who are re-accommodated by their landlord and experience a break in occupation as a result are protected for all social housing let under a Scottish secure tenancy.



159. Paragraph (a) adds an additional two circumstances to those already included within section 61(2)(c) of the 1987 Act in order to ensure that a tenant who is accommodated by such landlords under the circumstances provided for (see sub-paragraph (c)), is not deemed to have incurred a break in continuous occupation.
160. The effect of paragraph (b) is to ensure that breaks in occupation of a tenancy resulting from the circumstances provided for should be disregarded for the purposes of determining the period of occupation. That is, any period beginning with the termination of a tenancy in terms of section 18(2), 20(3) or 22(3) of the 2001 Act, and ending with the person being re-accommodated in pursuance of sections 19(3)(b), 21(3)(b) or 22(6) of the 2001 Act should be disregarded.
161. Paragraph (c) adds an additional two categories of person providing accommodation referred to in section 61(2)(c) (occupation requirement for exercise of right to purchase) to the list of landlords included in section 61(11) of the 1987 Act. The category in new section 61(11)(ab) includes those persons who provide accommodation to a tenant in instances where the tenant is required to move by their landlord under the circumstances provided for. The category in new section 61(11)(ac) includes those persons who provide accommodation to a tenant in instances where the tenant's existing house is to be demolished and the tenant agrees to move at their landlord's request.

### **Limitation on right to buy: new tenants**

162. [Section 141](#) inserts a new section 61ZA into the 1987 Act to extend the range of circumstances under which the right to buy cannot be exercised to include new tenants to the social housing sector. This is intended to ensure that tenants taking up a Scottish secure tenancy for the first time (following commencement of section 141) and those returning to the social rented sector after a break will not have the right to buy over any property they rent from a social landlord.
163. Subsection (1) of new section 61ZA sets out the tenancies which are not included in this limitation. These are tenancies of properties let under a Scottish secure tenancy created on or after the commencement date of section 141 of the Act, where the tenant has since that date continuously been occupying a house let by a social landlord or a landlord mentioned in section 61(11), or occupying living accommodation provided as mentioned in section 61(11)(ab), (ac) or (n).
164. Subsection (2) sets out the circumstances where an interruption in continuous occupation should be disregarded (where a tenant's tenancy has been terminated under section 18(2), 20(3) or 22(3) of the Housing (Scotland) Act 2001 and the tenant is then re-accommodated in pursuance of section 19(3)(b), 21(3)(b) or 22(6) of that Act) and also provides discretion for a landlord to disregard an interruption in occupation, where it appears to the landlord to result from circumstances outwith the control of the tenant.

### **Pressured areas: amendments**

165. [Section 142](#) amends the existing pressured area provision in section 61B of the 1987 Act to extend the maximum designation period from 5 to 10 years, to allow particular housing types as well as particular areas to be designated as pressured and to allow local authorities (rather than Scottish Ministers) to designate, revoke or amend pressured area and housing type designations, without requiring Scottish Ministers' approval.
166. Subsection (2) amends section 61C of the 1987 Act and sets out the process which local authorities should follow when designating a pressured area or housing type. Before making, amending or revoking a designation, local authorities have to take such steps as are reasonable to publicise its proposal to make, amend or revoke designations and its reasons for so proposing. They must consult every RSL holding houses for housing purposes in the part of their area covered by the proposals and such bodies representing the interests of tenants and other residents in that part and such other persons as the authority thinks fit. Local authorities proposing to make, amend or revoke pressured

area or housing type designations should have regard to guidance issued by Scottish Ministers about how they should do it, the information they should take into account before doing so and the terms of such designations.

### **Limitation on right to buy: new supply social housing**

167. [Section 143](#) inserts a new section 61F into the 1987 Act to extend the range of circumstances (set out in sections 61A to E) under which the right to buy cannot be exercised to include new supply social housing. A new supply social house is defined in subsection (3) as a house which is let under a Scottish secure tenancy created on or after the relevant day (which is the day on which section 143 comes into force), but which was not so let on or before 25 June 2008 or was acquired by the landlord on or after 25 June 2008.
168. Subsection (2) of the new section 61F provides that the limitation on exercising the right to buy over new supply social housing does not apply in the following circumstances:
- Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house, following an order for recovery of possession under section 16(2) of the Housing (Scotland) Act 2001, on any of the grounds set out in paragraphs 9 to 15 of schedule 2 to that Act.
  - Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house where the landlord has erroneously brought the tenancy / joint tenancy to an end and re-possessed the house because the landlord believes that the tenant is/tenants are/ are not occupying the house; or where the tenant of a house that has been designed for a person with special needs dies and as a result the landlord is required to re-accommodate a person who would otherwise have qualified to succeed to the tenancy.
  - Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house, as a result of a written agreement between the landlord and tenant where the tenant agrees to move from their original house which the landlord wishes to demolish.
  - Where a tenant's short Scottish secure tenancy is converted into a Scottish secure tenancy under section 37 of the 2001 Act.
  - Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house without the landlord having given the tenant seven days notice before the creation of the Scottish secure tenancy to which the new supply social house is subject, or where the landlord acquired the house from the tenant at least seven days before the missives for acquisition were concluded, that they will lose the right to buy over that new supply house.

### **Police housing**

169. [Section 144](#) inserts a new section 69A into the 1987 Act to permit local authority landlords to refuse applications from tenants, who would otherwise have the right to buy under section 61 of the 1987 Act, to purchase their house where that house is held by the authority for the purposes of a police force and it is necessary to retain the house for operational purposes. Subsections (3) and (4) of the new section set out matters which the landlord must consider when deciding whether or not to refuse a tenant's application.

### **Duty to collect and publish information: local authority housing stock**

170. [Section 145](#) requires Scottish Ministers, after the end of each financial year, to collect and publish information in respect of each local authority on the number of houses sold under Right to Buy; receipts derived from these sales; how much debt has incurred in

respect of local authority housing stock and; how much debt in respect of local authority housing stock has been repaid, all during that financial year.

### **Duty to collect and publish information: tenants eligible for right to buy**

171. [Section 146](#) requires Scottish Ministers, after the end of each financial year, to collect and publish information in respect of each local authority on the number of tenants with a Right to Buy their house on pre-Housing (Scotland) Act 2001 terms and the number of tenants with a Right to Buy on post-Housing (Scotland) Act 2001 terms, during that financial year.

### **Duty to collect and publish information: sale of houses by registered social landlords**

172. [Section 147](#) requires Scottish Ministers, after the end of each financial year, to collect and publish information in respect of each registered social landlord on the number of houses sold under Right to Buy and the receipts derived from these sales, during that financial year.

## **Part 15 – Amendment of Housing (Scotland) Act 2006**

173. [Section 148](#) explains that the provisions in this Part make miscellaneous amendments to the Housing (Scotland) Act 2006 (the “2006 Act”).
174. [Section 149](#) removes the need for local authorities to submit draft Housing Renewal Area (HRA) designation orders to Scottish Ministers for approval. Local authorities will still be required to give notice of their decision not to proceed with an HRA following public consultation on a draft designation order, and to give notice when an HRA is made. It also adds a requirement for local authorities to consult various interested parties before making any modification to an HRA which it thinks is significant.
175. Subsection (1) of section 150 extends the situations in which local authorities can pay missing shares into a maintenance account to include making a payment of a missing share on behalf of owners who are unwilling to pay. Subsection (2) enables local authorities to recover the cost of devising a maintenance plan where an owner fails to submit a satisfactory plan within the time specified in the maintenance order, and costs arising from the variation of a plan, from the owner of the house concerned. Subsection (3) amends section 61 of the 2006 Act to allow a local authority to recover from owners any expenses incurred in registering documents related to maintenance orders and plans, including the cost of registration, any administrative expenses, and interest at a reasonable rate. Local authorities will also be able to issue a repayment charge in respect of these costs. Subsection (4) allows local authorities to recover the costs of registering a repayment charge or the discharge of a repayment charge. This includes the cost of the registration, plus any related administrative expenses and interest at a reasonable rate, and can include the issue of a further repayment charge.
176. [Section 151](#) amends section 71 of the 2006 Act to extend the situations in which local authorities can provide assistance under section 71 of the 2006 Act to include demolition.

## **Part 16 – Miscellaneous**

### **Protection of unauthorised tenants**

177. [Section 152](#) provides increased protection for ‘unauthorised tenants’ (tenants who are granted a lease of a property in breach of their landlord’s standard security conditions), who are at risk of losing their home following repossession action against their landlord. It does so by bringing the protection recognised through the Tamroui case (a Sheriff Court decision, *Tamroui v Clydesdale Bank plc* 1997 (SLT (Sh.Ct.) 20)) onto a statutory

basis. However, the provision in section 152 applies to all assured tenancies, whether they are authorised or unauthorised tenancies.

178. The amendments in section 152(1) and (2) confirm that any decree for repossession of a property granted in favour of a lender in proceedings under the Conveyancing and Feudal Reform (Scotland) Act 1970 or the Heritable Securities (Scotland) Act 1894 is not a warrant for the ejection of an assured tenant under the Housing (Scotland) Act 1988. This means that after obtaining a repossession decree against the borrower/landlord, the lender must raise further proceedings to evict any assured tenant under the 1988 Act. Subsection (3) ensures consistent application of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#) in relation to this principle that there is a requirement to get a separate decree of eviction against any assured tenant.

### **Tenant protection: repossession orders**

179. [Section 153](#) amends section 16 of the Housing (Scotland) Act 2001 to provide landlords with discretion to retain tenants in their existing tenancies where agreement has been reached about payment of rent arrears after a court has granted a decree for eviction.
180. By requiring the court to set a second date after which the decree can no longer be relied upon to evict the tenant, section 16(5A) as inserted by section 153 creates a period during which the landlord can either exercise the right to terminate the tenancy and evict the tenant, or simply allow the decree to lapse and the existing tenancy to continue. (The possibility of carrying out a ‘technical eviction’ whereby the existing tenancy is terminated and a new tenancy begun will also continue to exist, should the landlord wish to use that option).
181. Subsection (5A)(a) provides that section 16(5)(a), which requires termination of a tenancy in all cases on the date set by the court for recovery of possession, does not apply in cases where rent arrears is one of the grounds for eviction. The tenancy is terminated only if the landlord actually recovers possession of the house. Under subsection (5A)(c), the court order must specify the period for which the landlord’s right to recover possession is to have effect. The Scottish Ministers have a power to prescribe the maximum period and to issue guidance about recovery of possession under the court order, which landlords must have regard to under subsection (5A)(d). Scottish Ministers are required to consult the interested parties specified in subsection (5B) before making an order or issuing guidance.

### **Police accommodation not to be Scottish secure tenancy**

182. [Section 154](#) amends schedule 1 to the Housing (Scotland) Act 2001, which sets out those tenancies which are not Scottish secure tenancies, to ensure that tenancies of police houses are not Scottish secure tenancies. It does so by amending paragraph 2 of that schedule to provide that a tenancy of a house which is created on or after the relevant day (which is the day on which section 154 comes into force) is not a Scottish secure tenancy where the house is held by the local authority landlord for the purposes of a police force (subparagraph (2)(a)) or is let expressly on a temporary basis pending its being so required (subparagraph (2)(b)).
183. New sub-paragraph (3) provides that sub-paragraph (2)(a) does not prevent a tenancy from being a Scottish secure tenancy in the following circumstances:
- Where the tenant moved to the house following an order for recovery of possession under section 16(2) of the Housing (Scotland) Act 2001, on any of the grounds set out in paragraphs 9 to 13 and 15 of schedule 2 to that Act.
  - Where the tenant moved to the house from another house where the landlord erroneously terminated the previous tenancy in the belief that the tenant was not occupying the house; or where the tenant of a house that has been designed for

a person with special needs dies and as a result the landlord is required to re-accommodate the tenant.

- Where the tenant was re-accommodated by the landlord in the house after moving from another house, the tenancy of which was terminated by written agreement between the landlord and tenant following the landlord's decision to demolish that other house.
- Where a tenant's short Scottish secure tenancy is converted into a Scottish secure tenancy under section 37 of the 2001 Act.
- Where the tenant occupied that or another police house under a Scottish secure tenancy immediately before the creation of the tenancy and agreed to terminate that Scottish secure tenancy without being given at least 28 days notice before so agreeing that the new tenancy would not be a Scottish secure tenancy.

### **Scottish secure tenancy: rent arrears pre-action requirements**

184. [Section 155](#) amends section 14 of, and inserts new section 14A in, the Housing (Scotland) Act 2001. It requires landlords to comply with certain pre-action requirements (where the tenancy is a Scottish Secure Tenancy), before raising proceedings for recovery of possession in all cases which include the ground that rent lawfully due from the tenant has not been paid.
185. New section 14(2A) requires the landlord to comply with pre-action requirements before sending a pre-action notice to the tenant. Before the proceedings commence, the landlord must confirm to the court (in the form prescribed by Scottish Ministers in regulations) that the pre-action requirements have been complied with. The pre-action notice to the tenant must also specify the steps the landlord has taken to comply with the pre-action requirements.
186. The pre-action requirements are set out in new section 14A of the 2001 Act, inserted by section 155(b). They are listed in subsections (2) to (7). Subsection (8) requires landlords to have regard to any guidance issued by Scottish Ministers in complying with the pre-action requirements, and subsection (9) allows Ministers to make further provision about the pre-action requirements by order.

### **Local authority duties on homelessness: armed forces**

187. [Section 156](#) amends section 27 of the Housing (Scotland) Act 1987, which specifically prohibits a person or household forming a local connection with an area due to employment or residence in it as a result of service in the armed forces. In contrast civilian residence or employment forms such a connection. The duties of a local authority to a homeless person are affected by whether the person has a local connection with that authority. This amendment will allow people serving in the regular armed forces of the Crown, and those who live with them, to form a local connection with the area they have lived or worked in.

### **Vacant dwellings: use of information obtained for council tax purposes**

188. [Section 157](#) amends Schedule 2 to the Local Government Finance Act 1992 and section 129(8)(a) of the Local Government Act 2003 to allow local authorities to use information obtained for council tax purposes to identify vacant dwellings in their area.

### **Duty to assess and provide housing support needs of person who are homeless or threatened with homelessness**

189. [Section 158](#) places a duty on local authorities to assess the housing support needs of, and provide support services to, persons who are homeless or threatened with homelessness by inserting new section 32B into the Housing (Scotland) Act 1987. Section 32B(1) and (2) require the local authority, if they are subject to a duty to the applicant under



section 31(2) or 32(2) of the 1987 Act and have reason to believe the applicant might need housing support services, to assess whether the applicant or any person residing with them needs prescribed services.

190. Section 32B(3) requires the local authority to conduct inquiries for that purpose (which may be prescribed by Scottish Ministers) and to have regard to any prescribed matters. Section 32B(4) requires the local authority, after assessment, to ensure the provision of prescribed housing support services to any persons assessed as being in need of them.
191. Section 32B(5) gives Scottish Ministers the power to make regulations about the provision of prescribed housing support services, which may specify the period for which services are to be provided and any matters the local authority is to have regard to when ensuring the provision of services. Section 32B(6) allows for regulations made to have different provision for different purposes and in different areas. Section 32B(7) requires Scottish Ministers to consult with bodies representing local authorities, bodies representing the interests of homeless persons and other persons as they think fit, before making regulations.
192. Section 32B(9) defines housing support services as including services which provide support, assistance, advice or counselling to an individual with a view to enabling the individual to occupy accommodation as their sole or main residence.

## **Part 17 – Supplementary and Final Provisions**

### **Offences by bodies corporate etc.**

193. [Section 159](#) sets out the position where an offence is committed by a social landlord, a body corporate, a Scottish partnership or an unincorporated association. It provides that where the offence was committed with the consent of or if it is attributable to any neglect of a relevant individual (defined in subsection (2)) of these bodies, the individual, as well as the offender, is also guilty of an offence.

### **Formal communications**

194. [Section 160](#) deals with formal communications. A formal communication is any notice, notification, direction, consent, order, licence, application (other than to a court) or decision that is served, given or made under the Act or for the purposes of the Act. There is provision about how such communications are to be made and served.

### **Orders**

195. [Section 161](#) sets out the general provisions applying to subordinate legislation to be made under the Act.

### **Minor and consequential amendments**

196. [Section 162](#) introduces schedule 2 which makes changes to other legislation required as a consequence of the Act.

### **Ancillary provisions**

197. [Section 163](#) gives the Scottish Ministers a free-standing power to make orders containing such ancillary provision as is necessary or expedient for the purposes or in consequence of the Act.

### **Connected bodies**

198. [Section 164](#) defines what is meant by a body that is connected to a registered social landlord or a local authority landlord. A body is considered to be connected if the RSL or local authority landlord is able to direct the body in accordance with its wishes and if the connected body can direct the RSL or local authority landlord in accordance with



*These notes relate to the Housing (Scotland) Act 2010  
(asp 17) which received Royal Assent on 9 December 2010*

its wishes. A body that is a subsidiary of a social landlord (including a registered social landlord or local authority landlord), a body which has a social landlord as a subsidiary, and a body which is the subsidiary of a body of which the social landlord is a subsidiary, is also a connected body. “Subsidiary” has the same meaning in section 164 of the Act as in the [Companies Act 2006 \(c.46\)](#) or, as the case may be, the [Co-operative and Community Benefit Societies and Credit Unions Act 1968 \(c.55\)](#).

### **Interpretation**

199. [Section 165](#) clarifies the meaning of various expressions used in the Act.

### **Commencement**

200. [Section 166](#) allows the Scottish Ministers to set different dates to commence different provisions of the Act.

### **Short title**

201. [Section 167](#) gives the short title of the Act.