

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Housing (Amendment) (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Housing (Amendment) (Scotland) Bill, introduced in the Scottish Parliament on 4 September 2017.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 20–FM);
 - a Policy Memorandum (SP Bill 20–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 20–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The annex provides an illustrative draft of provisions of the Housing (Scotland) Act 2010 as they would be amended by the Bill, but this should not be taken as a definitive statement of the law as it would have effect if the Bill is enacted.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Background and overview

Classification of registered social landlords

5. The Office for National Statistics (ONS) is responsible for determining how individual sectors within the economy should be classified in the UK's national accounts. On 28 September 2016,¹ the ONS informed the Scottish Government that it had reviewed the classification of registered social landlords (RSLs) in Scotland and determined that they should be classified as public bodies for the purposes of the national accounts. (RSLs had previously been classified as private bodies.)

6. RSLs are, broadly put, not-for-profit landlords of social housing, are registered under Part 2 of the Housing (Scotland) Act 2010 (“the 2010 Act”) and are regulated by the Scottish Housing Regulator (established by Part 1 of the 2010 Act – “the Regulator”). The Regulator also has functions that are exercisable in relation to “social landlords” – defined by section 165 of the 2010 Act as registered social landlords, local authority landlords and local authorities providing housing services (which includes providing accommodation).

7. The ONS explained that its decision was based on an analysis of the powers that the Regulator has under the 2010 Act in relation to RSLs. In terms of criteria that the ONS applies under the 2010 European System of Accounts, the ONS determined that the Regulator is classified as a public body. Consequently, the controls that the Regulator exercises under the 2010 Act are a form of public sector control, which requires RSLs to be classified to the public sector in the national accounts.

8. The particular controls that the ONS stated amounted to public sector control of RSLs include—

- the Regulator's power to appoint a manager to an RSL,
- the Regulator's power to appoint, suspend and remove officers of an RSL,

¹ See the [Statistical classification of registered providers of social housing in Scotland, Wales and Northern Ireland](#).

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

- the exercise of control over the disposal of land and housing assets by an RSL (through a requirement to obtain the Regulator’s consent to the disposal),
- the exercise of control over certain changes to the constitution of an RSL (requiring the Regulator’s consent to certain changes), and
- the exercise of control over restructuring, voluntary winding-up and dissolution of an RSL (again, mainly by requiring the Regulator’s consent to be obtained).

9. The Policy Memorandum for the Bill sets out in more detail the consequences of the classification of RSLs as public sector bodies and why the Scottish Government would prefer them to be classified back to the private sector.

10. The Bill will amend the 2010 Act to ensure that public sector influence over RSLs is compatible with RSLs being classified by the ONS as private sector bodies in the United Kingdom national accounts.

11. The ONS also noted that further public sector controls might exist through the relationships between some RSLs and local authorities. In particular, some local authorities may have the ability to exercise a degree of control over individual RSLs by having power to appoint officers of the RSL and through having voting rights.

12. The Bill will address this by providing a regulation-making power which would allow the Scottish Ministers to address this.

The Bill

Regulatory intervention by Scottish Housing Regulator

Section 1 – Managers appointed by, or on the requirement of, the Scottish Housing Regulator

13. The Regulator has a number of powers under the 2010 Act that allow it to appoint a manager, or to require a social landlord (including an RSL) to appoint a manager.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Section 57 – Appointment of manager for housing activities

14. Under section 57, the Regulator can appoint a person as manager if the Regulator considers the social landlord is, or is at risk of, failing in a number of respects (including that the landlord is failing to achieve a standard or an outcome set out in the Scottish Social Housing Charter² or that the landlord is failing to comply with an enforcement notice³) and that a person needs to be appointed to ensure that the social landlord provides housing services to an appropriate standard. While the person can be appointed to manage the social landlord's housing activities generally, or just aspects of its activities, there is no express link between the failure which led to the manager's appointment and the activities the person will manage, nor is there any express provision limiting the period of the manager's appointment (although there is provision in section 59(1) for the Regulator to determine that period).

15. Section 1(2) of the Bill will amend section 57(1)(b) and (2) so that a person can be appointed as a manager but only to ensure that the social landlord rectifies the failure which the Regulator has identified.

16. Section 1(2) will also amend section 57(1)(a) so that a manager can be appointed only where the social landlord has failed or is failing to achieve a standard or outcome set out in the Charter, or in some other respect, rather than where the landlord is only at risk of so failing.

17. In addition, section 1(4) will amend section 59 by inserting a new subsection (1A) to limit the period of the manager's appointment to the period necessary to rectify that failure.

Section 58 – Appointment of manager for financial or other affairs

18. Section 58 of the 2010 Act relates to RSLs (and, unlike section 57, not all social landlords) and allows the Regulator to appoint a person as manager where it considers this is necessary to ensure the RSL manages its financial or other affairs to an appropriate standard.

² Prepared and published by the Scottish Ministers under Part 3 of the 2010 Act.

³ Issued by the Regulator under section 56 of the 2010 Act.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

19. As is the case with section 57, while the person can be appointed to manage the RSL's financial or other affairs generally, or just aspects of those affairs, there is no express link between the failure which led to the manager's appointment and the matters the person will manage, nor is there any express provision limiting the period of the manager's appointment.

20. Section 1(3) will amend section 58 by inserting a new subsection (1). This replaces the existing subsection and provides that the manager may be appointed only where the RSL is failing or has already failed to comply with a statutory duty (imposed on it by the 2010 Act or by other legislation) or where the RSL has failed or is failing to comply with a requirement imposed on it by the Regulator.

21. The test for appointing a manager is that the appointment is necessary to rectify the failure identified by the Regulator.

22. New subsection (1A), inserted into section 59 of the 2010 Act by section 1(4), also has the effect of limiting the period of the manager's appointment under section 58 to the period necessary to rectify that failure.

Section 59 – Appointment of managers: supplementary

23. Section 59 of the 2010 Act makes provision about the appointment of managers under sections 57 and 58. In particular, section 59(4) provides that such a manager has a duty to comply with directions about the performance of the manager's functions given to the manager by the Regulator and may be removed if the manager fails to comply with those directions.

24. There is, as before, no express link between the failure that led to the manager's appointment and the functions in relation to which the Regulator may give the manager directions.

25. Section 1(4) will replace section 59(4) with new subsections (4) and (4A). While retaining the power of the Regulator to give directions, the duty of the manager to comply with those directions and the Regulator's power to remove a manager who fails to do so, these new subsections provide that the directions can relate only to rectifying the failure that led to the manager's appointment. Subsection (4A)(b) also clarifies that it is the

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Regulator who can remove a manager who fails to comply with a direction, even where the manager was appointed by the RSL under section 57 or 58 (rather than having been appointed directly by the Regulator).

Section 87 – Manager of registered society: extra powers

26. Part 7 of the 2010 Act covers the Regulator’s powers where an RSL is about to become insolvent and includes provision imposing a moratorium on the disposal of an RSL’s land⁴ and giving the Regulator power to appoint, or require the RSL to appoint, an interim manager under section 79 of the Act to manage the RSL’s affairs during the moratorium. During the moratorium, the Regulator may make proposals for the future ownership and management of the RSL’s land⁵ and may also appoint a manager to implement those proposals under section 85 of the Act.

27. Section 87 of the 2010 Act provides for certain extra powers exercisable by such a manager where the RSL is a registered society,⁶ including the power to make and execute instruments providing for the amalgamation of the society and for transferring the society’s engagements.

28. Section 1(5) of the Bill will amend section 87(3) and (4) to update references to sections of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 with references, instead, to the equivalent sections of the Co-operative and Community Benefit Societies Act 2014, which has replaced the 1965 Act. The Bill replaces and updates

⁴ See section 75 of the 2010 Act.

⁵ See sections 80 to 90 of the 2010 Act.

⁶ Section 165 of the 2010 Act defines “registered society” as a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (but see now section 6(16) of the Bill which amends that definition.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

a number of such references to the 1965 Act to ensure that the provisions in the 2010 Act work as they should.⁷

Section 2 – Registered social landlords: removal, suspension and appointment of officers etc.

29. The Regulator has a number of powers under the 2010 Act in relation to the removal and suspension of officers of RSLs, as well as power to appoint replacement and additional officers. In this context, an “officer” of an RSL is generally a person exercising management and control of the RSL (as defined in section 165 of the 2010 Act).⁸

30. Section 60 of the 2010 Act gives the Regulator a general power to remove an officer of an RSL for a number of reasons, including that the officer is impeding the proper management of the RSL because of the officer’s absence of other failure to act, which make it inappropriate for the person to be an officer of an RSL.⁹

31. Under section 61 of the 2010 Act, the Regulator has power, when carrying out an inquiry into an RSL, to suspend a “responsible individual” where the Regulator considers one or more of a number of failures have

⁷ See, for instance, sections 2(7) and 7(4) of the Bill. Although there is provision in the Co-operative and Community Benefit Societies Act 2014 which will “translate” references to repealed provisions into references to the equivalent provisions in the 2014 Act (see schedule 5, paragraph 3), the Government considers it is more helpful to the user of the 2010 Act to update these references in this Bill.

⁸ The meaning of “officer” as defined in that section depends on the type of body the RSL is. In the case of an RSL that is a company, “officer” includes a director, manager or secretary of the company (see section 1173 of the Companies Act 2006). In the case of an RSL that is a registered society, “officer” includes a treasurer, secretary or member of the management committee of the society (see section 149 of the Co-operative and Community Benefit Societies Act 2014).

⁹ See section 60(1)(e) of the 2010 Act. Other grounds for removing an officer are set out in section 60(1)(a) to (d) of the 2010 Act and include that the officer is an undischarged bankrupt or is disqualified from being a charity trustee.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

occurred or are occurring. “Responsible individual” is defined by section 63 of the 2010 Act as an officer or agent of the RSL who appears to the Regulator to be responsible for the failure. The failures which may lead to the Regulator suspending a responsible individual include where there has been misconduct or mismanagement of the RSLs financial or other affairs and where the interests of the RSL’s tenants need to be protected.¹⁰

32. The Regulator has power to remove a responsible individual under section 62 of the 2010 Act. The grounds for removing a responsible individual are the same as the grounds for suspension under section 61 of that Act.¹¹ The Regulator may remove, under section 62, a person suspended under section 61 (although the person need not have been first suspended before being removed under section 62)).

33. Section 64 of the 2010 Act provides a right of appeal to the Court of Session for a person removed under section 60 or 62 or suspended under section 61.

34. Under section 65 of the 2010 Act, the Regulator has power to appoint an individual as an officer of an RSL either to replace an officer removed under section 60 or 62, where there are no officers, where there are insufficient officers or where the Regulator considers an additional officer is

¹⁰ The full grounds for suspension are listed in section 61(1)(a) to (d) and the procedure for and effect of suspending the responsible individual are set out in section 61(2) to (4). Under section 61(5) and (6) it is an offence for a person suspended under section 61 to take, without the Regulator’s consent, any action in relation to the management or control of the RSL or any other RSL.

¹¹ See section 62(1)(a) to (d). The procedure for removal is set out in section 62(2). And section 62(3) and (4) make it an offence for a person removed under section 62(1) to take any action in relation to the management or control of the RSL or any other RSL without the consent of the Regulator.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

necessary for the proper management of the RSL's financial or other affairs.¹²

35. Section 2(2) of the Bill will replace the ground in section 60(1)(e) for suspending a responsible individual (that, through absence or failure to act, the individual is impeding the proper management of the RSL) with a ground that, because of the individual's absence or failure to act, the RSL is failing to comply with any duty imposed on it by the 2010 Act or with any other statutory duty or is failing to comply with a requirement imposed on the RSL by the Regulator.¹³

36. Section 2(3) will amend section 61(1) of the 2010 Act, replacing the grounds for suspension in paragraphs (a) to (c)¹⁴ with a new ground that the RSL has failed or is failing to comply with its statutory duties, or with any requirement imposed on it by the Regulator, as a result of the responsible individual.¹⁵ That will leave one other ground for the suspension of a responsible individual – that, during a moratorium on the disposal of the RSL's assets under section 75 of the 2010 Act triggered by a person taking a step towards the insolvency of the RSL,¹⁶ the responsible individual is obstructing the Regulator or that the individual is not co-

¹² There are "insufficient officers" where there are currently not enough officers to validly appoint more officers under the RSL's constitution and the constitution does not provide for a way for more officers to be appointed – see section 65(1)(c).

¹³ Such a requirement imposed by the Regulator may include a requirement to appoint a manager under section 57 of the 2010 Act or a requirement imposed under section 66(2) of that Act directing the RSL not to undertake particular transactions during an inquiry.

¹⁴ Those grounds being that there has been misconduct or mismanagement, that the interests of the RSL's tenants need protected and that the RSL's assets need protection.

¹⁵ See section 61 as read with section 63.

¹⁶ See section 73 of the 2010 Act.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

operating with the implementation of proposals about the future ownership and management of the RSL's assets.¹⁷

37. Section 2(4) will make a very similar amendment to section 62, replacing the grounds for removing a responsible individual set out in subsection (1)(a) to (c) with a new ground based on failure by the RSL to comply with statutory duties or with requirements imposed by the Regulator (which the responsible individual has been responsible for, has facilitated or otherwise contributed to, or has been privy to).¹⁸

38. As a result of the changes to sections 61 and 62, the references in section 63 to "misconduct" and to "mismanagement" need to be removed as those terms will no longer be used in those sections. Section 2(5) will make this change.

39. Section 2(6) will make a number of changes to section 65 of the 2010 Act. The main change is to replace section 65(1)(d) – which allows the Regulator to appoint an officer of an RSL where the Regulator considers this is necessary for the proper management of the RSL's financial or other affairs – with a new ground for appointing an officer – that it is necessary to rectify a failure by the RSL to comply with a statutory duty or with a requirement imposed on it by the Regulator (such failure in either case relating to the RSL's financial or other affairs).

40. Section 2(6)(c) will insert a new subsection (2A) into section 65. This has the effect of limiting the period of appointment of an officer appointed by the Regulator under new section 65(1)(d) to the period necessary to rectify the failure which led to the appointment. This change mirrors the change made by section 1 of the Bill to section 59 of the 2010 Act.¹⁹ A consequential amendment of section 65(2) will be made by subsection (6)(b) and subsection (6)(d) and (e) will make consequential amendments so that any reappointment of an officer appointed under new section 65(1)(d) is also limited to the period necessary to rectify the failure which lead to the appointment.

¹⁷ See sections 80 to 85 of the 2010 and, in particular section 84(2).

¹⁸ Again, see section 62 as read with section 63.

¹⁹ See paragraph 17 above.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

41. Subsection (7) of section 2 will update the definition of “officer” in section 165 of the 2010 Act so that it refers to section 149 of the Co-operative and Community Benefit Societies Act 2014 (the 2014 Act having replaced the pre-existing law on registered societies).

Disposal of land etc. by registered social landlords

Sections 3 and 4 – Disposal of land or other assets by registered social landlord and Special procedure where disposal results in change of landlord

42. Sections 3 and 4 of the Bill will amend Part 9 and Chapter 1 of Part 10 of the 2010 Act.

Part 9 of the 2010 Act

43. That Part and that Chapter currently make provision about the circumstances in which an RSL can dispose of its land or other assets. In a number of cases, the disposal can proceed only where the RSL has obtained the consent of the Regulator to the disposal.²⁰ Where that consent is not required, the RSL must notify the Regulator of the disposal.²¹ And in some of those cases, the RSL must also consult its tenants before making the disposal and must inform the Regulator of the result.²²

Chapter 1 of Part 10 of the 2010 Act

44. Where a disposal that requires Regulator’s consent would result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL making the disposal, Chapter 1 of Part 10 applies.²³

45. Under this Chapter, the Regulator may refuse consent under section 114 or direct the RSL to consult its tenants in accordance with section 115.

²⁰ See section 107(1) of the 2010 Act. See also section 108 which lists disposals in relation to which the consent of the Regulator is not required.

²¹ See section 109 of the 2010 Act.

²² See section 110 of the 2010 Act.

²³ See section 113 of the 2010 Act.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Section 115 requires the RSL to carry out a two-step consultation process with its tenants. Following that consultation process, the Regulator may either refuse consent or, subject to “tenant authorisation” being obtained, give conditional consent to the disposal.²⁴ “Tenant authorisation” is obtained where the Regulator directs the RSL, under section 116(2), to either—

- ballot the tenants who would be affected by the disposal, or
- seek the written agreement of those tenants to the disposal,

and where the majority of those tenants agree to the disposal.

46. Section 118 governs the conduct of the ballot and section 119 how the RSL goes about seeking the written agreement of its tenants. Section 120 makes further provision about the tenants who need to be balloted or whose agreement needs to be sought, in that it provides that the RSL need not ballot or seek agreement from “unaffected tenants” – tenants who will have vacated their houses before the proposed disposal is made.

47. Where the majority of affected tenants agree to the disposal (either by ballot or by agreeing in writing), the Regulator must approve the disposal. See section 121. Where there is no such majority, the Regulator must withdraw its conditional consent²⁵ and the disposal cannot proceed.

Amendments of Parts 9 and 10 of the 2010 Act

48. Essentially, the amendments to Part 9 and Chapter 1 of Part 10 of the 2010 Act made by sections 3 and 4 of the Bill will have the effect of removing any requirement for Regulator’s consent to a disposal of land or another asset by an RSL, while retaining various existing duties to give the Regulator notice of disposals, to carry out consultation with tenants and, in cases where the disposal would result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL making the disposal, requiring the RSL to seek the agreement of tenants affected by the disposal. The RSL can proceed with the disposal only where the affected tenants agree.

²⁴ See section 116 of the 2010 Act.

²⁵ See section 116(1)(b) as read with section 121(1)(b) of the 2010 Act.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

49. Section 3(3) will replace section 107 with a new version of that section. This section covers two types of disposal of land by an RSL.

50. Section 107(1) and (2) provide that an RSL may dispose of land, which isn't a disposal by way of granting security over the land, and isn't a disposal by virtue of which a tenant under a Scottish secure tenancy will cease to be a tenant of the RSL, provided the RSL complies with section 110. That section, as amended by section 3(8) of the Bill, will require the RSL to consult the tenants of any houses included in the proposed disposal and such other persons as the Regulator directs, before making the proposed disposal. Under section 110(2)(b), the RSL must inform the Regulator of the results of the consultation. Under section 110(3), as inserted by section 3(8)(c) of the Bill, the Regulator must issue guidance to RSLs about the tenant consultation under section 110(2) and, under new section 110(4), RSLs must have regard to any guidance issued by the Regulator.

51. In addition to consulting tenants before the disposal, the RSL must also notify the Regulator as soon as reasonably practicable after the disposal under section 109(1) (as substituted by section 3(6) of the Bill).

52. Section 107 covers another type of disposal, namely, a disposal of land which will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL. See section 107(4).

53. An RSL may make such a disposal only if the RSL has complied with sections 115 to 120 of Chapter 1 of Part 10 of the 2010 Act (as it will be amended by section 4 of the Bill) and if the majority of the affected tenants agree to the disposal taking place. The RSL must also give notice to the Regulator of the actual disposal as soon as reasonably practicable after it has taken place and, in any case, no later than 28 days after that event (see section 109(1)).²⁶

54. Finally, section 107(5) provides that section 107 does not apply to a disposal of a type mentioned in section 108, as is currently the case under section 107(1)(b) of the 2010 Act.

²⁶ Although section 109(2)(b) of the 2010 Act (as amended by section 3(6) of the Bill) allows the Regulator to extend this period of 28 days.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

55. Section 4 of the Bill will amend Chapter 1 of Part 10, which currently applies where an RSL proposes to dispose of land and where the disposal will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL (that is, in the circumstance now defined in section 107(4)).

56. The current role of the Regulator is largely removed so that consent is no longer required. Section 4(2) makes the necessary changes to section 113 of the 2010 Act to reflect these changes. As the Regulator no longer consents to the disposal, and no longer makes an initial decision, section 114 is no longer necessary and is repealed by section 4(3) of the Bill.

57. Section 115 – the two-fold consultation with tenants on the proposed disposal – is retained but amended by section 4(4) to remove references to directions given by the Regulator under section 114. In addition, section 115(2)(a)(ii) is removed as objections by tenants no longer serve a purpose. Previously they would have been communicated to the Regulator and may have had an influence on the Regulator's decision under section 116 of the 2010 Act.

58. As the Regulator's role is being largely removed from Chapter 1 of Part 10 of the 2010 Act, and the RSL will now be required to seek the agreement of affected tenants to the disposal in all cases, section 116 no longer serves a purpose and is repealed by section 4(6) of the Bill. The reduced role for the Regulator also means that the power in section 117 of the 2010 Act to require information from the RSL before the Regulator makes a decision is no longer needed and is also repealed.²⁷

59. Section 4(5) of the Bill inserts two new sections into Part 10 of the 2010 Act. Section 115A makes provision for the ballot of tenants and for seeking their written agreement. This replaces sections 118 and 119 which are repealed by section 4(6) of the Bill. Section 4(5) also inserts new section 115B, which makes provision for guidance under this Chapter.

60. Section 115A(1) requires the RSL to conduct a ballot or seek the written agreement of its affected tenants. The decision is left to the RSL

²⁷ See section 4(6) of the Bill.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

but the Regulator may issue guidance about this under section 115B by virtue of section 115B(2)(c). Under section 115A(2), the RSL must inform the Regulator of the result of the ballot or, where written agreement is sought, of the number of agreements sought and given.

61. Section 115B(1) requires the Regulator to issue guidance about tenant consultation under section 115 and about seeking tenant approval by ballot or written agreement under section 115A. An RSL must have regard to any such guidance when complying with its duties under sections 115 and 115A.

62. Section 120 of the 2010 Act makes provisions for when the RSL need not consult certain tenants under section 115 and need not ballot them or seek their written agreement to a proposed disposal under new section 115A. Section 4(7) will amend section 120 to make changes necessary in consequence of other amendments of Chapter 1, although the effect of section 120 is essentially unchanged.

63. Section 4(8) of the Bill will repeal sections 121 and 122 of Chapter 1 of Part 10. Section 121 is no longer necessary given that the Regulator can no longer refuse or give consent to a disposal under this Chapter. Section 122 of the 2010 Act currently provides that any failure by the Regulator or an RSL to comply with a provision of Chapter 1 of Part 10 does not invalidate the Regulator's consent to the disposal. Regulator's consent is no longer required. And the consequences of a failure by the RSL are dealt with by section 107 and 111 (as amended by section 3 of the Bill). So section 122 is no longer necessary and is repealed.

64. Turning back to the amendments made by section 3 of the Bill, section 107(3) makes clear that the RSL has no power to dispose of land where doing so would result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL, unless the RSL has complied with sections 115 to 120 of the 2010 Act and a majority of the affected tenants agree to the disposal taking place.

65. In addition, section 111 of the 2010 Act covers the situation where a disposal has nevertheless gone ahead. Under this section as currently in force, the disposal is void if the Regulator did not consent. But the removal of the need for Regulator's consent means different provision has to be made. Section 111 affects a third party who has transacted with the RSL

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

as well as affecting the RSL that made the disposal. The amendments of this section made by section 3(10) of the Bill will make clear that, in the case of a disposal to which section 107(2) applies, the disposal will be void if the RSL failed to consult its tenants and others under section 110(2)(a). In the case of a disposal to which section 107(4) applies, failure by the RSL to comply with all the provisions of sections 115 to 120 will not make a subsequent disposal void. Instead, only failure to comply with the most important of those provisions – consultation with tenants under section 115 and the seeking of agreement from the affected tenants under section 115A(1) – will result in the disposal being void. In addition, failure to obtain the agreement of the affected tenants to the disposal will also result in that disposal being void.

66. Finally on section 3 of the Bill, subsection (2) will amend section 78 of the 2010 Act in consequence of the changes made to Part 9 of the 2010 Act and the removal of the need for Regulator’s consent and, in particular, as a consequence of the changes to section 108 made by section 3(4) of the Bill.

Organisational changes affecting registered social landlords

Section 5 – Change of name, office or constitution by registered social landlord

67. Under section 92 of the 2010 Act, an RSL must notify the Regulator of any change in its name or to the address of its registered or principal office with 28 days of that change. Under section 93 of the 2010 Act, an RSL cannot make any other change to its constitution²⁸ unless the Regulator consents. Sections 94 and 95 make further provision about the Regulator’s consent under section 93.

68. Section 5 of the Bill will remove the need for the RSL to obtain the Regulator’s consent to changes to its constitution by inserting a new

²⁸ Section 165 of the 2010 Act defines what is meant by the “constitution” of an RSL: where the RSL is a registered company, its constitution is its articles of association; where it is a registered society, its constitution is the society’s rules; in any other case, the RSL’s constitution is the instrument which establishes it and states its purpose. See also footnote 6 for the meaning of “registered society”.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

section 92 providing that the RSL need only notify the Regulator of all such changes (rather than just changes of name or address) within 28 days of the change being made. As a consequence of the removal of the requirement for Regulator's consent, sections 93 and 95 are no longer needed and so are repealed by section 5(3).

Section 6 – Restructuring, winding up and dissolution of registered social landlord

69. Part 8 of the 2010 Act makes provision about various changes to RSLs, including about the restructuring, winding up and dissolution of RSLs that are registered societies²⁹ as well as about the restructuring of RSLs that are registered companies,³⁰ about the conversion of such companies into registered societies, about voluntary arrangements entered into by such companies under the Insolvency Act 1986 and about the voluntary winding up of such companies.

70. In the case of some of these organisational changes, the Regulator's consent is required and the RSL must obtain the agreement of its affected tenants to the change under Chapter 2 of Part 10 of the 2010 Act (which applies Chapter 1 of that Part, on disposals of land under Part 9, to organisational changes under Part 8). In other cases, Regulator's consent is required and there is a requirement for the RSL to consult its tenants in relation to the change (but there is no requirement for the agreement of the RSL's tenants affected by the change).

71. Section 6 of the Bill will amend these provisions in Part 8 to remove the requirement for the Regulator's consent and makes consequential changes as a result. It will also repeal Chapter 2 of Part 10 of the 2010 Act (see paragraphs 110 to 112 below).

²⁹ As defined by section 165 of the 2010 Act: see also footnote 6.

³⁰ i.e. companies registered under the Companies Acts: see section 165 of the 2010 Act.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Restructuring of registered societies

72. Section 96 of the 2010 Act makes provision for the restructuring,³¹ winding up and dissolution of RSLs that are registered societies. Section 96(2) applies Chapter 2 of Part 10 to certain restructurings of a registered society as mentioned in section 97 of the 2010 Act. Chapter 2 applies the provisions of Chapter 1 of Part 10 (on disposal of land) to society restructurings to which section 97 applies. But restructurings where the RSL is converting into a registered company are not covered (see section 123(2)(a)).

73. Section 96(3) provides that the Regulator must not to give consent in the following cases unless the society has consulted its tenants, namely—

- the winding up of a registered society (under section 98), and
- the dissolution of a registered society (under section 99).

74. Section 97(1) (and Chapter 2 of Part 10) applies to certain restructurings, namely those that will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the society but not those where the RSL is converting into a registered company (see section 123(2)(a)). It provides that the Financial Conduct Authority (“the FCA”) may register the special resolution relating to the restructuring only if the Regulator consents to the special resolution and the RSL sends a copy of that consent to the FCA with the copy special resolution. Chapter 1 of Part 10 governs the obtaining of Regulator consent. See paragraphs 44 to 47 for an explanation of the operation of Chapter 1.

75. In addition, section 97(1) applies to restructurings where the RSL is converting into a registered company. In such a case, Chapter 2 of Part 10

³¹ The “restructurings” to which sections 96 and 97 of the 2010 Act apply are amalgamations of registered societies, the transfer of engagements between registered societies and the conversion into or amalgamation of a registered society with a registered company – see the definition of “restructuring provision” in section 97(1). See also the amended definition, updating references to the Co-operative and Community Benefit Societies and Credit Unions Act 1965 to references to the Co-operative and Community Benefit Societies Act 2014, in section 6(3) of the Bill (see new section 96A(4)).

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

does not apply (and so Chapter 1 of that Part does not apply either). The FCA may register the special resolution only if the Regulator consents and the society sends a copy of that consent with the copy special resolution.

76. Section 97(2) applies to all restructurings and provides that a new body created, or to whom an RSL's engagements are transferred, by virtue of a restructuring is to be included in the register of registered social landlords.³²

77. Section 96 is amended by section 6(2) of the Bill. That subsection will repeal subsections (2) and (3) of section 96. These repeals are consequential on the removal of the need for Regulator's consent. In addition, what was Chapter 2 of Part 10 is repealed (by section 6(15) of the Bill)³³ as the requirements it imposed are now imposed directly in new section 96A and in the new version of section 97 (inserted by section 6(3) and (4) of the Bill). In addition, the tenant consultation requirements are now incorporated directly into sections 98 and 99 (see further below).

78. Section 6(3) will insert a new section 96A into Part 8 of the 2010 Act. This new section applies where a registered society proposes to restructure³⁴ and, as a result of that restructuring, a tenant under a Scottish secure tenancy will cease to be a tenant of the society. This new section imposes a duty on the society to comply with sections 115 to 120 of Part 10 of the 2010 Act (as those sections will be amended by section 4 of the Bill). Those sections, which apply to certain disposals of land by an RSL, are applied to the restructuring of an RSL that is a registered society by virtue of section 96A(3) with the modification in that subsection.³⁵ Those sections

³² Established under Part 2 of the 2010 Act and maintained by the Regulator.

³³ See also paragraphs 110 to 112 below.

³⁴ But "restructure" here does not include the conversion of the registered society into a registered company.

³⁵ The modification relates to when notice of the results of the tenant ballot or the seeking of tenant's written agreement is to be given to the Regulator under section 115A(2).

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

require the RSL to consult the tenants affected by the restructuring and to then seek their agreement to it, either by ballot or by written agreement.³⁶

79. Section 6(4) will substitute for section 97 of the 2010 Act a new version. This section applies to all restructurings by RSLs that are registered societies, not just those covered by section 96A.

80. Section 97(2) provides that, where an RSL proposes a restructuring to which section 96A applies,³⁷ the FCA may register the special resolution relating to the restructuring only if the RSL confirms it complied with its duty to consult its affected tenants under section 115, that it sought the agreement of those tenants under section 115A(1) and that a majority of these tenants agreed to the restructuring (see new section 97(3)).

81. In the case of all restructurings, and not just those to which section 96A applies, the RSL must also give the Regulator notice of the special resolution sent to the FCA. Where section 96A applies, that notice must be given no later than 28 days after the copy special resolution is sent to the FCA.

82. Section 97(5) re-enacts the provision in section 97(2) of the 2010 Act which provides that a new body created, or to whom an RSL's engagements are transferred, by virtue of a restructuring is to be included in the register of registered social landlords.

Voluntary winding up of registered societies

83. Section 98 of the 2010 Act covers the voluntary winding up of RSLs that are registered societies and provides that a resolution relating to the winding up is not valid unless the Regulator consents and the society sends a copy of that consent to the FCA with the special resolution. By virtue of section 96(3) of the 2010 Act, the Regulator can give consent only where the RSL has consulted its tenants.

³⁶ See paragraphs 55 to 63 above for a full explanation of Chapter 1 of Part 10 and the amendments made to it by section 4 of the Bill.

³⁷ And which therefore requires the RSL to seek the agreement of affected tenants.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

84. Section 6(5) of the Bill will replace section 98 of the 2010 Act with a new version. Under this new section 98, the need for the Regulator's consent will be removed. Instead, the RSL will be obliged to consult its tenants on the proposed voluntary winding up. In addition, the resolution for the winding up is valid only if the RSL confirms to the FCA that it consulted its tenants when sending the copy resolution to the FCA.

85. Subsections (4) to (6) of new section 98 make provision additional to that currently made by section 98. Section 98(4) places the RSL under a duty to notify the Regulator of the voluntary winding up. Section 98(5) gives the Regulator a duty to issue guidance about tenant consultation under this section. And section 98(6) requires the RSL, when consulting its tenants, to have regard to that guidance.

Dissolution of registered societies

86. Section 99 of the 2010 Act covers the dissolution of RSLs that are registered societies and provides that the FCA may register an instrument of dissolution and advertise the dissolution only if the Regulator consents and the society sends a copy of that consent to the FCA with the instrument. As for section 98, the Regulator can give consent only where the RSL has consulted its tenants on the dissolution (by virtue of section 96(3)).

87. Section 6(6) will replace section 99 of the 2010 Act with a new version. Under this new section 99, the need for the Regulator's consent will be removed. Instead, the RSL will be under a duty to consult its tenants on the proposed dissolution. In addition, the FCA may register the instrument of dissolution and advertise the dissolution only if the RSL confirms to the FCA that it consulted its tenants when sending the instrument to the FCA.

88. As for new section 98, subsections (4) to (6) of new section 99 make provision additional to that currently made. Section 99(4) places the RSL under a duty to notify the Regulator of the dissolution. Section 99(5) gives the Regulator a duty to issue guidance about tenant consultation under this section. And section 99(6) requires the RSL, when consulting its tenants, to have regard to that guidance.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Restructuring of companies

89. Section 100 of the 2010 Act makes provision for the restructuring and winding up of RSLs that are registered companies (so serves a similar purpose to section 96 for RSLs that are registered societies). Section 100(2) applies Chapter 2 of Part 10 to the restructuring of a registered company as mentioned in section 101 of the 2010 Act. Chapter 2 applies the provisions of Chapter 1 of Part 10 (on disposal of land) to company restructurings to which section 101 applies.

90. Section 100(3) provides that the Regulator may not give consent in the following cases unless the society has consulted its tenants, that is—

- the conversion of a company into a registered society (under section 102),
- a voluntary arrangement relating to a company (under section 103), and
- the voluntary winding up of a company (under section 104).

91. Section 100(2) and section 101 (and, therefore, Chapter 2 of Part 10) apply to certain company restructurings, namely—

- restructurings made following an order under section 899 of the Companies Act 2006 (“the 2006 Act”) and which are of a type mentioned in section 900(1) of that Act,³⁸ and
- which will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the RSL.

92. By virtue of section 123(2)(b) of the 2010 Act, restructurings where the RSL is being wound up or is in administration are not covered by Chapter 2 of Part 10 (although such restructurings still require consent under section 101).

³⁸ Section 900(1) relates to restructurings that involve a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and which will result in the whole or any part of the undertaking or the property of the company being transferred to another company.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

93. Section 101(1) goes on to provide that the order under section 899 or 900 of the 2006 Act which will result in the company being restructured has effect only if the Regulator consents and the RSL sends a copy of that consent to the registrar of companies with the copy of the order (which section 900(6) of the 2006 Act requires).

94. Section 101(2) applies to all restructurings where an order is made under section 900 of the 2006 Act (so restructurings of a type mentioned in section 900(1)) and provides that where the whole or any part of the undertaking and property and liabilities of the RSL are transferred to another company, that other company is to be included in the register of registered social landlords.³⁹

95. Section 100 is amended by section 6(7) of the Bill. That subsection will repeal subsections (2) and (3) of section 100. These repeals are consequential on the removal of the need for Regulator's consent. In addition, what was Chapter 2 of Part 10 is repealed (by section 6(15) of the Bill)⁴⁰ as the requirements it imposes are now imposed directly in new section 100A and in the new version of section 101 inserted by section 6(8) and (9) of the Bill. In addition, the tenant consultation requirements are now incorporated directly into sections 102, 103 and 104 (see further below).

96. Section 6(8) will insert a new section 100A into Part 8 of the 2010 Act. This new section applies where a company which is an RSL proposes to restructure and, as a result of that restructuring, a tenant under a Scottish secure tenancy will cease to be a tenant of the company. Restructurings where the RSL is being wound up or is in administration are not, however, covered.

97. This new section imposes a duty on the RSL to comply with sections 115 to 120 of Part 10 of the 2010 Act. As explained above in relation to the restructuring of registered societies, those sections, which apply to certain disposals of land by an RSL, are applied to the restructuring of an RSL that is a registered company by virtue of section 100A(3) with the modification

³⁹ Established under Part 2 of the 2010 Act and maintained by the Regulator.

⁴⁰ See also paragraphs 110 to 112 below.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

in that subsection.⁴¹ These sections require the RSL to consult the tenants affected by the restructuring and to then seek their agreement to it, either by ballot or by written agreement.⁴²

98. Section 6(9) will substitute for section 101 of the 2010 Act a new version. This section applies to all restructurings by RSLs that are registered companies, not just those covered by section 100A.

99. Section 101(2) (read with section 101(3)) provides that, where an RSL proposes a restructuring to which section 100A applies,⁴³ the court order relating to the restructuring has effect only if the RSL confirms it complied with its duty to consult its affected tenants under section 115, that it sought the agreement of those tenants under section 115A(1) and that a majority of these tenants agreed to the restructuring.

100. In the case of all restructurings, and not just those to which section 100A applies, the RSL must also give the Regulator notice of the restructuring. Where section 100A applies, that notice must be given no later than 28 days after the court order is made.

101. Section 101(5) re-enacts the provision in section 101(2) of the 2010 Act which provides that that where the whole or any part of the undertaking and property and liabilities of the RSL are transferred to another company, that other company is to be included in the register of registered social landlords.⁴⁴

⁴¹ The modification relates to when notice of the results of the tenant ballot or the seeking of tenant's written agreement is to be given to the Regulator under section 115A(2).

⁴² See paragraphs 55 to 63 above for a full explanation of Chapter 1 of Part 10 and the amendments made to it by section 4 of the Bill.

⁴³ And which therefore requires the RSL to seek the agreement of affected tenants.

⁴⁴ Established under Part 2 of the 2010 Act and maintained by the Regulator.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Conversion of company into a registered society

102. The conversion of an RSL that is a company into an RSL that is a registered society is covered by section 102 of the 2010 Act. That section provides that the special resolution relating to the conversion has effect only if the Regulator consented to it before it was passed and the RSL sends a copy of that consent along with the resolution to the registrar of companies. By virtue of section 100(3), the Regulator may consent only where the RSL consulted its tenants on the conversion.

103. The existing section 102(2) makes provision for the inclusion in the register of registered social landlords of the new registered society created as a result.

104. Section 6(10) of the Bill will replace section 102 with a new version. The main difference between the current version and the new one is the removal of the need for the Regulator's consent.

105. The new section 102(2) will place a duty on the RSL to consult its tenants on the proposed conversion into a registered society. By virtue of subsection (3), the special resolution relating to the conversion has effect only if the RSL confirms it did so, and sends a copy of that confirmation to the registrar of companies with the resolution. Under section 102(4), the RSL must give the Regulator notice of the sending of the special resolution to the registrar. Section 102(5) re-enacts section 102(2) and provides for the inclusion of the new registered society in the register of registered social landlords. Finally, subsections (6) and (7) require the Regulator to issue guidance about tenant consultation and require the RSL to have regard to that guidance when consulting its tenants.

Company voluntary arrangement

106. Section 103 of the 2010 Act applies to voluntary arrangements under Part 1 of the Insolvency Act 1986⁴⁵ by RSLs that are registered companies and provides that the arrangement does not take effect unless the

⁴⁵ A "voluntary arrangement" is a proposal (made by either the directors or, if the company is being wound up or is in administration, by the liquidator or by the administrator) to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Regulator consents. By virtue of section 100(3), the Regulator may consent only where the RSL consulted its tenants on the arrangement.

107. Section 6(11) of the Bill will replace this section with a new version, the main change being the removal of the need for Regulator's consent. In place of that, section 103(2) will place a duty on the RSL to consult its tenants on the voluntary arrangement. Under subsection (3), the arrangement does not take effect unless the RSL did so. The RSL must give the Regulator notice of the arrangement as soon as reasonably practicable after it takes effect (section 103(4)). Section 103(5) requires the Regulator to issue guidance about tenant consultation and section 103(6) requires the RSL to have regard to that guidance when consulting its tenants.

Voluntary winding up of companies

108. Section 104 of the 2010 Act makes provision where an RSL that is a registered company is being voluntarily wound up under the Insolvency Act 1986 and provides that the special resolution for the winding up is valid only if the Regulator consents and the RSL sends a copy of the consent (with the required copy resolution) to the registrar of companies. By virtue of section 100(3), the Regulator may consent only where the RSL consulted its tenants on the winding up.

109. Section 6(12) of the Bill will (by substituting for section 104 a new version of that section) remove the need for Regulator's consent and, instead, place a direct duty on the RSL to consult its tenants before passing the special resolution relating to the winding up (section 104(2)). The special resolution is valid only if the RSL confirms it consulted its tenants and sends a copy of that confirmation to the registrar of companies along with the copy resolution. The RSL will also be required to notify the Regulator that the copy resolution has been sent to the registrar (see section 104(4)). Finally, subsections (5) and (6) of new section 104 require the Regulator to issue guidance on tenant consultation under that section and require the RSL to have regard to it.

Chapter 2 of Part 10 of the 2010 Act

110. The amendments that will be made to Part 8 of the 2010 Act make Chapter 2 of Part 10 redundant. Section 123 of the 2010 Act applies Chapter 1 of Part 10 to the restructuring of registered societies under

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

section 97 and to the restructuring of companies under section 101. The substantive provisions of section 123 will now, as a result of the amendments in section 6(3), (4), (8) and (9) of the Bill, be placed in Part 8 of the 2010 Act.

111. Section 124 of the 2010 Act currently provides that any failure by the Regulator or an RSL to comply with a provision of Chapter 1 of Part 10 (as applied by section 123) does not invalidate the Regulator's consent to the restructuring. Regulator's consent will no longer be required. And the consequences for a failure by the RSL will be dealt with by section 97(2) and (3) and section 101(2) and (3) (as amended). So section 124 is no longer necessary.

112. Accordingly section 6(15) will repeal Chapter 2 of Part 10.

Section 165 of the 2010 Act – definition of “registered society”

113. Section 6(16) of the Bill will amend the definition of “registered society” in section 165 of the 2010 Act so that it refers to the Co-operative and Community Benefit Societies Act 2014 rather than the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (which has been repealed).

Section 7 – Registered social landlord becoming a subsidiary of another body

114. Part 8 of the 2010 Act also makes provision about an RSL that proposes to become a subsidiary of another body. Section 104A makes provision where the RSL is either a registered society or a registered company. Subsection (2) provides that an arrangement under which such an RSL is to become a subsidiary of a body of which it is not currently a subsidiary has effect only if the Regulator consents before the arrangement is completed. Subsection (3) provides that Chapter 3 of Part 10 has effect for the purposes of Regulator's consent and that Chapter essentially applies Chapter 1 of Part 10 to the obtaining of that consent.

115. Section 7 of the Bill will replace section 104A with a new version, under which Regulator's consent will no longer be required. Instead, under section 104A(2), the RSL will be under a duty to comply with sections 115 to 120 of Chapter 1 of Part 10 directly, as applied by section 104A(3). In

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

addition, for the arrangement under which the RSL will become a subsidiary to have effect, the conditions in section 104A(4) must be met. Those conditions are that the RSL complied with its duty to consult its affected tenants under section 115, that it sought the agreement of those tenants under section 115A(1) and that a majority of these tenants agreed to the RSL becoming a subsidiary (see section 104A(4)).

116. Section 104A(5) re-enacts the provision currently in section 124A(2) under which the Regulator must determine that the duty to comply with the tenant consultation and tenant approval provisions of Chapter 1 of Part 10 do not apply (or should cease to apply) where the Regulator considers—

- that the RSL's viability is in jeopardy for financial reasons,
- that a person could take a step in relation to the RSL which would require to be notified to the Regulator under section 73 of the 2010 Act (being a step which could result in the insolvency of the RSL⁴⁶), and
- that making a determination would substantially reduce the likelihood of the person taking that step.

117. Section 104A(6) places a duty on the RSL to give notice of the arrangement under which the RSL will become a subsidiary to the Regulator no later than 28 days after the arrangement takes effect.

Chapter 3 of Part 10 of the 2010 Act

118. As with Chapter 2 of Part 10 of the 2010 Act, the amendments that will be made to Part 8 of the 2010 Act – in particular, to section 104A – make Chapter 3 of Part 10 redundant. Section 124A of the 2010 Act applies Chapter 1 of Part 10 to arrangements under which RSLs will become subsidiaries as it applies to disposals of land. The substantive provisions of section 124A will now, as a result of the amendments in section 7(2) of the Bill, be placed in section 104A of the 2010 Act.

119. Section 124B of the 2010 Act currently provides that any failure by the Regulator or an RSL to comply with a provision of Chapter 1 of Part 10

⁴⁶ Such steps include presenting a petition for the winding up of the RSL and applying for the RSL to be put into administration (see section 73(1)(b)).

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

(as applied by section 124A) does not invalidate the Regulator's consent to the arrangement. Regulator's consent will no longer be required. And the consequences for a failure by the RSL will be dealt with by section 104A(2)(b) and (4) (as amended). So section 124B is no longer necessary.

120. Accordingly section 7(3) will repeal Chapter 3 of Part 10.

Section 165 of the 2010 Act – definition of subsidiary

121. Section 7(4) of the Bill will amend the definition of “subsidiary” in section 165 of the 2010 Act so that it refers to the Co-operative and Community Benefit Societies Act 2014 rather than the Co-operative and Community Benefit Societies and Credit Unions Act 1968 (which has been repealed).

Further modification of regulation of social landlords

Section 8 – Power to modify functions of Scottish Housing Regulator

122. Section 8 of the Bill allows the Scottish Ministers, through the conferral on them of a regulation-making power, to further modify the functions of the Regulator in relation to social landlords (including registered social landlords).

123. Such regulations will be subject to the affirmative procedure in the Scottish Parliament.⁴⁷ Before Ministers lay the draft of any regulations under this section before the Parliament, they must consult the Regulator, tenants of social landlords or their representatives, social landlords or their representatives (such as the Scottish Federation of Housing Associations and the Glasgow and West of Scotland Forum of Housing Associations) and secured creditors of registered social landlords or their representatives (primarily being UK Finance, formerly the Council of Mortgage Lenders).

⁴⁷ So laid in draft and approved by a resolution of the Scottish Parliament before final regulations are made – see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA”).

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Local authority influence over registered social landlords

Section 9 – Power to reduce local authority influence over registered social landlords

124. In classifying RSLs as public bodies, the ONS indicated to the Scottish Government that another aspect of public sector control over RSLs was the potential involvement in them of local authorities and the ability of local authorities in some cases to exert a degree of influence over RSLs by having either the ability to appoint officers⁴⁸ of the RSL or by having certain voting rights, or by having both powers.

125. Section 9 of the Bill will allow the Scottish Ministers, through the exercise of a regulation-making power, to limit or remove the ability of local authorities to exert this sort of influence over RSLs. This section is similar to section 93 of the Housing and Planning Act 2016, enacted as part of the UK Government’s response to the classification, by the ONS, of private registered provider of social housing (“housing associations”) in England as public bodies.⁴⁹

126. Regulations under this section will be subject to the affirmative procedure.⁵⁰

General provision

Sections 10 and 11 – Commencement and Short title

127. Other than sections 10 and 11 themselves (which come into force on the day after Royal Assent), the Bill will be brought into force by commencement regulations. Such commencement regulations are made

⁴⁸ For the meaning of “officer” in relation to an RSL, see section 165 of the 2010 Act and paragraph 29 above.

⁴⁹ See [Classification announcement: "Private registered providers" of social housing in England](#)

⁵⁰ So laid in draft and approved by a resolution of the Scottish Parliament before final regulations are made – see section 29 of ILRA.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

by the Scottish Ministers and then laid before the Scottish Parliament, not being subject to either the negative or the affirmative procedure.⁵¹

⁵¹ See section 30 of ILRA.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Annex

This annex provides an illustrative draft of provisions of the Housing (Scotland) Act 2010 as they would be amended by the Housing (Scotland) (Amendment) Bill (as introduced in the Scottish Parliament on 4 September 2017). It has been prepared by the Scottish Government and is intended to assist the consideration of provisions in the Bill. It should not be taken as a definitive statement of the law as it would have effect if the Bill is enacted.

...

Part 5

Regulatory intervention

Managerial appointment

57 Appointment of manager for housing activities

- (1) This section applies where the Regulator, having made inquiries or otherwise, considers—
 - (a) that a social landlord ~~is, or is at risk of,~~ has failed, or is failing—
 - (i) to achieve a standard or an outcome set out in the Scottish Social Housing Charter,
 - (ii) to meet a performance improvement target,
 - (iii) to implement an approved performance improvement plan, or
 - (iv) to comply with an enforcement notice, and
 - (b) that a person needs to be appointed in order to ensure that the social landlord provides housing services ~~to an appropriate standard~~ in a way that will rectify the failure.
- (2) The Regulator may appoint, or require the social landlord to appoint, a manager to manage the landlord's housing activities generally, or such aspects of those activities as are necessary, for the purpose of rectifying the failure which the Regulator considers requires the appointment of the manager.
 - ~~(a) to manage its housing activities generally, or~~
 - ~~(b) to manage particular aspects of those activities.~~

Annex

- (3) Before appointing or requiring appointment of a manager for a local authority or a local authority landlord, the Regulator must—
- (a) consult—
 - (i) the local authority or local authority landlord,
 - (ii) such bodies representing local authorities as it thinks fits, and
 - (iii) the Accounts Commission for Scotland, and
 - (b) have regard to views expressed by those consulted by such time as the Regulator may specify.

58 Appointment of manager for financial or other affairs

- ~~(1) This section applies where the Regulator, having made inquiries or otherwise, considers that a person needs to be appointed in order to ensure that a registered social landlord manages its financial or other affairs to an appropriate standard.~~
- (1) This section applies where the Regulator, having made inquiries or otherwise, considers—
- (a) that a registered social landlord has failed, or is failing, to comply with—
 - (i) a duty imposed by this Act or by any other enactment, or
 - (ii) a requirement imposed on the landlord by the Regulator under this Act or any other enactment, and
 - (b) that a person needs to be appointed in order to ensure that the landlord manages its financial or other affairs in a way that will rectify the failure.
- (2) The Regulator may appoint, or require the registered social landlord to appoint, a manager to manage the landlord's financial or other affairs generally, or such aspects of those affairs as are necessary, for the purpose of rectifying the failure which the Regulator considers requires the appointment of the manager.
- ~~(a) to manage its financial and other affairs generally, or~~
 - ~~(b) to manage particular aspects of those affairs.~~

Annex

59 Appointment of manager: supplementary

- (1) It is for the Regulator to determine the terms on which a manager is to be appointed under section 57 or 58 (including, subject to subsection (1A), as to period of appointment and remuneration and expenses).
- (1A) The appointment is to be only for so long as is necessary to rectify the failure which gave rise to the manager's appointment.
- (2) It is for the social landlord to pay the manager's remuneration and expenses.
- (3) A manager has—
 - (a) general powers to do anything required to perform the manager's functions (including power to enter into agreements or do anything else which the social landlord has power to do), and
 - (b) such specific powers as the Regulator may specify.
- ~~(4) But a manager must comply with any direction by the Regulator about the performance of the manager's functions (and may be removed on failure to so comply).~~
- (4) The Regulator may give a manager directions about the rectification of the failure which gave rise to the manager's appointment.
- (4A) The manager—
 - (a) must comply with such directions,
 - (b) may be removed by the Regulator on failure to so comply.
- (5) A manager acts as the social landlord's agent and is accordingly not personally liable on an agreement entered into as manager.
- (6) Anyone dealing with a manager in good faith and for value need not inquire whether the manager is acting within the powers conferred by virtue of this section.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Annex

Registered social landlords: removal, suspension and appointment of officers etc.

60 General power to remove officers

- (1) The Regulator may remove an officer of a registered social landlord if the officer—
 - (a) is an undischarged bankrupt or is otherwise apparently insolvent,
 - (b) is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 (c.46) or equivalent legislation in Northern Ireland,
 - (c) is disqualified from being a charity trustee under section 69 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),
 - (d) is, because of a mental disorder, incapable of acting, or
 - ~~(e) is impeding the proper management of the registered social landlord because of absence or other failure to act.~~
 - (e) is, because of absence or other failure to act, failing to ensure that the registered social landlord is complying with—
 - (i) a duty imposed by this Act or by any other enactment,
 - (ii) a requirement imposed on the landlord by the Regulator under this Act or any other enactment.
- (2) Before removing an officer, the Regulator must give at least 14 days' notice of its intention to do so to—
 - (a) the officer, and
 - (b) the registered social landlord.
- (3) In this section “apparently insolvent” is to be construed in accordance with section 16 of the Bankruptcy (Scotland) Act 2016.

Annex

61 Suspension of officers etc. during or following inquiries

- (1) The Regulator, when making or having made inquiries, may suspend a responsible individual (pending decision on removal or otherwise) where it considers—
 - ~~(a) that there has been misconduct or mismanagement in a registered social landlord's financial or other affairs,~~
 - ~~(b) that the interests of a registered social landlord's tenants need protection,~~
 - ~~(c) that a registered social landlord's assets need protection,~~
 - (a) that the registered social landlord has failed, or is failing, to comply with—
 - (i) a duty imposed by this Act or by any other enactment, or
 - (ii) a requirement imposed on the landlord by the Regulator under this Act or any other enactment,relating to its housing activities or its financial or other affairs, or
 - (d) that the responsible individual—
 - (i) is, during a moratorium under section 75, obstructing the Regulator from performing its functions under Part 7, or
 - (ii) is not co-operating in accordance with section 84(2).
- (2) The Regulator, unless it considers the case to be one of urgency, must give at least 14 days' notice of its intention to suspend a responsible individual to—
 - (a) the responsible individual, and
 - (b) the registered social landlord.
- (3) A suspension ceases to have effect—
 - (a) if the Regulator removes the individual or lifts the suspension, or
 - (b) where the Regulator does not so act, on the day falling 6 months after the inquiries concerned are concluded.

Annex

- (4) The Regulator may give the registered social landlord directions about—
 - (a) the performance of a suspended individual's functions,
 - (b) any other matter arising from the suspension,and may appoint an individual, on such terms as it thinks fit, to perform the suspended individual's functions.
- (5) It is an offence for a suspended individual to take any action in relation to the management or control of—
 - (a) the registered social landlord concerned, or
 - (b) any other registered social landlord,without the Regulator's consent.
- (6) An individual guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

62 Removal of officers etc. following inquiries

- (1) The Regulator may remove a responsible individual where, having made inquiries, it considers—
 - ~~(a) that there has been misconduct or mismanagement in a registered social landlord's financial or other affairs,~~
 - ~~(b) that the interests of a registered social landlord's tenants need protection,~~
 - ~~(c) that a registered social landlord's assets need protection,~~
 - (a) that the registered social landlord has failed, or is failing, to comply with—
 - (i) a duty imposed by this Act or by any other enactment, or
 - (ii) a requirement imposed on the landlord by the Regulator under this Act or any other enactment,relating to its housing activities or its financial or other affairs, or
 - (d) that the responsible individual—
 - (i) is, during a moratorium under section 75, obstructing the Regulator from performing its functions under Part 7, or

Annex

- (ii) is not co-operating in accordance with section 84(2).
- (2) Before removing a responsible individual, the Regulator must give at least 14 days' notice of its intention to do so to—
 - (a) the responsible individual, and
 - (b) the registered social landlord.
- (3) It is an offence for a removed individual to take any action in relation to the management or control of—
 - (a) the registered social landlord concerned, or
 - (b) any other registered social landlord,without the Regulator's consent.
- (4) An individual guilty of such an offence is liable, on summary conviction, to—
 - (a) imprisonment for a term not exceeding 3 months,
 - (b) a fine not exceeding level 5 on the standard scale, or
 - (c) both.

63 Responsible individuals

"Responsible individual" (used in sections 61 and 62) means an officer or agent of a registered social landlord who appears to the Regulator—

- (a) to have been responsible for,
- (b) to have facilitated or otherwise contributed to, or
- (c) to have been privy to,

the ~~misconduct, mismanagement,~~ failure or other problem concerned.

64 Appeals against suspension or removal

- (1) An individual may appeal to the Court of Session against the Regulator's decision to—

Annex

- (a) remove the individual under section 60 or 62, or
 - (b) suspend the individual under section 61.
- (2) The Court may determine an appeal by—
- (a) confirming the decision,
 - (b) quashing the decision,
 - (c) remitting the case to the Regulator for reconsideration,
- and the Court's determination of the matter is final.

65 Appointment of new officers

- (1) The Regulator may appoint an individual as an officer of a registered social landlord—
- (a) in place of an officer it removes under section 60 or 62,
 - (b) where there are no officers,
 - (c) where—
 - (i) the registered social landlord has an insufficient number of officers to be able to appoint an officer under its constitution, and
 - (ii) the constitution does not provide a mechanism for appointing an officer in such circumstances, or
 - (d) if the Regulator considers that an additional officer is needed ~~for the proper management of the registered social landlord's~~ to rectify a failure by the registered social landlord to comply with—
 - (i) a duty imposed by this Act or by any other enactment, or
 - (ii) a requirement imposed on the landlord by the Regulator under this Act or any other enactment,relating to its financial or other affairs.
- (2) It is for the Regulator to determine the terms on which an officer is appointed (including, subject to subsection (2A), as to period of appointment and remuneration and expenses).

Annex

(2A) Where the officer is appointed by virtue of subsection (1)(d) to rectify a failure to comply with a duty or requirement, the appointment is to be only for so long as is necessary to so rectify the failure.

(3) The Regulator may require the registered social landlord to purchase and maintain personal indemnity insurance approved by the Regulator for the officer appointed.

“personal indemnity insurance” means insurance designed to indemnify against liability attaching to an individual in connection with any negligence, default, or breach of duty committed in the individual’s capacity as officer but does not include insurance with a provision—

(a) prohibited by section 68A(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),

(b) prohibited by section 234(3) of the Companies Act 2006 (c.46),
or

(c) which would be prohibited if the registered social landlord was a registered company or a charity.

(4) ~~The~~ Subject to subsection (4A), the Regulator may renew the appointment of an officer on expiry of any period of appointment so determined.

(4A) Where the officer was appointed by virtue of subsection (1)(d), subsection (2A) applies to the renewal of the appointment as it applies to the appointment.

(5) It is for the registered social landlord to pay the appointed officer’s remuneration and expenses.

(6) An appointed officer is entitled—

(a) to require a general meeting of the registered social landlord to be convened within 21 days of giving notice to the landlord’s officers of a request to that effect,

(b) to attend, speak and vote at such a general meeting (whether or not convened in pursuance of paragraph (a)),

(c) to move a resolution at such a general meeting (whether or not so convened), and

Annex

- (d) to resign or retire in accordance with the registered social landlord's constitution.
- (7) An appointment may be made despite any contrary restriction in the registered social landlord's constitution (and any such restriction contrary to anything done by virtue of this section is accordingly overridden in relation to the appointment concerned).

...

Part 7

Registered social landlords: insolvency etc.

Moratorium

78 Effect of moratorium

- (1) During a moratorium a registered social landlord's land may not be disposed of without the Regulator's consent.
- (2) Subsection (1)—
 - (a) applies to disposals by the registered social landlord and by any other person having power to dispose of the registered social landlord's land, but
 - (b) does not apply to a disposal ~~for which the Regulator's consent is not required because of section 108~~ of a type mentioned in paragraphs (a) to (g) and (i) to (k) of section 108(1).
- (3) The Regulator's consent to a disposal may be given—
 - (a) before or after the moratorium begins,
 - (b) subject to such conditions as the Regulator considers appropriate.
- (4) A purported disposal during a moratorium without consent is void.

...

Annex

Implementing proposals

87 Manager of registered society: extra powers

- (1) This section applies where a manager is appointed to implement proposals relating to a registered social landlord which is a registered society.
- (2) The manager may make and execute, on behalf of the society—
 - (a) an instrument providing for the amalgamation of the society with another registered society (“amalgamation instrument”), or
 - (b) an instrument transferring the society’s engagements.
- (3) An amalgamation instrument executed by a manager has the same effect as a resolution by the society under ~~section 50 of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12)~~ section 109 of the Co-operative and Community Benefit Societies Act 2014 (amalgamation of societies by special resolution).
- (4) An instrument transferring the engagements has the same effect as a transfer of engagements under ~~section 51 or 52 of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12) (and, in particular, has effect subject to section 54 of that Act)~~ section 110 or 112 of the Co-operative and Community Benefit Societies Act 2014.
- (5) The manager must send a copy of the instrument (signed by the manager) to the Financial Conduct Authority.
- (6) The copy instrument must be registered by that Authority and the instrument does not take effect until the copy is so registered.
- (7) A copy instrument must be sent for registration within 14 days of execution (but a copy registered after that period is valid).

...

Annex

Part 8

Registered social landlords: organisational change etc.

Change of name, office or constitution

92 Change of name or office

~~A registered social landlord must give the Regulator notice of any change to—~~

~~(a) its name, or~~

~~(b) its registered or principal office,~~

~~within 28 days of the change being made.~~

92 Change of name, office or constitution

A registered social landlord must give the Regulator notice of—

(a) any change to—

(i) its name, or

(ii) its registered or principal office,

(b) any amendment to its constitution (other than a change of name or office),

within 28 days of the change or amendment being made.

93 Change of constitution

~~An amendment to a registered social landlord's constitution (other than a change of name or office) is valid only if the Regulator consents to the amendment.~~

94 Registered society's rules: supplementary

~~(1) This section applies where a registered social landlord which is a registered society obtains the Regulator's consent under section 93 to an amendment of its rules.~~

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Annex

- ~~(2) A copy of the consent must accompany the copies of the amendment sent to the Financial Conduct Authority in accordance with section 10(1) of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12).~~
- ~~(3) The Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12) applies in relation to sections 92 and 93 and subsection (2) of this section as if those provisions were contained in section 10 of that Act.~~

95 Change of registered company's articles: supplementary

- ~~(1) This section applies where a registered social landlord which is a registered company obtains the Regulator's consent under section 93 to an amendment of its articles of association.~~
- ~~(2) A copy of the consent must accompany the copy resolution sent to the registrar of companies in accordance with section 30 of the Companies Act 2006 (c.46).~~

Registered societies: restructuring, winding up and dissolution

96 Restructuring, winding up and dissolution of registered societies

- (1) This group of sections applies to a registered social landlord—
- (a) which is a registered society, and
 - (b) whose inclusion in the register has been recorded by the Financial Conduct Authority.
- ~~(2) Chapter 2 of Part 10 makes provision for Regulator consent for the purpose of section 97.~~
- ~~(3) The Regulator must not give any other consent for the purposes of this group of sections unless satisfied that the society has consulted its tenants about the matter for which consent is needed.~~

Annex

96A Proposed restructuring of society

- (1) This section applies where the society proposes to pass a special resolution for the purposes of a restructuring provision where the restructuring—
 - (a) will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the society proposing the restructuring, and
 - (b) is a restructuring other than the conversion of the society into a company in accordance with section 112 of the Co-operative and Community Benefit Societies Act 2014.
- (2) The society must comply with sections 115 to 120 (as applied by subsection (3)) in relation to the proposed restructuring.
- (3) Sections 115 to 120 apply in relation to a proposed restructuring to which this section applies as they apply in relation to a proposed disposal to which section 107(4) applies, subject to the modification that section 115A(2) has effect as if, for paragraph (b), there were substituted—
 - “(b) before notice of a meeting at which the special resolution is intended to be proposed is given under section 111 or, as the case may be, 113 of the Co-operative and Community Benefit Societies Act 2014,”.
- (4) In this section and section 97, “restructuring provision” means any of the following provisions of the Co-operative and Community Benefit Societies Act 2014—
 - (a) section 109 (amalgamation),
 - (b) section 110 (transfer of engagements),
 - (c) section 112 (conversion into or amalgamation with registered company).

97 Restructuring of society

- ~~(1) The Financial Conduct Authority may register a special resolution passed by the society for the purposes of a restructuring provision only if—
 - ~~(a) the Regulator consents to the special resolution, and~~~~

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Annex

~~(b) a copy of the consent accompanies the copy special resolution sent to the Financial Conduct Authority for the purposes of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12).~~

~~“restructuring provision” means any of the following provisions of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12)—~~

~~section 50 (amalgamation)~~

~~section 51 (transfer of engagements)~~

~~section 52 (conversion into or amalgamation with registered company)~~

~~(2) Any new body created, or to whom engagements are transferred, in pursuance of the special resolution is to be included in the register (and is to be treated as so included pending such inclusion).~~

97 Restructuring of society

- (1) This section applies in relation to a special resolution passed by the society for the purposes of a restructuring provision.
- (2) Where the restructuring to which the special resolution relates is one to which section 96A applies, the Financial Conduct Authority may register the special resolution only if—
 - (a) the society confirms the matters mentioned in subsection (3), and
 - (b) a copy of the confirmation accompanies the copy special resolution sent to the Financial Conduct Authority for the purposes of the Co-operative and Community Benefit Societies Act 2014.
- (3) Those matters are that, before the special resolution was passed—
 - (a) the society complied with sections 115 and 115A(1) (as applied by section 96A(3)), and
 - (b) a majority of tenants—

Annex

- (i) voting in a ballot conducted under section 115A(1)(a) wish the restructuring to proceed, or, as the case may be,
 - (ii) whose written agreement to the restructuring was sought under section 115A(1)(b) have given that agreement.
- (4) The society must, as soon as reasonably practicable after sending the copy special resolution to the Financial Conduct Authority (and, in a case to which subsection (2) applies, no later than 28 days after doing so), give notice of the restructuring to the Regulator.
- (5) Any new body created, or to whom engagements are transferred, in pursuance of such a special resolution is to be included in the register (and is to be treated as so included pending such inclusion).

98 Voluntary winding up of society

~~A resolution for the voluntary winding up of the society under the Insolvency Act 1986 (c.45) is valid only if—~~

- ~~(a) the Regulator consents to the resolution before it is passed, and~~
- ~~(b) a copy of the consent accompanies the copy resolution sent to the Financial Conduct Authority for the purposes of section 30 of the Companies Act 2006 (c.46) (as applied by virtue of section 55 of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12) and section 84(3) of the Insolvency Act 1986 (c.45)).~~

98 Voluntary winding up of society

- (1) This section applies in relation to the voluntary winding up of the society under the Insolvency Act 1986.
- (2) The society must consult its tenants in relation to the proposed voluntary winding up before passing a resolution for the winding up of the society.
- (3) Such a resolution is valid only if—
 - (a) the society confirms that it consulted its tenants as mentioned in subsection (2), and

Annex

- (b) a copy of the confirmation accompanies the copy resolution sent to the Financial Conduct Authority for the purposes of section 30 of the Companies Act 2006 (as applied by virtue of section 123 of the Co-operative and Community Benefit Societies Act 2014 and section 84(3) of the Insolvency Act 1986).
- (4) The society must, as soon as reasonably practicable after sending the copy resolution to the Financial Conduct Authority, give notice of the voluntary winding up to the Regulator.
- (5) The Regulator must issue guidance in relation to consultation for the purpose of subsection (2).
- (6) A society must, in consulting tenants for that purpose, have regard to guidance issued under subsection (5).

99 Dissolution of society

~~The Financial Conduct Authority may register an instrument of dissolution of the society under section 58 of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12), or cause notice of the dissolution to be advertised under that section, only if—~~

- ~~(a) the Regulator consents to the dissolution, and~~
- ~~(b) a copy of the consent accompanies the instrument sent to the Financial Conduct Authority for the purposes of that section.~~

99 Dissolution of society

- (1) This section applies where the society proposes an instrument of dissolution of the society (within the meaning of section 119 of the Co-operative and Community Benefit Societies Act 2014).
- (2) The society must consult its tenants in relation to the proposed dissolution before seeking the approval of the instrument for the purposes of section 119 of that Act.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Annex

- (3) The Financial Conduct Authority may register an instrument of dissolution of the society under section 121 of the Co-operative and Community Benefit Societies Act 2014, or cause notice of the dissolution to be advertised under section 122 of that Act, only if—
 - (a) the society confirms that it consulted its tenants as mentioned in subsection (2), and
 - (b) a copy of the confirmation accompanies the instrument sent to the Financial Conduct Authority for the purposes of section 121 of that Act.
- (4) The society must, as soon as reasonably practicable after sending the instrument to the Financial Conduct Authority, give notice of the dissolution to the Regulator.
- (5) The Regulator must issue guidance in relation to consultation for the purpose of subsection (2).
- (6) A society must, in consulting tenants for that purpose, have regard to guidance issued under subsection (5).

Companies: restructuring and winding up

100 Restructuring and winding up of companies

- (1) This group of sections applies to a registered social landlord which is a registered company.
- ~~(2) Chapter 2 of Part 10 makes provision for Regulator consent for the purpose of section 101.~~
- ~~(3) The Regulator must not give any other consent for the purposes of this group of sections unless satisfied that the company has consulted its tenants about the matter for which consent is needed.~~

100A Restructuring by company: proposed restructuring

- (1) This section applies where—
 - (a) a court order is made in respect of the company under section 896 of the Companies Act 2006,

Annex

- (b) the meeting summoned by the court order is to agree a restructuring of a type mentioned in section 900(1) of that Act, and
- (c) the restructuring—
 - (i) will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the company in respect of which the order is made, and
 - (ii) that company is not being wound up and is not in administration.
- (2) The company must comply with sections 115 to 120 (as applied by subsection (3)) in relation to the proposed restructuring.
- (3) Sections 115 to 120 apply in relation to a proposed restructuring to which this section applies as they apply in relation to a proposed disposal to which section 107(4) applies, subject to the modification that section 115A(2) has effect as if, for paragraph (b), there were substituted—
 - “(b) before the meeting summoned by the court order under section 896 of the Companies Act 2006 takes place,”.

101 Restructuring of company

- ~~(1) A court order made in respect of the company under section 899 or 900 of the Companies Act 2006 (c.46) has effect only if—
 - ~~(a) the Regulator consents to the order before it is made, and~~
 - ~~(b) a copy of the consent accompanies the copy of the order delivered to the registrar of companies in accordance with section 900(6) of the Companies Act 2006 (c.46).~~~~
- ~~(2) Where the whole or any part of the undertaking and property and liabilities of the company are transferred to another company in pursuance of an order under section 900 of the Companies Act 2006 (c.46), that other company is to be included in the register (and is to be treated as so included pending such inclusion).~~

Annex

101 Restructuring of company

- (1) This section applies where—
 - (a) a court order is made in respect of a company under section 899 or 900 of the Companies Act 2006, and
 - (b) the restructuring to which the order relates is of a type mentioned in section 900(1) of that Act.
- (2) Where section 100A applies in relation to a restructuring, a court order mentioned in subsection (1) in relation to the same restructuring has effect only if—
 - (a) the company confirms the matters mentioned in subsection (3), and
 - (b) a copy of the confirmation accompanies the copy of the order delivered to the registrar of companies in accordance with section 900(6) of the Companies Act 2006.
- (3) The matters are that, before the order was made—
 - (a) the company complied with sections 115 and 115A(1) (as applied by section 100A(3)), and
 - (b) a majority of tenants—
 - (i) voting in a ballot conducted under section 115A(1)(a) wish the restructuring to proceed, or, as the case may be,
 - (ii) whose written agreement to the restructuring was sought under section 115A(1)(b) have given that agreement.
- (4) The company must, as soon as reasonably practicable after the order is made (and, in a case to which subsection (2) applies, no later than 28 days after that event), give notice of the restructuring to the Regulator.
- (5) Where the whole or any part of the undertaking and property and liabilities of the company are transferred to another company in pursuance of an order under section 900 of the Companies Act 2006, that other company is to be included in the register (and is to be treated as so included pending such inclusion).

Annex

102 Conversion of company into a registered society

- ~~(1) A special resolution by the company under section 53 of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12) has effect only if—~~
- ~~(a) the Regulator consents to the special resolution before it is passed, and~~
 - ~~(b) a copy of the consent accompanies the resolution sent to the registrar of companies in accordance with section 53(4) of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12).~~
- ~~(2) The new registered society created in pursuance of that resolution is to be included in the register (and is to be treated as so included pending such inclusion).~~

102 Conversion of company into a registered society

- (1) This section applies in relation to the conversion of the company into a registered society under section 115 of the Co-operative and Community Benefit Societies Act 2014.
- (2) The company must consult its tenants on the proposed conversion before passing a special resolution for the conversion of the company into a registered society under section 115 of that Act.
- (3) Such a special resolution has effect only if—
 - (a) the company confirms that it consulted its tenants as mentioned in subsection (2), and
 - (b) a copy of the confirmation accompanies the resolution sent to the registrar of companies in accordance with section 115(5) of Co-operative and Community Benefit Societies Act 2014.
- (4) The company must, as soon as reasonably practicable after sending the resolution to the registrar of companies, give notice of the conversion to the Regulator.
- (5) The new registered society created in pursuance of the resolution is to be included in the register (and is to be treated as so included pending such inclusion).

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Annex

- (6) The Regulator must issue guidance in relation to consultation for the purpose of subsection (2).
- (7) A company must, in consulting tenants for that purpose, have regard to guidance issued under subsection (6).

103 Company voluntary arrangement

~~A voluntary arrangement under Part 1 of the Insolvency Act 1986 (c.45) in relation to the company does not take effect under section 5 of that Act unless the Regulator consents to the voluntary arrangement.~~

103 Company voluntary arrangement

- (1) This section applies in relation to a voluntary arrangement under Part 1 of the Insolvency Act 1986 in relation to the company.
- (2) The company must consult its tenants about the voluntary arrangement before the arrangement is approved under section 4 of that Act.
- (3) Such a voluntary arrangement does not take effect under section 5 of the Insolvency Act 1986 unless the company has consulted its tenants as mentioned in subsection (2).
- (4) The company must, as soon as reasonably practicable after the voluntary arrangement takes effect, give notice of the arrangement to the Regulator.
- (5) The Regulator must issue guidance in relation to consultation for the purpose of subsection (2).
- (6) A company must, in consulting tenants for that purpose, have regard to guidance issued under subsection (5).

104 Voluntary winding up of company

~~A special resolution for the voluntary winding up of the company under the Insolvency Act 1986 (c.45) is valid only if~~

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Annex

- ~~(a) the Regulator consents to the special resolution before it is passed, and~~
- ~~(b) a copy of the consent accompanies the copy resolution sent to the registrar of companies in accordance with section 30 of the Companies Act 2006 (c. 46).~~

104 Voluntary winding up of company

- (1) This section applies in relation to the voluntary winding up of the company under the Insolvency Act 1986.
- (2) The company must consult its tenants on the proposed winding up before passing a special resolution for the winding up of the company under that Act.
- (3) Such a special resolution is valid only if—
 - (a) the company confirms that it consulted its tenants as mentioned in subsection (2), and
 - (b) a copy of the confirmation accompanies the copy resolution sent to the registrar of companies in accordance with section 30 of the Companies Act 2006.
- (4) The company must, as soon as reasonably practicable after sending the copy resolution to the registrar of companies, give notice of the voluntary winding up to the Regulator.
- (5) The Regulator must issue guidance in relation to consultation for the purpose of subsection (2).
- (6) A company must, in consulting tenants for that purpose, have regard to guidance issued under subsection (5).

Registered social landlord becoming a subsidiary of another body

104A Registered social landlord becoming a subsidiary of another body

- ~~(1) This section applies to a registered social landlord which is—
 - ~~(a) a registered society, or~~~~

Annex

- ~~(b) a registered company.~~
- ~~(2) An arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary has effect only if the Regulator consents to that arrangement before it is completed.~~
- ~~(3) Chapter 3 of Part 10 makes provision for Regulator consent for the purpose of this section.~~

104A Registered social landlord becoming a subsidiary of another body

- (1) This section applies where a registered social landlord which is a registered society or a registered company proposes to enter into an arrangement under which the landlord will become a subsidiary of a body of which it is not currently a subsidiary.
- (2) Subject to subsection (5)—
 - (a) the registered social landlord must comply with sections 115 to 120 (as applied by subsection (3)) in relation to the arrangement, and
 - (b) the arrangement has effect only if the conditions in subsection (4) are met.
- (3) Sections 115 to 120 apply in relation to a proposed arrangement to which this section applies as they apply in relation to a proposed disposal to which section 107(4) applies.
- (4) The conditions are that, before the arrangement was completed—
 - (a) the registered social landlord complied with sections 115 and 115A(1) (as applied by subsection (3)), and
 - (b) a majority of tenants—
 - (i) voting in a ballot conducted under section 115(1)(a) wish the arrangement to proceed, or, as the case may be,
 - (ii) whose written agreement to the arrangement was sought under section 115A(1)(b) have given that agreement.

Annex

- (5) The Regulator must determine that subsections (2) and (3) are not, or are to cease, to apply in relation to an arrangement where the Regulator considers that—
- (a) the registered social landlord's viability is in jeopardy for financial reasons,
 - (b) a person could take a step in relation to the landlord which would require to be notified to the Regulator under section 73, and
 - (c) the determination under this subsection would substantially reduce the likelihood of a person taking such a step.
- (6) The registered social landlord must, as soon as reasonably practicable after the arrangement takes effect (and no later than 28 days after that event), give notice of the arrangement to the Regulator.

Winding up petition

105 Regulator's power to petition for winding up

- ~~(1) This section applies to a registered social landlord which is—~~
- ~~(a) a registered society, or~~
 - ~~(b) a registered company.~~
- ~~(2) The Regulator may present a petition for the winding up of the registered social landlord under the Insolvency Act 1986 (c.45) on the ground—~~
- ~~(a) that the registered social landlord is failing properly to carry out its objects,~~
 - ~~(b) that the registered social landlord is unable to pay its debts within the meaning of section 123 of that Act, or~~
 - ~~(c) the Regulator has directed the registered social landlord under section 67 to transfer all its assets to another registered social landlord.~~

Annex

Asset transfer on dissolution or winding up

106 Asset transfer on dissolution or winding up

- (1) This section applies to a registered social landlord—
 - (a) which is a registered society dissolved as mentioned in ~~section 55(a) or (b) of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12)~~ section 119 or 123 of the Co-operative and Community Benefit Societies Act 2014, or
 - (b) which is a registered company wound up under the Insolvency Act 1986 (c.45).
- (2) Any surplus assets available after the registered social landlord's liabilities have been discharged are to be transferred to such other registered social landlord as the Regulator directs.
- (3) The Regulator must—
 - (a) before making a direction, consult the tenants of any houses to be included in the transfer, and
 - (b) when making a direction, have regard to any views expressed by those consulted by such time as the Regulator may specify.
- (4) The Regulator may discharge any liability of the registered social landlord in order to ensure that assets which would otherwise need to be sold to discharge that liability are instead transferred under subsection (2).
- (5) The Regulator may direct the transfer of assets from a registered social landlord which is a charity only if the recipient registered social landlord is a charity which the Regulator, after consulting the Office of the Scottish Charity Regulator, considers has the same or similar charitable purposes (within the meaning of section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10)).
- (6) The Regulator may direct the transfer of assets which the registered social landlord is under a duty to apply in accordance with section 19(1) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) only if the Regulator—
 - (a) consults with the Office of the Scottish Charity Regulator, and

Annex

- (b) after doing so, considers that the recipient registered social landlord will secure the proper application of those assets for the purposes which were set out in the transferor registered social landlord's entry in the Scottish Charity Register immediately before its removal from that register.
- (7) This section has effect despite anything in—
- ~~(a) the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12),~~
 - (a) the Co-operative and Community Benefit Societies Act 2014,
 - (b) the Insolvency Act 1986 (c.45),
 - (c) the Companies Act 2006 (c.46), or
 - (d) the registered social landlord's constitution.

Part 9

Disposal of land or assets by registered social landlords

107 Power to dispose of land or assets

- ~~(1) (1) A registered social landlord has power to dispose of land, or to dispose of any other asset by granting security over it, but may do so only if—~~
- ~~(a) the Regulator consents to the disposal, or~~
 - ~~(b) the Regulator's consent is not required because of section 108.~~
- ~~(2) The Regulator may—~~
- ~~(a) give general consent to certain disposals, or~~
 - ~~(b) give consent for particular purposes (for example, for particular registered social landlords, particular land or particular disposals).~~
- ~~(3) The Regulator's consent may be conditional.~~

Annex

107 Restrictions on power to dispose of land

- (1) A registered social landlord may make a disposal of land to which subsection (2) applies only if the landlord complies with section 110 in relation to the disposal.
- (2) This subsection applies to a disposal of land, other than a disposal by way of granting security over the land or any interest in it, which will not result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the landlord making the disposal.
- (3) A registered social landlord may make a disposal of land to which subsection (4) applies only if—
 - (a) the landlord complies with sections 115 to 120 in relation to the disposal, and
 - (b) a majority of tenants—
 - (i) voting in a ballot in relation to the disposal under section 115A(1)(a) wish the disposal to proceed, or, as the case may be,
 - (ii) whose written agreement to the disposal was sought under section 115A(1)(b) have given that agreement.
- (4) This subsection applies to a disposal of land which will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the landlord making the disposal.
- (5) This section does not apply where section 108 applies to the disposal.

108 ~~Disposals not requiring consent~~ Disposals not subject to section 107

- (1) ~~The Regulator's consent under this Part is not required for~~ This section applies to a disposal—
 - (a) by way of a lease under a Scottish secure tenancy (or what would be such a tenancy but for schedule 1 to the Housing (Scotland) Act 2001 (asp 10)),
 - (b) by way of a lease under a short Scottish secure tenancy,

Annex

- (c) by way of a lease under an assured tenancy or an assured agricultural occupancy,
 - (d) by way of a lease under what would be an assured tenancy but for any of paragraphs 3 to 8 and 12 of schedule 4 to the Housing (Scotland) Act 1988 (c.43),
 - (e) by way of an occupancy arrangement,
 - (g) made in pursuance of a direction given by the Regulator under section 67 or 106,
 - (h) for which the Regulator's consent is required under section 78,
 - (i) made in implementation of agreed proposals under section 86 or 87,
 - (j) arising from a restructuring ~~for which the Regulator's consent is required under Part 8~~ in relation to which Part 8 applies, or
 - (k) of such type and made in such manner as the Regulator may determine.
- (2) For the purposes of subsection (1)(e) an occupancy arrangement is an arrangement other than a lease—
- (a) under which a person has the lawful right to occupy living accommodation (within the meaning of section 194 of the Housing (Scotland) Act 2006 (asp 1)) which forms part of premises or a group of premises owned by the landlord, and
 - (b) where the occupants of the premises share with each other one or more of—
 - (i) a toilet,
 - (ii) personal washing facilities, or
 - (iii) facilities for the preparation or provision of cooked food.
- (3) Before making, revising or withdrawing a determination under subsection (1)(k), the Regulator must consult—
- (a) Ministers,
 - (b) registered social landlords or their representatives, and
 - (c) secured creditors of registered social landlords or their representatives.

Annex

- (4) The Regulator must make arrangements for bringing a determination (and any revision or withdrawal) to the attention of those affected by it.

109 ~~Notification where disposal consent not required~~ Notification of disposals

- ~~(1) If a registered social landlord makes a disposal which does not require the Regulator's consent it must notify the Regulator as soon as reasonably practicable.~~
- ~~(2) The Regulator may make a determination dispensing with the notification requirement.~~
- (1) A registered social landlord must notify the Regulator of any disposal of land or any other asset as soon as reasonably practicable (and, where section 107(4) applies, no later than 28 days) after the disposal is made.
- (2) The Regulator may make a determination—
 - (a) dispensing with the notification requirement in subsection (1),
 - (b) where section 107(4) applies, extending the period mentioned in that subsection.
- (3) A determination may be given generally or for particular purposes (and different determinations may be issued for different social landlords or for different areas or properties).
- (4) Before issuing, revising or withdrawing a general determination, the Regulator must consult—
 - (a) Ministers,
 - (b) tenants of social landlords or their representatives,
 - (c) registered social landlords or their representatives, and
 - (d) secured creditors of registered social landlords or their representatives.
- (5) The Regulator need not consult on a specific determination relating only to one or more particular registered social landlords or properties.

Annex

110 ~~Tenant consultation: other disposals~~ Tenant consultation where no change of landlord

~~(1) This section applies where—~~

~~(a) a registered social landlord proposes to make a disposal of land for which the Regulator's consent under this Part is required,~~

~~(aa) the proposed disposal is not by way of granting security over the land or any interest in it, and~~

~~(b) Part 10 does not apply in relation to the proposed disposal (see section 113).~~

(1) This section applies in relation to disposals of land by registered social landlords to which section 107(2) applies.

(2) The registered social landlord must, before making such a disposal—

(a) consult—

(i) tenants of any houses included in the disposal, and

(ii) any other person whom the Regulator requires the landlord to consult, and

(b) inform the Regulator of the views expressed by those consulted.

(3) The Regulator must issue guidance in relation to consultation under subsection (2).

(4) A registered social landlord must, in consulting tenants or other persons under subsection (2)(a), have regard to guidance issued by the Regulator under subsection (3).

111 Effect of disposals without consent

~~A disposal of land by a registered social landlord for which the Regulator's consent is required is void if the Regulator does not consent to the disposal before it is made.~~

Annex

111 Effect of disposals in breach of section 107

- (1) A disposal of land by a registered social landlord to which section 107(2) applies is void if the landlord did not comply with section 110(2)(a).
- (2) A disposal of land by a registered social landlord to which section 107(4) applies is void if—
 - (a) the landlord did not comply with section 115 or 115A(1), or
 - (b) a majority of tenants—
 - (i) voting in a ballot in relation to the disposal under section 115A(1)(a) did not wish the disposal to proceed, or, as the case may be,
 - (ii) whose written agreement to the disposal was sought under section 115A(1)(b) did not give that agreement.

112 De-registered bodies

This Part applies in relation to a disposal of land by a body removed from the register of social landlords as if that body were still registered.

But it only so applies in relation to land held by the body before it was so removed.

Part 9

Special procedure for disposals and restructuring resulting in change of landlord

Chapter 1

Disposals by a registered social landlord

113 Disposals resulting in change of landlord

- (1) This Chapter applies to a disposal of land by a registered social landlord to which section 107(4) applies.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Annex

- ~~(a) for which the Regulator's consent under Part 9 is required, and~~
 - ~~(b) as a result of which a tenant under a Scottish secure tenancy will cease to be a tenant of the registered social landlord making the disposal.~~
- ~~(2) Where this Chapter applies, the special procedure set out in sections 114 to 121 applies to the disposal.~~
- (3) Where this Chapter applies to only a part of a disposal of land, it applies to that part as to a separate disposal.

114 Regulator's initial decision

~~The Regulator may, having regard to any information available to it—~~

- ~~(a) refuse consent to the disposal, or~~
- ~~(b) direct the registered social landlord to consult with tenants in accordance with section 115.~~

115 Consultation with tenants

- (1) A registered social landlord proposing to make a disposal must, ~~after a direction given by the Regulator under section 114,~~ serve a notice on the tenants of each house included in the proposed disposal—
- (a) specifying to whom the proposed disposal is to be made,
 - (b) explaining the likely consequences of the disposal for the tenants,
 - (c) informing them of their right to make representations to the registered social landlord within such reasonable period (of not less than 28 days) as may be specified, and
 - (d) including such other details about the proposed disposal as the landlord considers appropriate.
- (2) The registered social landlord must, after considering any timeous representations made in pursuance of the notice served under subsection (1), serve a further notice on the tenants concerned—

Annex

- (a) informing them—
 - (i) of any significant changes to the proposed disposal, ~~and~~
 - (ii) ~~of their right to object to the proposed disposal within such reasonable period (of not less than 28 days) specified in the notice,~~ and
- (b) explaining that the disposal requires the ~~Regulator's consent~~ approval of tenants by way of ballot or written agreement.

115A Tenant approval

- (1) A registered social landlord must, in relation to a proposed disposal—
 - (a) conduct a ballot of tenants of houses included in the proposed disposal on the question of whether the tenants wish the disposal to proceed, or
 - (b) seek the written agreement of the tenants of houses included in the proposed disposal to the disposal.
- (2) The registered social landlord must—
 - (a) as soon as reasonably practicable after the ballot is completed or, as the case may be, the period for the giving of written agreement has expired, and
 - (b) before making the disposal,notify the Regulator of the results of the ballot or, as the case may be, the number of written agreements sought and the number given.

115B Guidance

- (1) The Regulator must issue guidance in relation to tenant consultation and approval under sections 115 and 115A.
- (2) Guidance issued under subsection (1) may in particular include guidance as to—
 - (a) how notices under section 115(1) and (2) are to be served and the information to be contained in such notices,

Annex

- (b) the consideration to be given to timeous representations made in pursuance of a notice served under section 115(1),
 - (c) the circumstances in which the approval of tenants under section 115A is to be sought by way of—
 - (i) ballot,
 - (ii) written agreement,
 - (d) how such ballots are to be conducted and how such written agreements are to be sought and given.
- (3) A registered social landlord must, in complying with sections 115 and 115A, have regard to guidance issued by the Regulator under subsection (1).

116 Regulator's consent

- ~~(1) Following consultation under section 115, the Regulator may—~~
- ~~(a) refuse consent to the disposal, or~~
 - ~~(b) consent to the disposal, subject to tenant authorisation.~~
- ~~(2) Tenant authorisation is given when—~~
- ~~(a) the Regulator—~~
 - ~~(i) directs the registered social landlord to conduct a ballot under section 118, or~~
 - ~~(ii) directs the registered social landlord to seek the written agreement of tenants in accordance with section 119, and~~
 - ~~(b) the outcome is approved by the Regulator under section 121.~~
- ~~(3) The Regulator when making its decision under subsection (1)—~~
- ~~(a) must have regard to the results of the consultation under section 115, and~~
 - ~~(b) may have regard to any other information available to it.~~
- ~~(4) Where the disposal is to a person other than a registered social landlord, the Regulator must not consent unless it is satisfied that a disposal to a registered social landlord is not appropriate.~~

Annex

~~(5) A consent under this section may be subject to such conditions as the Regulator thinks fit.~~

~~(6) Nothing in section 121 affects the Regulator's general discretion to refuse consent to a disposal under this section on grounds relating to whether a disposal is supported by tenants.~~

117 Further information

~~The Regulator may, before making its decision under section 121—~~

~~(a) require the registered social landlord concerned to provide any information—~~

~~(i) about representations and objections made by tenants and others in relation to the proposed disposal, or~~

~~(ii) otherwise relating to the proposed disposal,~~

~~which the Regulator considers relevant,~~

~~(b) direct the registered social landlord concerned—~~

~~(i) to carry out further consultation with tenants in addition to that carried out under section 115, and~~

~~(ii) to give the Regulator such information about that consultation as it may require.~~

118 Ballot

~~(1) A registered social landlord must, where given a direction to do so by the Regulator, conduct a ballot of tenants of houses included in the proposed disposal on the question of whether the tenants wish the disposal to proceed.~~

~~(2) The registered social landlord must inform the Regulator of the results of the ballot.~~

~~(3) The registered social landlord must, when conducting the ballot and informing the Regulator of the results, have regard to any guidance issued by Ministers about such matters.~~

Annex

119 Written agreements

- ~~(1) A registered social landlord must, where given a direction to do so by the Regulator, seek the written agreement to the disposal from tenants of houses included in the proposed disposal.~~
- ~~(2) The registered social landlord must provide the Regulator with information about every written agreement sought.~~

120 Unaffected tenants

- (1) In this section, “unaffected tenant” means a tenant of a house included in a proposed disposal of land who the registered social landlord expects to have vacated the house before the disposal is made.
- (2) The registered social landlord—
 - (a) need not give notice (or further notice) under section 115 to an unaffected tenant, and
 - (b) may exclude an unaffected tenant from any ballot conducted under ~~section 118~~ section 115A(1)(a), and
 - ~~(c) where directed to seek the written agreement of tenants under section 119, need not seek the agreement of an unaffected tenant.~~
 - (c) need not seek the agreement of an unaffected tenant when seeking written agreement under section 115A(1)(b).
- (3) But, where a registered social landlord does not give such a notice or so excludes a tenant from the ballot or does not seek the tenant’s written consent, the ~~Regulator must not decide whether to give approval under section 121 unless the registered social landlord has served notice on the Regulator confirming that the tenants concerned have all vacated the houses concerned~~ registered social landlord must confirm that the tenants concerned have all vacated the houses concerned when notifying the Regulator under section 115A(2).

Annex

121 Regulator's approval

~~(1) Where a direction is made under section 116(1)(b), the Regulator must—~~

~~(a) approve the disposal if satisfied—~~

~~(i) that a majority of tenants voting in a ballot conducted under section 118 wish the disposal to proceed, or as the case may be,~~

~~(ii) 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, or~~

~~(b) if not so satisfied, withdraw the conditional consent it gave under section 116(1)(b).~~

~~(2) The Regulator may, before making its decision under this section, require the registered social landlord concerned to provide information about—~~

~~(a) the ballot conducted under section 118, or~~

~~(b) the written agreements sought under section 119.~~

122 Purchaser protection

~~Failure by the Regulator or by a registered social landlord to comply with any provision of this Chapter in relation to a disposal does not invalidate the Regulator's consent to the disposal.~~

Chapter 2

Restructuring of a registered social landlord

123 Restructuring resulting in change of landlord

~~(1) This Chapter applies to a restructuring by a registered social landlord—~~

~~(a) in relation to which the Regulator's consent is required under section 97 or 101, and~~

Annex

~~(b) as a result of which a tenant under a Scottish secure tenancy will cease to be a tenant of the registered social landlord proposing the restructuring.~~

~~(2) Despite subsection (1), this Chapter does not apply where—~~

~~(a) a registered society converts into a company in accordance with section 52 of the Co-operative and Community Benefit Societies and Credit Unions Act 1965, or~~

~~(b) the registered social landlord in respect of which a court order is made under section 899 or 900 of the Companies Act 2006 (c.46) is being wound up or is in administration.~~

~~(3) The special procedure set out in sections 114 to 121 of Chapter 1 applies in relation to a restructuring to which this Chapter applies as it applies in relation to a disposal to which Chapter 1 applies.~~

124 Purchaser protection

~~Failure by the Regulator or by a registered social landlord to comply with any provision of sections 114 to 121 of Chapter 1 in relation to a restructuring does not invalidate the Regulator's consent to the restructuring.~~

Chapter 3

Registered social landlord becoming a subsidiary of another body

124A Regulator's consent

~~(1) The special procedure set out in sections 114 to 121 of Chapter 1 applies in relation to an arrangement to which the Regulator's consent is required under section 104A as it applies in relation to a disposal to which Chapter 1 applies.~~

~~(2) The Regulator must determine that the special procedure is not to apply or is to cease to apply where the Regulator considers that—~~

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Annex

- ~~(a) the registered social landlord's viability is in jeopardy for financial reasons,~~
 - ~~(b) a person could take a step in relation to the registered social landlord which would require to be notified to the Regulator under section 73, and~~
 - ~~(c) the determination under this subsection would substantially reduce the likelihood of a person taking such a step.~~
- (3) ~~Where the Regulator makes a determination under subsection (2), the Regulator may give or refuse consent to the arrangement.~~

124B Purchaser protection

~~Failure by the Regulator or by a registered social landlord to comply with any provision of sections 114 to 121 of Chapter 1 in relation to an arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary does not invalidate the Regulator's consent to the arrangement.~~

...

Part 17

Supplementary and final provisions

165 Interpretation

In this Act, except where the contrary intention appears—

“approved person” means a person approved under section 126,

“asset” includes property, rights and interests,

“assured agricultural occupancy” has the same meaning as in Part 1 of the Housing Act 1988 (c.50),

Annex

“assured tenancy” has the same meaning as in Part 2 of the Housing (Scotland) Act 1988 (c.43),

“body” includes a body of persons corporate or unincorporated and a partnership constituted under the law of Scotland,

“charity” means a body entered in the Scottish Charity Register,

“connected body”, and similar expressions, have the meaning given by section 164,

“constitution”—

- (a) in relation to a registered company, means its articles of association,
- (b) in relation to a registered society, means its rules,
- (c) in relation to a body of any other status, means the instrument which establishes it and states its purposes,

“disposal”, in relation to property, means any disposal of the property or any interest in it and, in particular, includes—

- (a) a sale or lease of the property or any interest in it,
- (b) granting security over the property or any interest in it, and
- (c) granting an option or otherwise entering into a contract for disposal,

“eligible house” has the meaning given by section 127(1),

“enforcement notice” has the meaning given by section 56,

“equal opportunities” has the same meaning as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46),

“financial management or governance target” has the meaning given by section 37,

“house” includes—

- (a) any part of a building occupied or intended to be occupied as a separate dwelling, and in particular includes a flat, and
- (b) any yard, garden, garage, outhouse and pertinent belonging to the house or usually enjoyed with it,

Annex

“housing accommodation” includes flats, lodging-houses and hostels,

“housing activities” means any activities undertaken by a social landlord in relation to housing services which are or may be provided by it,

“housing services” means providing housing accommodation and related services and includes anything done, or required to be done, in relation to—

- (a) the prevention and alleviation of homelessness,
- (b) the management of housing accommodation,
- (c) the provision of services for owners and occupiers of houses,
- (d) the provision and management of sites for gypsies and travellers, whatever their race or origin,

“inquiries” means inquiries under section 42,

“landlord” means any person who lets a house under a tenancy, and includes the landlord’s successors in title,

“Lands Tribunal” means the Lands Tribunal for Scotland,

“legislative registration criteria” has the meaning given by section 24,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39) and references to a local authority area are to be construed accordingly,

“local authority landlord” means a landlord which is a local authority, a joint board or joint committee of 2 or more local authorities, or the common good of a local authority, or any trust controlled by a local authority,

“Ministers” means the Scottish Ministers,

“offer to sell” has the meaning given by section 129,

“officer”—

Annex

- (a) in relation to a registered social landlord which is a registered company, has the meaning given by section 1173 of the Companies Act 2006 (c.46),
- (b) in relation to a registered social landlord which is a registered society, has the meaning given by ~~section 74 of that Act~~ section 149 of the Co-operative and Community Benefit Societies Act 2014,
- (c) in relation to a registered social landlord of any other status, means any person concerned in the management or control of the registered social landlord,

“owner”, in relation to any property, means a person who has right to the property whether or not that person has completed title,

“performance improvement plan” has the meaning given by section 55,

“performance improvement target” has the meaning given by section 34,

“personal indemnity insurance” has the meaning given by section 65(3),

“qualifying tenant” has the meaning given by section 127(2),

“register” has the meaning given by section 20(1),

“registered company” means a company for the purposes of the Companies Act 2006 (c.46),

“registered social landlord” means a body registered in the register,

“registered society” means a society registered under the ~~Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12)~~ Co-operative and Community Benefit Societies Act 2014,

“registered tenant organisation” has the meaning given by section 53(6) of the Housing (Scotland) Act 2001 (asp 10),

“registration criteria” has the meaning given by section 23,

Annex

“the Regulator” means the Scottish Housing Regulator established by section 1,

“regulatory intervention” is to be construed in accordance with section 52,

“regulatory registration criteria” has the meaning given by section 25,

“relevant regulators” has the meaning given by section 18(2),

“responsible individual” has the meaning given by section 63,

“revision” includes addition and replacement,

“tenancy” means an agreement under which a house is made available for human habitation, and “lease” and other related expressions are to be construed accordingly,

“tenant” means a person who leases a house from a landlord and whose right in the house derives directly from the landlord, and in the case of a joint tenancy means all the tenants,

“Scottish secure tenancy” has the same meaning as in the Housing (Scotland) Act 2001 (asp 10),

“Scottish Social Housing Charter” has the meaning given by section 31,

“secured creditor” in relation to a registered social landlord, means a creditor who holds a security over assets,

“security” means any security or charge (including a floating charge),

“short Scottish secure tenancy” has the same meaning as in the Housing (Scotland) Act 2001 (asp 10),

“social landlord” means a registered social landlord, local authority landlord or a local authority which provides housing services,

“subsidiary” has the same meaning 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)~~ Co-operative and Community Benefit Societies Act 2014,

“undischarged bankrupt” means an individual—

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Annex

- (a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),
- (b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it),
- (c) who is the subject of—
 - (i) a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 (c.66), the Bankruptcy (Scotland) Act 2016 or the Insolvency Act 1986 (c.45), or
 - (ii) a bankruptcy restrictions undertaking entered into under paragraph 7 of Schedule 4A to the Insolvency Act 1986, or
- (d) who has been adjudged bankrupt (and has not been discharged), or is subject to any other kind of order, arrangement or undertaking analogous to those described above, anywhere in the world.

...

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Housing (Amendment) (Scotland) Bill

Explanatory Notes

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -

www.scottish.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.scot/documents