

Draft Order laid before Parliament under section 115(1) of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2012 No.

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

HOUSING

The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012

Made - - - -

Coming into force - -

1st April 2012

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1), 113(2) and (5) and 114(1) of the Scotland Act 1998(a).

In accordance with section 115(1) of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

Citation, extent and commencement

1.—(1) This Order may be cited as the Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012.

(2) Paragraph 2 of the Schedule extends to England and Wales only.

(3) This Order comes into force on 1st April 2012.

Status of the Scottish Housing Regulator as part of the Scottish Administration

2. The Scottish Housing Regulator(b) is part of the Scottish Administration.

Construction of references to an office-holder in the Scottish Administration

3.—(1) Unless the context otherwise requires, references in the Scotland Act 1998 and any other enactment (except the Crown Suits (Scotland) Act 1857(c)) to an office-holder in the Scottish Administration are to be taken to include a reference to the Scottish Housing Regulator.

(a) 1998 c. 46.

(b) The Scottish Housing Regulator was established by section 1 of the Housing (Scotland) Act 2010 (asp 17).

(c) 1857 c. 44.

(2) Paragraph (1) applies whether or not the enactment defines the expression “office-holder in the Scottish Administration” by reference to the Scotland Act 1998 or any specific provision of that Act.

Modifications

4. The modifications specified in the Schedule have effect.

Parliamentary Under Secretary of State
Scotland Office
Ministry of Justice

Dover House,
London
Date

PART 1

MODIFICATIONS OF PUBLIC GENERAL ACTS

House of Commons Disqualification Act 1975 (c.24)

1. In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified)(a), insert at the appropriate place—

“The Scottish Housing Regulator”.

Housing Associations Act 1985 (c.69)

2. In section 2B of the Housing Associations Act 1985 (meaning of “registered housing association”, “registered social landlord” etc.), in paragraph (c) of the definition of “unregistered”(b), for “Part 3 of the Housing (Scotland) Act 2001 (asp 10)” substitute “Part 2 of the Housing (Scotland) Act 2010 (asp 17)”.

Insolvency Act 1986 (c.45)

3. In section 72G(b) of the Insolvency Act 1986 (exception in respect of social landlords)(c), for “Part 3 of the Housing (Scotland) Act 2001 (asp 10)” substitute “Part 2 of the Housing (Scotland) Act 2010 (asp 17)”.

Taxation of Chargeable Gains Act 1992 (c.12)

4.—(1) The Taxation of Chargeable Gains Act 1992 is amended as follows.

(2) In section 219(1)(c) (disposals following direction by housing regulator)(d), after “Housing and Regeneration Act 2008” insert “, section 106 of the Housing (Scotland) Act 2010”.

(3) In section 219(2) (disposals by housing related bodies: definitions)(e)—

(a) in the definition of “housing regulator”, after “the Regulator of Social Housing” insert—

“, the Scottish Housing Regulator”; and

(b) in paragraph (c) of the definition of “relevant housing provider”, for “section 57 of the Housing (Scotland) Act 2001” substitute “section 20(1) of the Housing (Scotland) Act 2010”.

(4) In section 259(3)(c) (gifts to housing associations: definition of “relevant housing provider”)(f), for “section 57 of the Housing (Scotland) Act 2001” substitute “section 20(1) of the Housing (Scotland) Act 2010”.

(a) There are amendments to Part 2 of Schedule 1 not relevant to this Order.

(b) Section 2B was inserted by the Housing Act 1996 (Consequential Provisions) Order 1996 (S.I. 1996/2325), Schedule 2, paragraph 15(2). The definition of “unregistered” was substituted by the Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866), Schedule 2, paragraph 40. There are other amendments to the section not relevant to this Order.

(c) Section 72G was inserted by the Enterprise Act 2002 (c. 40), Part 10, section 250(1) and amended by the Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866), Schedule 2, paragraph 61.

(d) Section 219(1) was substituted by the Housing Act 1996 (Consequential Provisions) Order 1996 (S.I. 1996/2325), Schedule 2, paragraph 20(2) and amended by the Housing and Regeneration Act 2008 (c.17), Schedule 9, paragraph 18(2). There are other amendments to the section not relevant to this Order.

(e) Section 219(2) was substituted by the Housing Act 1996 (Consequential Provisions) Order 1996 (S.I. 1996/2325), Schedule 2, paragraph 20(2). The definition of “housing regulator” was amended by the Housing and Regeneration Act 2008 (c.17), Schedule 9, paragraph 18(3)(a). The definition of “relevant housing provider” was substituted by paragraph 18(3)(b) of that Schedule. There are other amendments to the section not relevant to this Order.

(f) Section 259 was amended by the Housing and Regeneration Act 2008 (c. 17), Schedule 9, paragraph 19.

Value Added Tax Act 1994 (c.23)

5.—(1) The Value Added Tax Act 1994 is amended as follows.

(2) For paragraph (b) of Note (21) of Group 5 of Schedule 8 (meaning of “relevant housing association”)(a) substitute —

“(b) a registered social landlord within the meaning of the Housing (Scotland) Act 2010 (asp 17)(b) which is either—

(i) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12)(c), or

(ii) a company within the meaning of the Companies Act 2006 (c.46), or”.

(3) For paragraph 10(3)(b) of Part 1 of Schedule 10(d), substitute—

“(b) a registered social landlord within the meaning of the Housing (Scotland) Act 2010 (asp 17) which is either—

(i) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12), or

(ii) a company within the meaning of the Companies Act 2006 (c.46), or”.

Enterprise Act 2002 (c.40)

6. In section 255(3)(b) of the Enterprise Act 2002 (application of law about company arrangement or administration to non-company)(e), for “Part 3 of the Housing (Scotland) Act 2001 (asp 10)” substitute “Part 2 of the Housing (Scotland) Act 2010 (asp 17)”.

Finance Act 2003 (c.14)

7.—(1) The Finance Act 2003 is amended as follows.

(2) In section 121 (minor definitions)(f), in paragraph (b) of the definition of “registered social landlord”, for “section 57 of the Housing (Scotland) Act 2001 (asp 10)” substitute “section 20(1) of the Housing (Scotland) Act 2010 (asp 17)”.

(3) In section 128(2)(b) (exemption from stamp duty: definition of “registered social landlord”), for “section 57 of the Housing (Scotland) Act 2001 (asp 10)” substitute “section 20(1) of the Housing (Scotland) Act 2010 (asp 17)”.

Income Tax Act 2007 (c.3)

8. In applying section 555(3)(b) of the Income Tax Act 2007 (substantial donor exceptions: definition of “relevant housing provider”)(g) in accordance with paragraph 27 of Schedule 3 to the Finance Act 2011(h), paragraph (b) has effect as if for “section 57 of the Housing (Scotland) Act

(a) Group 5 was substituted by the Value Added Tax (Construction of Buildings) Order 1995 (S.I. 1995/280), article 2. Note 21 was substituted by the Value Added Tax (Registered Social Landlords) (No.1) Order 1997 (S.I. 1997/50), article 2(b). Paragraph (b) of Note 21 was substituted by the Value Added Tax (Construction of Buildings) Order 2010 (S.I. 2010/486), article 2(1)(c). There are other amendments to Note 21 not relevant to this Order.

(b) Section 165 of that Act provides that a registered social landlord means a body registered in the register maintained under section 20(1) of that Act.

(c) The Co-operative and Community Benefit Societies and Credit Unions Act 1965 was formerly cited as the Industrial and Provident Societies Act 1965 and was re-named by virtue of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 (c.7), section 2.

(d) Schedule 10 was substituted by the Value Added Tax (Buildings and Land) Order 2008 (S.I. 2008/1146), article 2. There are other amendments to paragraph 10(3) of Schedule 10 not relevant to this Order.

(e) Section 255(3)(b) was renumbered by the Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866), Schedule 2, paragraph 119.

(f) There are amendments to the section not relevant to this Order.

(g) Section 555(3) was amended by the Housing and Regeneration Act 2008 (c.17), Schedule 9, paragraph 34.

(h) 2011 c.11. Paragraph 27 of Schedule 3 applies the repeal of section 555(3)(b) of the Income Taxes Act 2007 to transactions occurring on or after 1st April 2013 other than excluded transactions as defined in paragraph 27(3).

2001 (asp 10)” there were substituted “section 20(1) of the Housing (Scotland) Act 2010 (asp 17)”.

Corporation Tax Act 2010 (c.4)

9. In applying section 508(2)(b)(ii) of the Corporation Tax Act 2010 (exceptions in respect of donors), in accordance with paragraph 27 of Schedule 3 to the Finance Act 2011(a), paragraph (b)(ii) has effect as if for “section 57 of the Housing (Scotland) Act 2001 (asp 10)” there were substituted “section 20(1) of the Housing (Scotland) Act 2010 (asp 17)”.

PART 2

MODIFICATIONS OF SUBORDINATE LEGISLATION

Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968)

10. In paragraph 1(1) of Schedule 9 to the Social Security (Claims and Payments) Regulations 1987 (interpretation), in paragraph (b)(ii) of the definition of “hostel”(b), for “Part 3 of the Housing (Scotland) Act 2001” substitute “Part 2 of the Housing (Scotland) Act 2010”.

National Minimum Wage Regulations 1999 (S.I. 1999/584)

11. In regulation 31(5)(b) of the National Minimum Wage Regulations 1999 (meaning of “registered social landlord”)(c), for “section 57 of the Housing (Scotland) Act 2001” substitute “section 20(1) of the Housing (Scotland) Act 2010”.

Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201)

12. In paragraph 48(2)(b) of Part 4 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001 (meaning of “relevant housing body”)(d), for “the Housing (Scotland) Act 2001” substitute “the Housing (Scotland) Act 2010”.

Communications (Television Licensing) Regulations 2004 (S.I. 2004/692)

13. In paragraph 7(1)(b)(ii) of Part 2 of Schedule 4 to the Communications (Television Licensing) Regulations 2004 (accommodation for residential care licences)(e), for “section 57 of the Housing (Scotland) Act 2001” substitute “section 165 of the Housing (Scotland) Act 2010”.

Displaced Persons (Temporary Protection) Regulations 2005 (S.I. 2005/1379)

14. In regulation 2(1)(f)(ii) of the Displaced Persons (Temporary Protection) Regulations 2005 (interpretation)(f), for “section 57 of the Housing (Scotland) Act 2001” substitute “section 20(1) of the Housing (Scotland) Act 2010”.

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- (a) 2011 c.11. Paragraph 27 of Schedule 3 applies the repeal of section 508(2)(b)(ii) of the Corporation Tax Act 2010 to transactions occurring on or after 1st April 2013 other than excluded transactions as defined in paragraph 27(3).
- (b) The definition of “hostel” was substituted by the Social Security (Care Homes and Independent Hospitals) Regulations 2005 (S.I. 2005/2687), regulation 13(3)(a). Paragraph (b)(ii) of the definition was substituted by the Social Security (Miscellaneous Amendments) (No. 6) Regulations 2008 (S.I. 2008/2767), regulation 3(2)(a)(i). There are other amendments to paragraph 1(1) not relevant to this Order.
- (c) Regulation 31(5)(b) was inserted by the National Minimum Wage Regulations 1999 (Amendment) Regulations 2007 (S.I. 2007/2318), regulation 5. There are other amendments to the regulation not relevant to this Order.
- (d) Paragraph 48 was substituted by the Financial Services and Markets Act 2000 (Exemption) (Amendment) (No. 2) Order 2003 (S.I. 2003/1675), article 2(4)(c). There are other amendments to the paragraph not relevant to this Order.
- (e) There are amendments to the paragraph not relevant to this Order.
- (f) There are amendments to the Regulations not relevant to this Order.

Housing Benefit Regulations 2006 (S.I. 2006/213)

15.—(1) The Housing Benefit Regulations 2006 are amended as follows.

(2) In regulation 2(1) (interpretation), in paragraph (c) of the definition of “registered housing association” **(a)**, for “by Scottish Ministers by virtue of section 57(3)(b) of the Housing (Scotland) Act 2001” substitute “in the register maintained by the Scottish Housing Regulator under section 20(1) of the Housing (Scotland) Act 2010”.

(3) In the definition of “registered social landlord” in regulation 13C(6) (when a maximum rent (LHA) is to be determined)**(b)**, for “sections 57 and 59 of the Housing (Scotland) Act 2001” substitute “section 165 of the Housing (Scotland) Act 2010”.

Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214)

16.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 are amended as follows.

(2) In regulation 2(1) (interpretation), in paragraph (c) of the definition of “registered housing association”**(c)**, for “by Scottish Ministers by virtue of section 57(3)(b) of the Housing (Scotland) Act 2001” substitute “in the register maintained by the Scottish Housing Regulator under section 20(1) of the Housing (Scotland) Act 2010”.

(3) In the definition of “registered social landlord” in regulation 13C(6) (when a maximum rent (LHA) is to be determined)**(d)**, for “sections 57 and 59 of the Housing (Scotland) Act 2001” substitute “section 165 of the Housing (Scotland) Act 2010”.

Community Benefit Societies (Restriction on Use of Assets) Regulations 2006 (S.I. 2006/264)

17. In regulation 2 of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006 (interpretation)**(e)**, in paragraph (b) of the definition of “registered social landlord”, for “Scottish Ministers under section 57 of the Housing (Scotland) Act 2001” substitute “Scottish Housing Regulator under section 20(1) of the Housing (Scotland) Act 2010”.

Regulated Covered Bonds Regulations 2008 (S.I. 2008/346)

18. In regulation 2(3) of the Regulated Covered Bonds Regulations 2008 (eligible property)**(f)**, in paragraph (b) of the definition of “registered social landlord”, for “Part 3 of the 2001 Act” substitute “Part 2 of the Housing (Scotland) Act 2010”.

Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948)

19. Paragraph 219 of Schedule 1 to the Companies Act 2006 (Consequential Amendments etc) Order 2008 (amendments to the Housing (Scotland) Act 2001)**(g)** is revoked.

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- (a) The definition of “registered housing association” was inserted by the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (S.I. 2007/2868), regulation 4(1)(g). The definition was substituted by the Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010 (S.I. 2010/671), Schedule 1, paragraph 51(a). There are other amendments to the regulation not relevant to this Order.
- (b) Regulation 13C was inserted by the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (S.I. 2007/2868), regulation 7. There are other amendments to the regulation not relevant to this Order.
- (c) The definition of “registered housing association” was inserted by the Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (S.I. 2007/2869), regulation 4(1)(f). The definition was substituted by the Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010 (S.I. 2010/671), Schedule 1, paragraph 57(a). There are other amendments to the regulation not relevant to this Order.
- (d) Regulation 13C was inserted by the Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (S.I. 2007/2869) regulation 7. There are other amendments to the regulation not relevant to this Order.
- (e) There are amendments to the regulation not relevant to this Order.
- (f) There are amendments to the regulation not relevant to this Order.
- (g) There are amendments to the Schedule not relevant to this Order.

Companies (Disclosure of Address) Regulations 2009 (S.I. 2009/214)

20. In Schedule 1 to the Companies (Disclosure of Address) Regulations 2009 (specified public authorities)(**a**), insert after “a police force”—

“; the Scottish Housing Regulator”.

Overseas Companies Regulations 2009 (S.I. 2009/1801)

21. In Schedule 1 to the Overseas Companies Regulations 2009 (specified public authorities)(**b**), insert after “a police force”—

“; the Scottish Housing Regulator”.

Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941)

22. Paragraph 191(2), (3), (5) and (6) of Schedule 1 to the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (amendments to the Housing (Scotland) Act 2001) are revoked.

(a) There are amendments to the Schedule not relevant to this Order.
(b) There is an amendment to the Schedule not relevant to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Housing (Scotland) Act 2010 (asp 17) (“the 2010 Act”). The 2010 Act creates a body corporate to be known as the Scottish Housing Regulator and makes provision about the performance and regulation of social landlords in Scotland.

Article 2 provides that the Scottish Housing Regulator is part of the Scottish Administration.

Article 3 provides that references in the Scotland Act 1998 and any other enactment to an office-holder in the Scottish Administration, however it is defined, are to be taken to include references to the Scottish Housing Regulator, unless the context otherwise requires. It also provides that the Crown Suits (Scotland) Act 1857 does not apply to the Scottish Housing Regulator with the effect that the Lord Advocate cannot be sued in the place of the Scottish Housing Regulator.

Article 4 and the Schedule make modifications of primary and secondary legislation in consequence of the 2010 Act.

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