

HOUSING (AMENDMENT) (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

SUPPLEMENTARY EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these Supplementary Explanatory Notes are published to accompany the Housing (Amendment) (Scotland) Bill (introduced in the Scottish Parliament on 4 September 2017) as amended at Stage 2.
2. These Supplementary 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.
3. The Notes should be read in conjunction with the Bill as amended at Stage 2, and with the Explanatory Notes that accompanied the Bill when it was first introduced (the “original Explanatory Notes”) (SP Bill 20–EN). Even as so read, the Notes 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.

BACKGROUND

4. 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.)
5. 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).

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

6. 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.

7. 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 UK national accounts. In addition, section 8 of the Bill will allow 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). See paragraphs 122 and 123 of the original Explanatory Notes for more detail on section 8.

8. 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. 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. See paragraphs 124 to 126 of the original Explanatory Notes for more detail on section 9.

AMENDMENTS MADE AT STAGE 2

9. One amendment to the Bill was agreed to at Stage 2: the insertion of a new section 9A.² This new section is explained below.

Duration of regulation-making powers

Section 9A – Duration of powers conferred by sections 8(1) and 9(1)

10. As already noted, sections 8 and 9 of the Bill confer power on the Scottish Ministers to make regulations further modifying the functions of the Scottish Housing Regulator and limiting or removing certain types of local authority influence over RSLs. New section 9A creates a time limit for the exercise of both of these powers. The powers may only be exercised in the three years beginning with the day after the Bill receives Royal Assent (subsection (1)). That is, the powers conferred by sections 8(1) and 9(1) are temporary.

11. The temporary nature of these powers means that, on their expiry, the provisions conferring the powers are effectively repealed.³ The repeal of an enactment generally has the effect of automatically revoking any subordinate legislation made under that enactment. Section 15 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that such revocations do not affect certain things. For example, the validity of things done under

² The Bill was considered at Stage 2 at the Local Government and Communities Committee's meeting on 9 May 2018. The minutes and Official Report for that meeting are available at [Local Government and Communities Committee - Parliamentary Business : Scottish Parliament](#).

³ See section 18 of the Interpretation and Legislative Reform (Scotland) Act 2010.

regulations while they were in force is not affected by the revocation of the regulations. Textual amendments of other enactments also survive the revocation of the regulations which made the amendments. But section 15 does not generally provide for freestanding provision made by subordinate legislation to continue to have effect following revocation. Unless provision is made to the contrary, any freestanding provision made by regulations made under section 8 or 9 would be revoked at the end of the three-year period provided for in subsection (1) of section 9A.

12. To avoid this, subsection (2) provides that subsection (1) does not affect the continuation in force of any regulations made during the three-year period. So, although no further regulations can be made under section 8 or 9 after the expiry of the three-year period, any regulations in force at the end of that period will remain in force indefinitely.⁴ For example, if regulations are made under section 9(1) restricting the number of officers that a local authority can appoint to an RSL, that restriction will remain in place on the expiry of the three-year period mentioned in subsection (1), rather than local authorities regaining their ability to appoint a greater number of officers. This will ensure that any ONS reclassification decision which depends on the provision made in the regulations is not jeopardised by the end of the three-year period.

⁴ Power to make regulations includes power to amend or revoke them. Therefore, restricting the power to make regulations under sections 8 and 9 to the three-year period mentioned in section 9A(1) also has the effect of restricting the power to amend or revoke any regulations made during that three-year period to that three-year period. The Scottish Ministers will not be able to amend or revoke any regulations continued in effect by section 9A(2) by subordinate legislation. If any such regulations need to be amended or revoked in future, primary legislation will be required.

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20A) as amended at Stage 2

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