

SFT Guidance on powers of Scottish public bodies to generate/procure heat and electricity supplies, and to supply heat and electricity to third parties, and the constraints on those powers.

Appendix 6

Legislation referred to in the Registered Social Landlords section.

HOUSING (SCOTLAND) ACT 2010

24 Legislative registration criteria

(1) The “legislative registration criteria” are—

(a) that a body does not trade for profit,

(b) that a body is established for the purpose of, or has among its objects and powers, the provision, construction, improvement or management of—

(i) houses to be kept available for letting,

(ii) houses for occupation by members of that body, where the rules of that body restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by that body, or

(iii) hostels,

(c) that a body carries out, or intends to carry out, those purposes, objects or powers in Scotland, and

(d) that any additional purposes or objects of a body must be from among the following—

(i) providing land, amenities or services, or providing, constructing, repairing or improving buildings, for its residents (or for its residents and other persons together),

(ii) acquiring, or repairing and improving, or creating by the conversion of houses or other property, houses to be disposed of on sale, on lease, on shared ownership terms or on shared equity terms,

(iii) constructing houses to be disposed of on shared ownership terms or on shared equity terms,

(iv) managing—

(A) houses which are held on leases or other lettings (not being houses falling within subsection (1)(b)(i) or (1)(b)(ii)), or

(B) blocks of flats (a block of flats meaning a building containing two or more flats which are held on leases or other lettings and which are occupied or intended to be occupied wholly or mainly for residential purposes),

(v) providing services of any description for owners or occupiers of houses in—

(A) arranging or carrying out works of maintenance, repair or improvement,

or encouraging or facilitating the carrying out of such works,

(B) arranging property insurance,

(vi) encouraging and giving advice on the formation of registered social landlords,

(vii) providing services for, and giving advice on the running of—(A) registered social landlords, and

(B) other organisations whose activities are not carried on for profit which are concerned with housing or matters connected with housing,

(viii) promoting or improving the economic, social or environmental wellbeing

of—

(A) its residents (or its residents and other persons together), or

(B) the area in which the houses or hostels it provides are situated,

(ix) giving financial assistance (by way of grant or loan or otherwise) to persons in order to help them to acquire houses on shared equity terms.

(2) But a body is not ineligible for registration by reason only that its powers include power—

(a) to acquire commercial premises or businesses as an incidental part of a project or series

of projects undertaken for purposes or objects falling within subsection (1)(b) or (1)(d),

(b) to repair, improve or convert any commercial premises acquired as mentioned in paragraph (a) or to carry on for a limited period any business so acquired, or

(c) to repair or improve houses, or buildings in which houses are situated, after the tenants have exercised, or claimed to exercise, rights to purchase under section 61 of the Housing (Scotland) Act 1987 (c.26).

(3) Ministers may by order—

(a) amend the purposes, objects and powers specified in subsections (1)(d) and (2),

(b) make such provision (including provision amending or otherwise modifying any provision of this Act) which Ministers consider appropriate for the purpose of applying any provision of this Act to, or adapting it for, bodies constituted otherwise than as a registered society or registered company.

(4) Before making any order under this section, Ministers must—

(a) have regard to the interests of persons who may become—

(i) homeless, or

(ii) tenants of social landlords, and

(b) consult—

(i) the Regulator,

(ii) tenants of social landlords or their representatives,

(iii) social landlords or their representatives, and

(iv) secured creditors of registered social landlords or their representatives.

(5) Any order which restricts or limits purposes or objects in subsection (1)(d) has no effect in relation to a body registered as a social landlord when the order was made.

(6) In this section—

“letting” includes the grant of a right or permission to occupy,

“residents”, in relation to a body, means persons occupying the houses or hostels provided or managed by the body.

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

7 The charity test

(1) A body meets the charity test if—

(a) its purposes consist only of one or more of the charitable purposes, and

(b) it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere.

(2) The charitable purposes are—

(a) the prevention or relief of poverty,

(b) the advancement of education,

(c) the advancement of religion,

(d) the advancement of health,

(e) the saving of lives,

(f) the advancement of citizenship or community development,

(g) the advancement of the arts, heritage, culture or science,

(h) the advancement of public participation in sport,

(i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,

(j) the advancement of human rights, conflict resolution or reconciliation,

(k) the promotion of religious or racial harmony,

(l) the promotion of equality and diversity,

(m) the advancement of environmental protection or improvement,

(n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,

(o) the advancement of animal welfare,

(p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

(3) In subsection (2)–

(a) in paragraph (d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering,

(b) paragraph (f) includes–

(i) rural or urban regeneration, and

(ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,

(c) in paragraph (h), “sport” means sport which involves physical skill and exertion,

(d) paragraph (i) applies only in relation to recreational facilities or activities which are–

(i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or

(ii) available to members of the public at large or to male or female members of the public at large,

(e) paragraph (n) includes relief given by the provision of accommodation or care, and

(f) for the purposes of paragraph (p), the advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the purpose set out in paragraph (c).

(4) A body which falls within paragraphs (a) and (b) of subsection (1) does not, despite that subsection, meet the charity test if–

(a) its constitution allows it to distribute or otherwise apply any of its property (on being wound up or at any other time) for a purpose which is not a charitable purpose,

(b) its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities, or

(c) it is, or one of its purposes is to advance, a political party.

(5) The Scottish Ministers may by order disapply either or both of paragraphs (a) and (b) of subsection (4) in relation to any body or type of body specified in the order.

COMPANIES ACT 2006

39 A company's capacity

(1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's constitution.

(2) This section has effect subject to section 42 (companies that are charities).

INDUSTRIAL AND PROVIDENT SOCIETIES ACT 1965

7A Capacity of society not limited by its rules

(1) The validity of an act done by a registered society shall not be called into question on the ground of lack of capacity by reason of anything in the society's registered rules.

(2) A member of a registered society may bring proceedings to restrain the doing of an act which but for subsection (1) of this section would be beyond the society's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the society.

(3) It remains the duty of the members of the committee of a registered society to observe any limitations on their powers flowing from the society's registered rules; and action by the members of the committee which but for subsection (1) of this section would be beyond the society's capacity may only be ratified by the society by special resolution.

(4) A resolution ratifying such action shall not affect any liability incurred by a member of the committee or any other person; relief from any such liability must be agreed to separately by special resolution.

(5) The operation of this section is restricted by section 7D of this Act (application to charitable societies); and section 7E of this Act (transactions with members of the committee and connected persons in excess of powers) has effect notwithstanding this section.

(6) In this section "special resolution" means a resolution passed by not less than 75% of such members of the society as (being entitled to do so) vote in person, or by proxy where the society's rules allow proxies, at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution, has been duly given according to those rules.

(7) A copy of every special resolution for the purposes of this section signed by the chairman of the meeting at which the resolution was passed and countersigned by the secretary of the society shall be sent to the FCA and registered by it; and until that copy is so registered the special resolution shall not take effect.

CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES ACT 2014

43 Capacity of a society and relationship with its rules

- (1) The validity of an act done by a registered society may not be called into question on the ground of lack of capacity by reason of anything in the society's registered rules.
- (2) A member of a registered society may bring proceedings to restrain the doing of an act which would, but for subsection (1), be beyond the society's capacity.
- (3) But proceedings may not be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the society.
- (4) It remains the duty of the members of a registered society's committee to observe any limitations on their powers flowing from the society's registered rules.
- (5) Action by the members of the committee which would, but for subsection (1), be beyond the society's capacity may be ratified by the society only by a special resolution.
- (6) A special resolution ratifying such action does not affect any liability incurred by a member of the committee or any other person; relief from any such liability must be agreed to separately by special resolution.
- (7) In the case of a charitable registered society whose registered office is in England or Wales, ratification under subsection (5) is ineffective without the prior written consent of the Charity Commission for England and Wales.
- (8) Section 44 contains provisions about special resolutions under this section.
- (9) This section is subject to—the committee and connected persons in excess of powers).

44 Special resolutions under section 43

- (1) This section supplements section 43.
- (2) A resolution is a "special resolution" if—
 - (a) it is passed at a general meeting by at least 75% of the eligible members who vote, and
 - (b) at least 21 days' notice of the meeting, specifying the intention to propose the resolution, is given in accordance with the society's rules.
- (3) In subsection (2)—
 - (a) "eligible member" means a member who is entitled to vote;
 - (b) references to voting are to voting in person or, where the society's rules allow proxies, by proxy.

(4) A copy of a special resolution, signed by the chair of the meeting at which the resolution was passed and countersigned by the society's secretary, must be sent to the FCA and registered by it.

(5) The resolution does not take effect until a copy of it has been registered.

HOUSING (SCOTLAND) ACT 2010

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.

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

16 Changes which require OSCR's consent

(1) A charity may take any action set out in subsection (2) only with OSCR's consent and in accordance with any conditions attached to any such consent.

(2) Those actions are—

(a) amending its constitution so far as it relates to its purposes,

(b) amalgamating with another body,

(c) winding itself up or dissolving itself,

(d) applying to the court in relation to any action set out in paragraphs (a) to (c).

(3) Subsection (1) does not apply in relation to any action—

(a) in pursuance of an approved reorganisation scheme, or

(b) for which OSCR's consent is required by virtue of any other enactment.

(4) Where a charity proposes to take any action set out in subsection (2) it must, not less than 42 days before the date on which the action is to be taken, give notice to OSCR of the proposal specifying that date.

(5) In the case of an action set out in subsection (2)(a), the charity must not proceed unless and until OSCR has given its consent.

(6) In any other case, unless OSCR, within 28 days of the date on which notice is given under subsection

(4)—

(a) refuses its consent, or

(b) directs the charity not to take the action for a period of not more than 6 months specified in the direction, OSCR is to be taken as having consented to it.

(7) A direction under subsection (6)(b)–

(a) may be revoked at any time,

(b) may be varied, but not so as to have effect for a period of more than 6 months from the date on which it is given.

(8) Where OSCR gives such a direction it must, after making such inquiries as it thinks fit–

(a) give its consent, whether or not subject to conditions, or

(b) refuse its consent.