EXECUTIVE NOTE

THE HOUSING (SCOTLAND) ACT 2010 (COMMENCEMENT NO. 6, TRANSITIONAL AND SAVINGS PROVISIONS) ORDER 2012

SSI 2012/39 (C. 8)

1. The above order is made in exercise of the powers conferred by sections 161(2)(a) and (c) and 166(2) of the Housing (Scotland) Act 2010 (the 2010 Act). The instrument is subject to no procedure.

Policy Objectives

2. This Order brings certain provisions of the Housing (Scotland) Act 2010 into force on 1 April 2012. The purpose of the 2010 Act is to modernise the framework for regulating social landlords in Scotland. It establishes the Scottish Housing Regulator as an independent body with the objective of safeguarding and promoting the interests of persons who are or who may become homeless, tenants of social landlords, or recipients of services provided by social landlords. The Order will commence the new regime for the regulation of social housing.

The Scottish Housing Regulator

3. With effect from 1 April 2011, we commenced the provisions of the 2010 Act necessary to establish the Scottish Housing Regulator as a body corporate and enable it to consult on how it proposed to act as regulator. With one exception, this order will commence all remaining functions, enabling the new body to perform the full range of functions that the Act confers on it.

4. The order commences section 110 on 1 April 2012 in such a way that it does not apply to a proposed disposal of land by way of granting security over the land or any interest in it. The provision is being commenced on a basis consistent with what the provision was intended to achieve, which is to require tenant consultation for disposals of land requiring Regulator consent, other than disposals to which the special procedure in Part 10 of the Act applies, or disposals by way of security for a loan. This was the position under the previous legislation, in section 68 of the Housing (Scotland) Act 2001. The effect of the drafting of section 110 however is that, were the section to be commenced in full, it would go beyond what was intended with the result that RSLs would be required to consult tenants when they grant a standard security over existing houses in order to raise finance. This would place unreasonable and impractical restrictions on the ability of RSLs to manage their businesses effectively. When a suitable opportunity arises, the Scottish Government will introduce legislation to amend section 110 so as to limit its effect to that originally intended.

Savings and Transitionals

5. The policy intention behind the transitional provision made in this order is to facilitate smooth and effective transition to the new regulatory regime. As such, any matters in progress under the 2001 Act as at 1 April 2012 will generally be concluded by the new Regulator under the 2010 Act provisions. There are certain cases however where we have

considered that it would be more appropriate for a matter to be concluded under the 2001 Act regime, and the order makes provision accordingly. In those cases, responsibility for concluding the matter under the 2001 Act is transferred from the Scottish Ministers to the new Regulator.

Consultation

6. There has been no formal consultation on the Commencement Order, though consultation on the proposals when the Bill was before Parliament attracted broad support.

Impact Assessments

7. The finalised EQIA for Modernising Social Housing Regulation and the Scottish Housing Regulator is available on the Scottish Government website at: http://vq73eda/systems/EqualityUnit/Assessment/view.asp?ID=221

Financial Effects

8. There are no direct financial effects as a result of the Commencement Order.

9. The Regulatory Impact Assessment for the Housing Bill is available on the Scottish Government website at http://www.scotland.gov.uk/Publications/2009/04/27095102/8

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