



# Housing (Scotland) Act 2010

## 2010 asp 17

### PART 4

#### INQUIRIES AND INFORMATION

##### *Inquiries*

#### **42 Inquiries about social landlords**

- (1) The Regulator may make inquiries about—
  - (a) a social landlord, or
  - (b) a body which at the material time is or was connected to a registered social landlord or a local authority landlord.
- (2) Inquiries may be made—
  - (a) at any time, and
  - (b) generally or for particular purposes.
- (3) Inquiries may relate to—
  - (a) a social landlord's housing activities, or
  - (b) a registered social landlord's financial or other affairs.
- (4) Inquiries may be carried out—
  - (a) by the Regulator, or
  - (b) by another person (an “inquirer”) appointed by the Regulator,and, where carried out by an inquirer, references to the Regulator in sections 43 to 49 include references to the inquirer.
- (5) Where inquiries are made about a body connected to a registered social landlord or a local authority landlord, references to the social landlord in sections 43 and 46 are references to the social landlord and the connected body.

#### **43 Inquiries: general powers**

- (1) The Regulator, when making inquiries, has the following general powers in addition to the powers conferred by section 48 and other provisions of this Act.

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- (2) The Regulator has a right of access at all reasonable times to—
  - (a) any premises occupied by the social landlord concerned, and
  - (b) any document or other information relating to the social landlord concerned which the Regulator believes to be relevant to the inquiries.
- (3) The social landlord concerned and any person in premises accessed under subsection (2) must provide such facilities and assistance as the Regulator may reasonably request in connection with the inquiries.
- (4) A person holding or accountable for any document or other information of a kind described in subsection (2) must, if so required, attend before the Regulator in person to produce the document or, as the case may be, give the information.
- (5) The Regulator may inspect, copy, make extracts from or take away any document or other information found on premises accessed under subsection (2) (including any information accessible by computers on the premises but stored elsewhere).
- (6) It is an offence for a person, without reasonable excuse—
  - (a) to fail to comply with subsection (3) or (4), or
  - (b) to otherwise obstruct the Regulator from properly exercising its powers when making inquiries.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **44      Inquiries: survey powers**

- (1) The Regulator may arrange for a survey of the condition of housing accommodation where it suspects that the standard to which it is being maintained means that a social landlord is, or is at risk of, failing—
  - (a) to achieve a standard or an outcome set out in the Scottish Social Housing Charter,
  - (b) to meet a performance improvement target,
  - (c) to meet a financial management or governance target, or
  - (d) to implement an approved performance improvement plan.
- (2) The Regulator may require the social landlord to pay some or all of the expenses of the survey.
- (3) A survey may be carried out by any person authorised in writing by the Regulator.
- (4) The authorised person—
  - (a) has a right of access to the housing accommodation at all reasonable times to carry out the survey,
  - (b) must, when seeking to enter accommodation in order to carry out a survey, produce a copy of his or her authorisation on request by an occupier.
- (5) The Regulator must give the social landlord at least 28 days' notice of its intention to carry out a survey.
- (6) A social landlord to which notice is given under subsection (5) must give each occupier of the housing accommodation concerned at least 7 days' notice of the Regulator's intention to carry out a survey.

- (7) The authorised person must—
  - (a) produce a written report after carrying out a survey, and
  - (b) give a copy of the report to the Regulator.
- (8) The Regulator must give a copy of the authorised person’s report to the social landlord.
- (9) It is an offence for a person, without reasonable excuse—
  - (a) to fail to comply with subsection (6), or
  - (b) to obstruct an authorised person from carrying out a survey under this section.
- (10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **45 Exceptional audit**

- (1) The Regulator may, as part of inquiries about a registered social landlord’s financial or other affairs, arrange for a qualified auditor (appointed by the Regulator) to—
  - (a) audit the registered social landlord’s accounts and balance sheet, and
  - (b) report to the Regulator about matters specified by the Regulator.

“qualified auditor” means a person eligible for appointment as auditor of the registered social landlord’s ordinary accounts.
- (2) It is for the Regulator to pay for the expenses of the audit (including the auditor’s remuneration).
- (3) An audit done under this section is additional to, and does not affect, any other audit done or to be done under any other enactment.
- (4) It is an offence for a person, without reasonable excuse, to obstruct a person from carrying out an audit under this section.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **46 Reports on inquiries**

- (1) The Regulator may prepare and publish a report of any inquiries it makes.
- (2) The Regulator must—
  - (a) publish a statement setting out the types of inquiries on which it intends to publish reports, and
  - (b) make arrangements for bringing its statement (and any revision) to the attention of—
    - (i) Ministers,
    - (ii) tenants of social landlords,
    - (iii) social landlords,
    - (iv) secured creditors of registered social landlords, and
    - (v) the Accounts Commission for Scotland.
- (3) The Regulator must send a copy of a report prepared under this section to the social landlord concerned.

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- (4) Where the Regulator publishes a report, it must send a copy of the report to every registered tenant organisation associated with the social landlord which is the subject of the report.

### *Information*

#### **47 Information from tenants on significant performance failures**

- (1) The Regulator must make arrangements to enable and assist tenants of social landlords to provide it with information on significant performance failures by social landlords.
- (2) The Regulator must publish a statement setting out—
- (a) what it considers to be a significant performance failure (with reference to standards and outcomes in the Scottish Social Housing Charter, performance improvement targets, financial management and governance targets and the code of conduct issued under section 36), and
  - (b) details of its arrangements (including details of how it will deal with information provided and how it will respond to tenants).

#### **48 Power to obtain information**

- (1) The Regulator may, when making inquiries or otherwise for a purpose connected with its functions, require any person to provide it with any document or other information relating to—
- (a) a social landlord, or
  - (b) a body which at the material time is or was connected to a registered social landlord or a local authority landlord.
- (2) A requirement must specify—
- (a) the document or other information which the person must provide, and
  - (b) where and by when the person must provide it.
- (3) A requirement must not be made of a person other than the social landlord or connected body concerned unless—
- (a) the social landlord or connected body has already failed to comply with a requirement to provide the document or other information, or
  - (b) the Regulator believes that the social landlord or connected body is unable to provide the document or other information.
- (4) This section does not authorise the Regulator to require—
- (a) the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in the Court of Session, or
  - (b) a banker to disclose anything in breach of a duty of confidentiality owed to anyone other than the social landlord or connected body concerned (or any other body connected to the social landlord).
- (5) The Regulator may copy, or make extracts from, any document or other information it receives.

#### **49 Failure to provide information etc.**

- (1) It is an offence for a person, without reasonable excuse, to fail to comply with a requirement made under section 48.
- (2) It is an offence for a person, knowingly or recklessly, to provide information which is false or misleading in a material respect to the Regulator or any other person—
  - (a) in purported compliance with a requirement made under section 48, or
  - (b) otherwise if the person knows, or could reasonably be expected to know, that the information may be used by, or provided to, the Regulator.
- (3) It is an offence for a person intentionally to alter, suppress, conceal or destroy a document or other information which the person, or which the person knows another person, has been required to provide under section 48.
- (4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) A person guilty of an offence under subsection (2) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **50 Social landlords' involvement of tenants etc. when providing information**

- (1) The Regulator must issue guidance setting out the extent to which social landlords must seek to involve persons (or representatives of such persons) who are or who may become—
  - (a) homeless,
  - (b) tenants of social landlords, or
  - (c) recipients of housing services provided by social landlords,in the preparation of information to be given by social landlords to the Regulator.
- (2) The Regulator may require a social landlord to provide information on how it has involved such persons (or their representatives) in providing information to which the guidance relates.
- (3) Guidance may be given generally or for particular purposes (and different guidance may be issued for different social landlords or for different areas or cases).
- (4) Before issuing or revising guidance, the Regulator must consult—
  - (a) Ministers,
  - (b) tenants of social landlords or their representatives,
  - (c) homeless persons or bodies representing the interests of homeless persons,
  - (d) recipients of housing services provided by social landlords or their representatives,
  - (e) social landlords or their representatives,
  - (f) secured creditors of registered social landlords or their representatives, and
  - (g) the Accounts Commission for Scotland.
- (5) The Regulator must make arrangements for bringing its guidance (and any revision or withdrawal) to the attention of affected social landlords.

*Code of practice*

**51 Code of practice: inquiries**

- (1) The Regulator must issue a code of practice on inquiries setting out how it intends to make inquiries and otherwise perform its functions under this Part.
- (2) The code of practice may, in particular, set out examples of situations in which it may make inquiries, arrange for surveys or audits or require information to be provided.
- (3) The code of practice must be kept under review and must be re-issued (with any revisions which the Regulator thinks appropriate) at least once every 5 years.
- (4) Before issuing a code of practice, the Regulator must consult—
  - (a) Ministers,
  - (b) tenants of social landlords or their representatives,
  - (c) homeless persons or bodies representing the interests of homeless persons,
  - (d) recipients of housing services provided by social landlords or their representatives,
  - (e) social landlords or their representatives,
  - (f) secured creditors of registered social landlords or their representatives, and
  - (g) the Accounts Commission for Scotland.
- (5) The Regulator must make arrangements for bringing the issued code of practice to the attention of social landlords.