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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 301**

**The Registered Social Landlords (Repayment Charges) (Scotland) Regulations 2018**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Registered Social Landlords (Repayment Charges) (Scotland) Regulations 2018 and come into force on 27th October 2018.

(2) In these Regulations—

“the 2004 Act” means the Tenements (Scotland) Act 2004<sup>(1)</sup>;

“the 2006 Act” means the Housing (Scotland) Act 2006;

“flat” has the meaning given to it by section 29(1) (interpretation) of the 2004 Act;

“notice” means a notice given in accordance with rule 9 (giving of notice) of schedule 1 of the 2004 Act;

“repayable amount” means the sum the property concerned is charged with under a repayment charge made in accordance with regulation 2(1);

“scheme costs” has the meaning given to it by rule 4.1 (meaning of “scheme costs”) of schedule 1 of the 2004 Act;

“scheme decision” has the meaning given to it by rule 1.4 (meaning of “scheme decision”) of schedule 1 of the 2004 Act; and

“tenement” has the meaning given to it by section 26 (meaning of tenement) of the 2004 Act.

**Repayment charges**

2.—(1) Subject to paragraph (2), a registered social landlord may make in favour of itself a charge (“a repayment charge”) to recover a sum which—

(a) the registered social landlord is entitled to recover from an owner of a flat in a tenement; and

(b) represents the owner’s share of scheme costs as determined in accordance with section 4A(3) of the 2004 Act.

(2) Paragraph (1) applies only where—

(a) the registered social landlord—

(i) is the owner of at least one flat in the tenement; and

(ii) has paid an owner’s share of scheme costs by enforcing a scheme decision under rule 8.3 (enforceability of scheme decisions) of schedule 1 of the 2004 Act; and

(b) the scheme costs are incurred as a result of a scheme decision in relation to any matter mentioned in rule 3.1 (basic scheme decisions) of schedule 1 of the 2004 Act, except costs for a common policy of insurance mentioned in rule 3.1(e).

### Notice of payment of share

3. Before paying an owner's share of scheme costs by enforcing a scheme decision under rule 8.3 of schedule 1 of the 2004 Act, the registered social landlord must give notice to the owner who has failed to pay a share of any scheme costs of the registered social landlord's intention to make the payment.

### Repayable amount

- 4.—(1) Subject to paragraph (2), the repayable amount is the lower of—
- (a) the amount recoverable under section 4A(5) of the 2004 Act; or
  - (b) any lower amount determined by the registered social landlord.
- (2) The repayable amount mentioned in paragraph (1) may not exceed £10,000.

### Repayment period

- 5.—(1) The registered social landlord must—
- (a) determine—
    - (i) the number of equal annual instalments, being no fewer than 5 and no more than 30, in which the repayable amount is to be paid; and
    - (ii) the date in each year on which the instalment becomes due; and
  - (b) notify the owner of its determination under paragraph (a).
- (2) The registered social landlord may—
- (a) determine that an equal annual instalment mentioned in paragraph (1) may be made by 12 equal monthly payments beginning on the date determined under paragraph (1)(a)(ii) and—
    - (i) on the same day of each subsequent month; or
    - (ii) if a subsequent month has no such day, on the final day of the month; and
  - (b) notify the owner of its determination under paragraph (a).

### Early repayment

- 6.—(1) The owner of, or any other person interested in, any property subject to a repayment charge may at any time redeem the repayable amount early by paying to the registered social landlord—
- (a) such sum as the owner or other person may agree with the registered social landlord; or
  - (b) failing such agreement, such a sum as an arbiter may determine.
- (2) The arbiter will be appointed by the Scottish Arbitration Centre<sup>(2)</sup>.
- (3) The Arbitration (Scotland) Act 2010<sup>(3)</sup> will govern any such arbitration.

### Form of repayment charge and discharge

7. A repayment charge must be in the form set out in Part 1 of the schedule.
8. A discharge of a repayment charge must be in the form set out in Part 2 of the schedule.

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(2) The Scottish Arbitration Centre is a company limited by guarantee, registered in Scotland with company number SC394779.  
(3) 2010 asp 1.

### **Registration of a repayment charge or discharge**

**9.**—(1) The registered social landlord must register a repayment charge in the appropriate land register.

(2) As soon as practicable after the repayable amount is paid, the registered social landlord must register a discharge of that repayment charge in the appropriate land register.

### **Effect of registering a repayment charge or discharge of a repayment charge etc.**

**10.**—(1) A registered repayment charge is conclusive evidence that the charge specified in it has been created in respect of the property specified in it.

(2) A registered repayment charge constitutes a charge on the property specified in it and has priority over—

- (a) all future burdens and incumbrances on the same property; and
- (b) all existing burdens and incumbrances on the same property except any charges created or arising under—
  - (i) any local Act authorising a charge for recovery of expenses incurred by a local authority;
  - (ii) schedule 9 of the Housing (Scotland) Act 1987<sup>(4)</sup>;
  - (iii) section 172 of the 2006 Act<sup>(5)</sup>; or
  - (iv) any Act authorising advances of public money.

(3) A registered repayment charge is enforceable at the instance of the registered social landlord against any person deriving title to the charged property.

(4) A registered repayment charge is not enforceable against—

- (a) a third party who acquires right to the charged property (whether title has been completed or not) in good faith and for value before the repayment charge is registered; or
- (b) any person deriving title from such third party.

(5) A registered discharge of a repayment charge is conclusive evidence that the charge concerned has been discharged.

### **Fees and expenses**

**11.** The registered social landlord may recover from the owner of the property concerned—

- (a) the amount of any fee payable in respect of registering a repayment charge or a discharge of such a charge; and
- (b) any administrative expenses incurred by it in connection with such registration.

### **Appeals**

**12.**—(1) A person aggrieved by a determination under regulation 4(1)(b) or 5(1)(a) or (2)(a) may appeal to the sheriff.

(2) On an appeal under this regulation, the sheriff may make such order relating to the repayable amount, number of instalments or frequency of instalments as the sheriff thinks fit.

(3) The decision of the sheriff on appeal under this regulation is final.

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<sup>(4)</sup> 1987 c.26.

<sup>(5)</sup> Section 172 was amended by section 150(4) of the Housing (Scotland) Act 2010 (asp 17) and sections 85(2), 90(1) and 91(1) of the Housing (Scotland) Act 2014.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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St Andrew's House,  
Edinburgh  
3rd October 2018

*KEVIN STEWART*  
Authorised to sign by the Scottish Ministers