

Housing (Amendment) Scotland Bill

This guide provides some background information on what the Bill does and why. It attempts to explain this in everyday language however this is not always possible because the Bill is quite technical. This guide is not intended to cover all aspects of the Bill or provide a legal interpretation of the Bill. For the exact details of the Bill, how it was prepared, and why the Scottish Government wants to change the law please read the Bill and the other documents which the Scottish Government has prepared and which can be found here:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/105852.aspx>

It is the role of the Local Government and Communities Committee to investigate the Bill and decide whether it is a good idea and will do what the Scottish Government says it will. The Committee is therefore asking anyone with an interest in the Bill, to write to it with their views by 26 October 2017. The Committee has prepared some questions to help people write in with their views and these can be found here.

- **What does the Housing (Amendment) Scotland Bill do?**

This Bill is relatively short and technical. It proposes to **reduce or remove some of the powers that the Scottish Housing Regulator (SHR) has over Registered Social Landlords (RSLs)**.¹ The SHR is the independent organisation that monitors, assesses and reports on RSLs and local authority housing services in Scotland. The SHR aims to:

"...safeguard and promote the interests of current and future tenants of social landlords, people who are or may become homeless, and people who use housing services provided by registered social landlords (RSLs) and local authorities."²

They do this by assessing and reporting on how social landlords are performing their housing services and how RSLs are managed.

The Bill also proposes to give Scottish Government Ministers the power to make further legislation, known as regulations, **to limit the influence that a local authority can have over a RSL.**

- **Why are these changes necessary?**

The Scottish Government says that changes are being made so to enable the **Office of National Statistics (ONS)**³ to reclassify RSLs as private sector bodies in relation to the UK National Accounts.

RSLs were previously classed as private sector bodies by the ONS. But the ONS decided that, because of the level of regulation and control the SHR and local authorities have over RSLs, they should now be classed as public sector bodies.

¹ RSLs are mainly housing associations

² Scottish Housing Regulator website: <https://www.scottishhousingregulator.gov.uk/about-shr>. Their objective, functions and powers are set out in the Housing (Scotland) Act 2010.

³ The ONS is a UK body that produces statistics for the United Kingdom. More information on its website at: <https://www.ons.gov.uk/>

- **What would happen if RSLs continue to be classed by ONS as public sector bodies?**

Some RSLs borrow money to build new houses, in addition to any funding they receive from the Scottish Government. RSLs borrow around £300 million each year. At the moment, RSLs decide how much money they need to borrow. **If action was not taken to reclassify RSLs as private bodies it would mean that any money they borrow would be counted as borrowing by the Scottish Government.** The Scottish Government borrowing for capital projects (such as building new houses) is currently limited to £450m in any one year and £3bn in total.

The Scottish Government say that, left unchanged, this would be a, “**significant permanent burden on the Scottish Government’s finances**”⁴ and to stay within their limit of £3 bn they might have to introduce controls over how much RSLs can borrow. The Scottish Government also say there would be, “**immediate implications**” for the **Scottish Government’s commitment to build at least 50,000 affordable homes by 2021.**⁵

- **What specific changes will the Bill make?**

One of the reasons behind the ONS’ decision to classify RSLs as public bodies was that RSLs are “subject to public sector control due to SHR powers over their management, constitutional changes and consent in relation to the disposal of land and housing assets”⁶. In other words, RSLs are considered to be like public bodies because the SHR can exercise powers over RSLs in relation to their management, the rules of how RSLs work (their constitutions) and how RSLs sell or get rid of land and housing. Therefore, to enable ONS to classify RSLs as private sector bodies, the bill proposes to reduce the powers the SHR has to:

- Appoint a manager to a RSL;
- Suspend, remove and appoint officers of a RSL;
- Exercise control over the disposal (e.g. a sale) of land and housing assets by a RSL (by requiring a RSL to obtain the Regulator’s consent to a disposal);
- Exercise consent over any changes to the constitution of a RSL;
- Exercise control over voluntary winding-up, dissolution and restructuring of a RSL (mainly by requiring a RSL to obtain the Regulator’s consent to these actions).

In this Bill the Scottish Government has tried to propose changes that will enable the ONS to reclassify RSLs back into the private sector, but also to make sure that the SHR can continue to protect the interests of tenants and others who use the services of RSLs. The Scottish Government explains that in case the Bill, as it is currently sets out, does not persuade the ONS to classify RSLs as private sector bodies the Bill also gives Scottish Government Ministers the power to bring more legislation (or

⁴ Policy Memorandum para 10

⁵ Policy Memorandum para 12

⁶ ONS [Statistical classification of registered providers of social housing in Scotland, Wales and Northern Ireland: September 2016](#)

regulations) to the Scottish Parliament to make further changes to the power of the SHR to control RSLs.

The Bill also gives Scottish Government Ministers the power to make further legislation in the Scottish Parliament to limit the influence that a local authority can have over a RSL. Local authority influence over RSLs mainly exists in areas where there has been a wholesale transfer of local authority housing stock to a RSL. The Bill does not say how this power will be used. However, the Scottish Government has said that it will use this power so local authorities may only nominate up to a maximum of 24% of the board members of an RSL, and may not exercise control over RSLs, for example through a power to veto changes to a RSLs' business rules or constitution.⁷ .

We set out below each of the key changes the Bill proposes.

Annex

The Guide below provides a description of the main changes that the Bill proposes. It does not cover every detail. Further detail is set out in the Policy Memorandum and Explanatory Notes to the Bill.

That the SHR can currently do	What the Bill proposes that the SHR should be able to do
<p>The SHR can appoint a manager to a social landlord (ie local authority or RSL) if the landlord is, or is at risk of, failing in its housing activities (e.g. not meeting an outcome in the Scottish Social Housing Standard)</p>	<ul style="list-style-type: none"> • Limit when the SHR can appoint a manager: a manager can only be appointed where the social landlord has <i>failed or is failing to achieve standards, or failed to comply with statutory duties. They cannot be appointed where there is a risk of failing to achieve standards or comply with duties.</i> • Limit the reasons why a manager can be appointed. They can only be appointed to fix the problem the SHR has identified. • Give a time limit for how long a manager can be appointed by the SHR. The limit is the time necessary to fix the identified problem identified by the SHR.
<p>The SHR can appoint a manager to a RSL for financial, or other affairs, where this is necessary to make sure that the RSL manages its business to an appropriate</p>	<ul style="list-style-type: none"> • Limit the reasons when a manager can be appointed. They can only be appointed where the RSL is failing, or has already failed to, comply with a duty required by law or a requirement imposed by the SHR. • Limit the reasons why a manager can be appointed. They can only be appointed to fix the problem the SHR has identified. • Give a time limit for how long a manager can be

⁷ Policy Memorandum para 30

<p>standard.</p>	<p>appointed by the SHR. The limit is the time necessary to fix the identified problem.</p>
<p>The SHR has the power to remove and suspend officers of a RSL. An officer includes a director, manager or secretary of the company.</p>	<ul style="list-style-type: none"> • Limit the reasons when the SHR can remove or suspend an officer from a RSL. For example, the SHR can currently suspend an officer for misconduct or mismanagement in a RSL’s financial, or other, affairs and where the interests of the RSL’s tenants need to be protected. <p>This will be replaced with more specific reasons. The suspension of an officer would need to be linked to the officer being responsible for the failure of the RSL to comply with its statutory duties, or with any requirement imposed on it by the SHR.</p>
<p>The SHR can appoint an officer to a RSL in a number of circumstances (for example, to make sure that the RSL manages its business correctly).</p>	<ul style="list-style-type: none"> • Limit the reasons why the SHR can appoint an officer to a RSL. The Bill replaces this with a more specific ground,—the officer would be appointed because the RSL has failed to meet a duty required by law or has failed to meet a SHR requirement on it. • Give a time limit for how long an officer can be appointed by the SHR. The limit is the time necessary to fix the identified problem.
<p>The SHR can agree or disagree to the disposal(e.g. a sale) of land and housing by an RSL in certain circumstances.</p>	<ul style="list-style-type: none"> • The SHR will no longer be able to agree or disagree. The RSL will still have to notify the SHR of disposals (such as the sale of land) and will still have to consult tenants.
<p>The SHR has to agree any changes a RSL makes to its business rules (or constitution) other than a change of name or office before the RSL can make the changes.</p>	<ul style="list-style-type: none"> • THE SHR will no longer be able to agree or disagree. RSLs will have to notify the SHR of any changes to their constitutions within 28 days of making the change.
<p>The SHR’s agreement is needed in some circumstances such as the restructuring, winding up and dissolution of RSLs.</p>	<ul style="list-style-type: none"> • The SHR will no longer be able to agree or disagree. RSLs will have to notify the SHR of any a voluntary winding-up, dissolution and restructuring of a RSL within the 28 days. RSLs would have to consult their tenants or in some cases seek tenant approval.