



THE SCOTTISH  
HOUSING  
REGULATOR

## GUIDANCE NOTE

**To:** All Registered Social Landlords (RSLs)

**Subject:** Schedule 7 of the Housing (Scotland) Act 2001 Control of Payments and Benefits

**Issued by:** The Scottish Housing Regulator

**Ref no:** SHR 12

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### Summary

Part 1 of Schedule 7 of the Housing (Scotland) Act 2001 restricts the types of payments and benefits that RSLs can make to employees, governing body members and the families of employees and governing body members. These provisions are designed to make sure that such people do not abuse their positions or benefit from their connection with a registered social landlord and play an important part in maintaining the RSL sector's good reputation. Schedule 7 replaces Section 15 of the Housing Associations Act 1985.

This guidance details the circumstances under which payments can be made or benefits granted, describes some of the practical effects of the legislation for RSLs, and provides information on the interpretation of the terms of Schedule 7. This guidance supersedes SHGN 99/09 and applies to all RSLs. The provisions of Schedule 7 were introduced on 1 November 2001 and this guidance note has immediate effect.

**CSGN 2003/02  
2/13  
March  
2003**

For any references to Communities Scotland (or Scottish Homes) please read the Scottish Housing Regulator.

If you have any questions about this guidance, you should direct them to:

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## INTRODUCTION

1. Part 1 of Schedule 7 to the Housing (Scotland) Act 2001 (the 2001 Act) restricts the types of payments and benefits that RSLs can make to employees, governing body members and the families of employees and governing body members. These legal measures are designed to ensure that governing bodies and employees do not abuse their positions or benefit from their connection with the RSL and that they manage conflicts that might arise between their personal interests and duties to the RSL. Therefore, Schedule 7 plays an important part in maintaining the RSL sector's good reputation.
2. This guidance deals primarily with the statutory provisions contained in the Schedule. RSLs must also meet Performance Standards. This means that in dealing with payments and benefits, it is not sufficient to simply fulfill the letter of the law. RSLs must also observe the spirit of the law, exercise good governance and judgment and maintain high ethical standards of honesty, integrity and probity.
3. This guidance highlights the importance of complying with the provisions of Schedule 7 and sets out:
  - the way Part 1 of Schedule 7 works;
  - those payments and benefits permitted by the 2001 Act;
  - the six classes of additional payments or benefits approved by Scottish Ministers acting through Communities Scotland; and
  - how breaches of the provisions will be dealt with.

## SCHEDULE 7

4. Part 1 of Schedule 7 of the 2001 Act re-enacts and amends measures previously enshrined in Section 15 of the Housing Associations Act 1985. The effect of the 2001 Act is to restrict the payments and benefits that RSLs can grant to governing body members and employees and to their close relatives or to any business trading for profit which is owned or managed by a governing body member or an employee, or by a close relative of a governing body member or employee. The full text of Part 1 of Schedule 7 is included at Annex A.
5. The 2001 Act sets out at paragraph 2 (2) of Part 1 of the Schedule those payments and benefits which are permitted. These are referred to in this guidance as *general exceptions*. Scottish Ministers (acting through Communities Scotland) may approve further classes of permitted payments and benefits. Specific approvals cannot be made for individual cases, only for classes of case. Six additional classes have been approved and these are set out as *special exceptions* in this guidance note.
6. Under paragraph 2 (3) of Schedule 7 Scottish Ministers have the power to direct the RSL to recover the sum or value of any payment or benefit granted in breach of the provisions.

## **APPLICATION OF PART 1 OF SCHEDULE 7 TO DIFFERENT TYPES OF RSLs**

7. Schedule 7 applies to all RSLs, whether Industrial and Provident Societies or Companies limited by guarantee and whether charitable or not.
8. RSLs recognised as having charitable status by the Inland Revenue, are governed by the principles of general charity law, as well as the provisions of Schedule 7. This means trustees (that is, members of the governing body) may not normally receive any payment or benefits from the charity except reasonable out-of-pocket expenses. Charitable RSLs should bear this in mind in applying any of the payments and benefits permitted, in respect of Schedule 7, and ensure that they do not make payments that are inconsistent with their charitable status.
9. An RSL with an unregistered, profit-distributing subsidiary should ensure that the arrangements for any services provided by the subsidiary are not prohibited under Schedule 7. Unregistered non profit-distributing subsidiaries are not expressly covered by the legislation. However, we expect RSLs to ensure that any unregistered subsidiaries adopt similar high standards of conduct to those of the parent RSL. Therefore, for the purposes of Schedule 7, the group should act as though bound by the spirit of these provisions. Charities within group structures must also be mindful of the restrictions, in terms of general charitable law, regarding providing services to non-charitable group members.

## **WHICH INDIVIDUALS ARE COVERED BY THE SCHEDULE?**

10. For the purposes of this guidance, an individual affected by Part 1 of Schedule 7 is called a “relevant person”. A relevant person is someone who fits into one of the categories (a) to (d) listed below. A “relevant business” is defined at (e) listed below. Annex B provides a detailed explanation of the terms used. In summary, the effect of the provisions in Schedule 7 is that relevant people and relevant businesses cannot receive a payment or benefit from an RSL unless the payment or benefit is specifically covered by the general exceptions in the 2001 Act or falls into one of the special exceptions approved by Scottish Ministers:

### **Relevant Person**

- (a) Members of the governing body (also described as “officers” in the 2001 Act). This category includes all members of the governing body, including co-opted members, and also extends to members of any sub-committee or equivalent to which the governing body has delegated powers;
- (b) Employees. This means people who have a contract of employment with the RSL and are paid a salary or wages, but in some cases it may extend to people working on a freelance basis;
- (c) People who have been governing body members or employees within the previous 12 months;

- d) A close relative of a person within categories (a) to (c) above;

### **Relevant Business**

- (e) A business trading for profit of which a person within categories (a) to (d) above is a principal proprietor or is directly involved in the management of the business. A business trading for profit is one that can distribute its surpluses or profits to its members for their personal use. It should be noted that payments must not be made to such businesses either direct, or through a third party where the RSL has required the use of that third party (e.g., where a main contractor is employing a relevant business as a nominated sub-contractor).
11. RSLs are expected to take steps to avoid any conflicts of interest that may arise from personal relationships that may develop between members of staff or between staff and governing body members. Such relationships do not in themselves represent a breach of Schedule 7 and while it is very much a matter of judgment, RSLs need to be alert to the prospect that breaches of schedule 7 could arise where a close relationship exists.

### **GIFTS, DIVIDENDS OR BONUSES**

12. Paragraph 1 (1) of Schedule 7 is applicable specifically to gifts, dividends or bonuses to members or former members of an RSL or their families or to any company or firm of which an existing or former member or their family is a director or member. A family member is defined in Section 108 of the 2001 Act. The relevant parts of Section 108 are included at Annex B. Even if it is a not-for-profit organisation, an RSL is not permitted to make a gift, or pay a sum by way of a dividend or bonus to such a company or firm except in limited circumstances as described in the 2001 Act.

### **DEFINING PAYMENTS AND BENEFITS**

13. Whilst it may be obvious that a payment involves an exchange of money, the definition of a “benefit” may be less clear-cut. It should be noted that any payments to which a relevant person is entitled under statute are not considered to be a benefit (e.g. home loss and disturbance payments).
14. When considering what might constitute a benefit RSLs should consider that a benefit includes but is not confined to:
- the grant of a tenancy;
  - the grant of a shared ownership or shared equity agreement;
  - the sale of property at any value, (other than sales under the Right to Buy or other statutory scheme);
  - the purchase by the RSL of a property owned by a relevant person;
  - the award of a contract of employment;

- the award of any other type of commercial contract such as a building contract or contract for letting commercial premises or provision of services or supplies;
- loans outwith the contract of employment unless in very exceptional circumstances and of “de minimis” value as detailed in 15 (a);
- the use of the RSL’s premises, facilities and/or staff time for non-RSL business unless this is of “de minimis” value;
- a non-contractual severance payment;
- an out-of-court settlement paid in relation to a dispute referred to an Employment Tribunal; and
- gifts of more than a “de minimis” value.

This list is illustrative, not exhaustive.

#### **GENERAL EXCEPTIONS: PAYMENTS AND BENEFITS THAT ARE PERMITTED UNDER THE 2001 ACT**

15. RSLs may make the following payments and benefits:

- (a) **Payments made or benefits granted to an employee under his or her contract of employment with the RSL.**

RSLs should ensure that contracts of employment comply with relevant employment legislation and are explicit about the terms of employment including methods of determining remuneration and entitlement to any benefits. Entitlement to payments or benefits should be clearly stated in the contract of employment. Payments or benefits that are wholly discretionary are not granted under the terms of the contract of employment and do not, therefore, fall within this general exception.

Employment contracts can generally be amended at any time, but RSLs should not amend a contract:

- simply to avoid the provisions of Schedule 7;
- retrospectively after an employee has left the RSL;
- after a decision has been made that the employee will leave or be made redundant, in order to increase severance or pension payments; or
- after a decision has been made about an event such as a merger or take-over that is likely to result in staff redundancies or early retirement.

RSLs should take care to distinguish between contractual and discretionary elements. It is important that RSLs take proper advice about the terms of employment contracts and in amending them, ensure that the intended outcome can be achieved without any unintended breach of the provisions of Part 1 of Schedule 7.

In agreeing redundancy, or other payments due in terms of the contract of employment, RSLs should avoid creating situations where a conflict of interest might arise. A conflict of

interest may arise where an employee who is about to receive such a payment is involved in giving advice on the amount of money or terms that are to apply.

Payment of expenses to staff should be in line with the terms of the contract of employment and the RSL's expenses policy.

RSLs may not normally provide a loan, interest bearing or interest free, to a relevant person unless expressly provided for in the contract of employment, such as a staff car loan where the use of a car is essential to enable the employee concerned to carry out his or her role. If an RSL chooses to provide a member of staff with a loan, this should only be in very exceptional circumstances to assist an employee in serious financial difficulties and where all other options have been exhausted. Before making such a loan, an RSL must have a loan policy approved by its governing body, which specifies the maximum level of loan and interest and repayment provisions. Salary advances to employees are considered to be a loan and are, therefore, also routinely prohibited. A loan or salary advance should be subject to a "de minimis" value in accordance with the RSL's approved policy.

**(b) Payment of expenses to governing body members.**

The Scottish Ministers may from time to time specify the maximum amounts payable by an RSL by way of fees or other remuneration or expenses to its members, or by way of expenses to governing body members.

The payment of expenses to governing body members should be limited to out-of pocket expenses incurred in connection with the duties of a governing body member. The RSL must have a written policy on the payment of expenses which should detail under what circumstances and when expenses will be payable and which sets limits on the maximum level of expenses (subject to any maximum amount that might be specified by Scottish Ministers) that will be paid in certain circumstances.

If allowances rather than actual expenses are paid to members of the governing body to cover out of pocket expenditure (e.g. for subsistence when attending conferences) the scale of the allowances must be reasonable. The allowance set by the RSL should be contained within their policy on payments and benefits and should set limits on the maximum level of allowances payable.

Expenses can include the cost of child minding or care of a dependent relative providing that the person claiming the expenses can provide a receipt for the costs incurred. When an appropriately qualified person has carried out the child minding or has taken care of the dependent, the expenses paid should be in accordance with an invoice provided by that person that confirms their actual cost. Expenses should not be paid when another member of the household is looking after the child or other dependent. It will be acceptable for the governing body member to make a payment to another close relative who is not a member of the household and have this reimbursed, providing that this is acceptable in terms of the RSL's own policy and the costs are reasonable. The RSL should make it clear as part of its overall policy on payments and benefits the circumstances in which such payments can be

claimed and any rules on the maximum number of hours or total cost that can be claimed in a given period.

**(c) Payments permitted by paragraph 1 (2) of Schedule 7.**

This deals with interest payable in accordance with the constitution of an RSL and certain sums payable by a fully mutual housing association to a person who has ceased to be a member, which might otherwise be regarded as a gift, dividend or bonus to a member in terms of paragraph 1.

**(d) The granting or renewal of a tenancy by a housing co-operative.**

This relates to a fully mutual housing co-operative where all tenants are also required to be members of the co-operative.

**(e) The granting of a new tenancy to a person, or a close relative of that person, who was a tenant of the RSL prior to becoming a member of the governing body or employee of the RSL.**

In granting the tenancy the RSL must ensure that:

- a) this action fully meets the published criteria by which the RSL allocates housing; and
- b) the employee or governing body member has no involvement in or influence over the process by which the RSL allocates the tenancy in question.

**(f) Payments made or benefits granted with the approval of the Scottish Ministers acting through Communities Scotland.**

**SPECIAL EXCEPTIONS: ADDITIONAL CLASSES OF PERMITTED PAYMENTS OR BENEFITS APPROVED BY SCOTTISH MINISTERS**

16. In addition to the payments and benefits allowed under the 2001 Act, Scottish Ministers, acting through Communities Scotland, can approve special classes of payments or benefits as exceptions. These relate to types of situations where the operation of Schedule 7 may result in an unfair or disadvantageous outcome for the RSL or people and businesses connected with the RSL. In these instances, Communities Scotland has determined that certain payments or benefits can be granted. There are six classes of special exception. They replace, but largely replicate with some amendment, the designation of permitted classes previously set out in April 1999 under Section 15 of the Housing Associations Act 1985.
17. These additional payments or benefits may be made or granted under these special exceptions provided that:
  - a) such payments can be made or benefit granted within the objects and powers set out in the RSL's governing instrument or constitution; and

- b) in the case of any RSL which has charitable status, no payments are made under the special exceptions which would be in breach of the RSL's charitable objects; and
- c) no person receiving any payments or benefits under these permitted classes is given any priority, beneficial treatment or beneficial terms because of any connection with the RSL or any relevant person or business; and
- d) any decision taken as to whether or not to make a payment or grant a benefit under these permitted classes is taken by the RSL's governing body or a sub-committee with specific delegated authority. Any person with an interest in the matter should declare it and leave the meeting before the discussion of the case; and
- e) all decisions taken in relation to these classes of special exception are recorded as such with the date and summary details of payments made or benefits granted, in the minutes of the governing body meeting, and in a separate register kept for that purpose (i.e. Schedule 7 Special Exceptions Register). The register must be available for public inspection at the head office of the RSL at all reasonable times. The register details should include:
  - the category of special exception employed;
  - the name of the person or business involved;
  - the relationship or connection with the RSL;
  - the description of the payment made or the benefit granted (for example, the address of the property or the job title of the post concerned);
  - the value of the payment or benefit granted (in kind); and
  - the date of the governing body meeting at which the decision was made.

18. These are the six classes of special exception:

**Exception 1: Granting of a tenancy or shared ownership agreement to a relevant person.**

Tenancies are benefits in terms of the legislation so most RSLs would be prohibited from granting tenancies to existing or former employees or governing body members and close relatives of such people (the exception being governing body members of fully mutual co-operative societies). However, we recognise that this restriction could deter people from becoming members of committees and act against objectives such as community empowerment and tenant involvement.

An RSL may, therefore, grant a new tenancy, transfer of tenancy, mutual exchange or shared ownership agreement or dispose of a house to a relevant person providing that:

- a) this action fully meets the published criteria by which the RSL allocates or disposes of housing; and

- b) the employee, former employee, governing body member or former governing body member has no involvement in or influence over the process by which the RSL allocates the tenancy or disposal in question.

**Exception 2: Granting a contract of employment to a former employee, or to a close relative of an existing employee, or to a close relative of a person who has been an employee or governing body member within the last 12 months.**

An RSL may grant a contract of employment to a former employee or to a close relative of an existing or former employee or to a close relative of a former governing body member within the 12-month exclusion period providing that:

- a) there was a full and fair process for competitive recruitment; and
- b) in the case of a close relative of an employee or former employee, that employee or former employee has no involvement or influence over the selection process; and
- c) there is no direct or indirect line management responsibility involving an existing member of staff and a close relative.

**Exception 3: Making a specified payment or carrying out work to the house of any tenant of an RSL, which might otherwise be prohibited by Schedule 7:**

Members of governing bodies are not entitled to receive payments from the RSL other than out of pocket expenses. This can be a problem for governing body members who are also tenants. For example, this would prohibit them from accepting payments such as decoration allowances or ex-gratia compensation payments to which they might otherwise be entitled as tenants.

Therefore, an RSL may make a specified payment or carry out work to the house of any tenant of an RSL, which might otherwise be prohibited by Schedule 7, in respect of any payments due to all tenants which arise from an agreed RSL policy, providing that:

- a) the RSL has a clear policy and procedure in place which entitles all tenants to the same access to payments and/or benefits, and makes the qualifying criteria very clear; and
- b) the person to whom the payment is made meets the qualifying criteria.

**Exception 4: Making a voluntary severance payment to an employee, which is outside the contract of employment:**

An RSL may make a non-contractual payment or grant a non-contractual benefit (in addition to any contractual payment to which the employee is entitled) to an employee but the RSL must ensure that:

- a) it directly arises from the RSL's decision to determine (terminate) the employee's contract; and
- b) there is a clear business rationale for the employee's contract being determined i.e.

- because of early retirement, redundancy, restructuring or in the interests of the efficient and effective operation of the RSL; and
- c) if charitable, the decision is consistent with the RSL's charitable status; and
  - d) the total sum of non-contractual payments awarded does not exceed, in the opinion of the RSL's legal advisor, the likely level of compensation which a court or tribunal might award if the employee brought a successful action for unfair dismissal against the RSL; and
  - e) the total value of the non-contractual payments and benefits does not exceed the equivalent of one year's gross remuneration for employees who have worked for the RSL for ten years or more. For those employees who have worked for fewer than 10 years, the payment should not exceed 1/10<sup>th</sup> of one year's gross remuneration for each year of completed service. These are not recommended amounts but are the maximum discretionary amounts that can be paid. The calculation of service should be based on continuous employment, but if members of staff have transferred under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) or within a group structure their total years of service can be used for the purposes of this calculation.

**Exception 5: Making a payment or granting a benefit to a relevant business.**

RSLs may in some cases make a payment or grant a benefit to a relevant business in which a close relative of a governing body member is a principal proprietor or is directly concerned in the management of a business with which the RSL has a commercial relationship where the relevant business is able to offer better value for money than any alternative.

RSLs may also, in very exceptional circumstances, make a payment or grant a benefit to a relevant business in which a close relative of an employee is a principal proprietor or is directly concerned in the management of a business with which the RSL has a commercial relationship. This would only apply where no other alternative, reasonable option exists for procuring the product or service.

In both circumstances, this exception is permitted providing that:

- a) the procurement process is fair and accountable and in accordance with good practice in procurement and the RSL's procurement policy; and
- b) the governing body member or employee concerned is not involved in any aspect of the contract procurement; and
- c) the governing body member or employee concerned is not to be involved in the management of the contract, including approving any variations or extensions to the contract; and
- d) the governing body member or employee concerned will declare their interest and leave any meetings where dealings with the relevant business are discussed.

**Exception 6: Payment for loss of earnings.**

RSLs may make payment for loss of earnings to a member of the governing body to cover attendance at a meeting or an event providing that:

- a) The payment is not being made in respect of a routine meeting, except where the RSL operates in a remote rural or island community or where the RSL's area of operation covers a widespread geographical area where travel time is extensive and loss of earnings results as a direct consequence of this and there is no other option to ensure the appropriate level of expertise or tenant experience on the governing body; and
- b) attendance by the person claiming loss of earnings was important e.g. the Chairperson of a staffing sub-committee at an interview panel; and
- c) every effort was made to hold the relevant meeting at a time which would avoid governing body members losing salary or leave, having regard to the cost of other options such as overnight accommodation costs; and
- d) the governing body member concerned provides a letter from their employer confirming that earnings have been lost or leave entitlement had to be used, and the amount or value involved; and
- e) the RSL has a policy on payment for loss of earnings that includes an upper limit payable, which is broadly in line with jury level expenses.

#### **“DE MINIMIS” PAYMENTS AND BENEFITS**

19. Certain payments may be considered “de minimis” or as having no substantive value or material consequence and should not breach Schedule 7. For example:
  - gifts of small value made to employees or governing body members on certain occasions;
  - giving promotional material to employees and governing body members;
  - sponsorship by RSLs of local clubs or giving prizes for local competitions;
  - donations of a small value to local groups or charities;
  - parties or organised events to celebrate special occasions; or
  - lending computer equipment to governing body members to assist that person in their role on the governing body.
  
20. In these cases the RSL should ensure that:
  - the scale and nature of the activity is proportionate to the scale and aims of the organisation; and
  - there is an appropriate policy on the matter; and
  - the budget for these activities is made known to the membership; and
  - potential and real conflicts of interest are pro-actively managed; and
  - there is a fair and open approach to any event or activity; and
  - equipment located outwith the RSL's office is recorded in the fixed asset register.

## **BREACHES OF PART 1 OF SCHEDULE 7**

21. RSLs should develop their own policies and procedures on payments and benefits and other aspects of corporate governance that have regard to current best practice and recommended Codes of Conduct for RSLs. These policies and procedures should build on this guidance and help keep the RSL within the letter and spirit of the law and should be appropriate to the scale and nature of the organisation. RSLs should also ensure that there are robust controls in place to detect and prevent breaches of the law. RSLs should have established systems to allow for declarations of interest to be stated by potential and existing governing body and staff members and housing applicants and for appropriate checks to be made by the RSL, particularly when considering commercial contracts. However, a declaration of interest by itself does not necessarily indicate a breach of Schedule 7, nor is it enough to remedy a breach of the provisions of Part 1 of Schedule 7.
22. If an RSL has any doubt about whether a particular payment should be made or benefit granted it should seek independent legal advice. RSLs should ensure that their governing instrument is clear about what action will be taken in respect of a governing body or staff member who, by their actions or omissions, cause the RSL to be in breach of Schedule 7.
23. Where an RSL makes a payment in excess of the maximum permitted (as may be specified by Scottish Ministers) in relation to the payment of fees or other remuneration or expenses to members, or in relation to expenses to a governing body member, the RSL must recover the excess payment if directed to do so by Communities Scotland (acting on behalf of the Scottish Ministers).
24. Where an RSL, in contravention of schedule 7, makes a payment or gift or grants a benefit, it may be directed to take proceedings to recover the sum or the value of the gift or benefit. In deciding whether or not to direct recovery, the Regulation Board of Communities Scotland (acting on behalf of the Scottish Ministers) may consider:
  - a) the materiality and seriousness of the case;
  - b) the positions of the people involved and the nature of any relevant relationships;
  - c) the potential to damage the reputation of the sector;
  - d) the factors that the RSL's governing body considered in reaching its decision;
  - e) evidence of intent to deceive or mislead and evade Schedule 7;
  - f) the speed and manner of the RSL's response once a breach has been identified;
  - g) the RSL's track record on Schedule 7 and associated governance issues;
  - h) whether all other procedures were followed properly apart from the breach (e.g. procuring a contract, competition for a job, normal criteria for tenancy allocation etc);
  - i) the impact of a decision to recover on the beneficiary (e.g. any decision to recover a payment or benefit awarded under a contract which was entered into in good faith may directly affect the recipient rather than the RSL);
  - j) the impact of the RSL's decision, and the possible impact of a decision to recover, on the RSL's financial situation; and
  - k) the actions taken by the RSL to make sure that a similar breach does not recur.

## **REVIEWING THE GUIDANCE**

25. Communities Scotland will review this guidance in one year and will collect information from RSLs on their use of the special exceptions to inform the review process.

**Annex A**

**Housing (Scotland) Act 2001**

**SCHEDULE 7**

(introduced by section 63)

**REGULATION OF REGISTERED SOCIAL LANDLORDS**

**Part 1**

**CONTROL OF PAYMENTS TO MEMBERS ETC.**

**Payments by way of gift, dividend or bonus**

1 (1) A registered social landlord must not make a gift or pay a sum by way of dividend or bonus to -

- (a) person who is or has been a member of the body,
- (b) a person who is a member of the family of a person within paragraph (a),
- (c) a company of which a person within paragraph (a) or (b) is a director, or
- (d) a firm of which a person within paragraph (a) or (b) is a member,

except as permitted by this paragraph.

(2) The following are permitted –

- (a) the payment of a sum, which, in accordance with the constitution or rules of the body, is paid as interest on capital lent to the body or subscribed by way of shares in the body,
- (b) the payment by a fully mutual housing association to a person who has ceased to be a member of the association of a sum which is due to the person either under a tenancy agreement with the association or under the terms of the agreement under which the person became a member of the association.

(3) Where a landlord pays a sum or makes a gift in contravention of this paragraph, the landlord may recover the sum of the value of the gift, and proceedings for its recovery must be taken if the Scottish Ministers so direct.

*Payments and benefits to officers and employees etc.*

2 (1) A registered social landlord must not make a payment or grant a benefit to –

- (a) an officer or employee of the landlord,
- (b) a person who at any time within the preceding twelve months has been a person within paragraph (a),
- (c) a close relative of a person within paragraph (a) or (b), or

- (d) a business trading for profit of which a person falling within paragraph (a), (b) or (c) is a principal proprietor or in the management of which such a person is directly concerned, except as permitted by this paragraph.
- (2) The following are permitted –
- (a) payments made or benefits granted to an officer or employee of the landlord under that person's contract of employment with the landlord,
  - (b) the payment of expenses to an officer of the landlord, who does not have a contract of employment with the landlord,
  - (c) any such payment as may be made in accordance with paragraph 1 (2) (interest payable in accordance with the rules and certain sums payable by a fully mutual housing association to a person who has ceased to be a member),
  - (d) the grant or renewal of a tenancy by a co-operative housing association,
  - (e) where a tenancy of a house has been granted to, or to a close relative of, a person who later becomes an officer or employee, the grant to that tenant of a new tenancy, whether of the same or another house,
  - (f) payments made or benefits granted with the approval of the Scottish Ministers (which approval may be given only in relation to a class or classes of case).
- (3) Where a landlord pays a sum or grants a benefit in contravention of this paragraph, the landlord may recover the sum or value of the benefit; and proceedings for its recovery must be taken if the Scottish Ministers so direct.

*Maximum amounts payable by way of fees, expenses, etc.*

- 3 (1) The Scottish Ministers may from time to time specify the maximum amounts that may be paid by a registered social landlord –
- (a) by way of fees or other remuneration, or by way of expenses, to a member of the landlord who is not an officer or employee of the landlord, or
  - (b) by way of expenses to an officer of the landlord who does not have a contract of employment with the landlord,

and different amounts may be so specified for different purposes.

- (2) Where a landlord makes a payment in excess of the maximum permitted under this paragraph, the landlord may recover the excess, and proceedings for its recovery must be taken if the Scottish Ministers so direct.

## Annex B

### Interpretation of Terms

For the purposes of this guidance and its annexes, the following definitions will apply:

- **Payments and Benefits:** a benefit includes but is not confined to:
  - the grant of a tenancy;
  - the grant of a shared ownership or shared equity agreement;
  - the sale of property at any value, (other than sales under the Right to Buy or other statutory scheme);
  - the purchase of a property owned by a relevant person;
  - the award of a contract of employment;
  - the award of any other type of commercial contract such as a building contract or contract for letting commercial premises or provision of services or supplies;
  - loans, unless included in the employment contract, such as a car loan;
  - the use of the RSL's premises, facilities and/or staff time for non-RSL business unless this is of "de minimis" value;
  - a non-contractual severance payment;
  - an out-of-court settlement paid in relation to an Employment Tribunal; and
  - gifts of more than a "de minimis" value;
- **Governing Body:** the RSL's committee of management, board of directors, executive board etc., however denominated, and any sub-committee or equivalent to which the governing body has delegated powers.
- **Governing Body Members:** all members of the main governing body including co-opted members. Where the organisation is a subsidiary the term "governing body members" will include the members and co-opted members of the governing body of both the parent and the subsidiary. Members of sub-committees or area committees or the equivalent, who are not members of the main governing body, should be treated as being subject to schedule 7.
- **Employee:** a person who has a contract of employment with the RSL. Normally an employee is paid a salary or wages and the RSL deducts tax and National Insurance contributions through the PAYE system. However, it is possible for a contract of employment to exist where someone is apparently working on a freelance basis. This will depend on the amount of control the RSL has over the individual's time and methods of performing the task. For example, a consultant brought in to carry out the duties that would normally be performed by a paid member of staff would be considered an employee for the purpose of this guidance.

- **Officer:** defined for the purposes of Part 3 of the 2001 Act in section 83 of that Act:
  - For I&P Societies “officer” has the meaning ascribed in section 74 of the 1965 Act, which states “officer...includes any treasurer, secretary, member of the committee, manager or servant of the society other than a servant appointed by the society’s committee”. This includes a co-opted member of the committee of the society.
  - For Companies, “officer” has the meaning ascribed in the 1985 Companies Act, which states “officer in relation to a body corporate includes a director, manager or secretary”.
  
- **Member of the Family:** as defined by Section 108 of the 2001 Act – “Meaning of “family” and “spouse”: cohabitation”:
  - (1) For the purposes of this Act, a person (“A”) is a member of another’s (“B’s”) family if-
    - (a) A is the spouse of B, or A and B live together as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex, or
    - (b) A is B’s parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.
  
  - (2) For the purpose of subsection (1)(b)-
    - (a) a relationship by marriage is to be treated as a relationship by blood,
    - (b) a relationship of the half-blood is to be treated as a relationship of the whole blood,
    - (c) the stepchild of a person is to be treated as that person’s child, and
    - (d) a person brought up or treated by another person as if the person were the child of the other person is to be treated as that person’s child.
  
- **Close Relative:** a person is a close relative if:
  - (a) he or she is the spouse or he or she cohabits with that person (whether the same or different sexes), or
  - (b) he or she is that person’s parent, grandparent, child, stepchild, grandchild, brother, or sister.

- **Relevant Person:**

- (a) a member of the governing body, an officer or employee of the RSL
- (b) a person who at any time within the previous 12 months has been a person within category (a)
- (c) a close relative of a person within category (a) or (b)

- **Relevant Business:** a relevant business is a business trading for profit where a principal proprietor or a person who is directly concerned in its management is a relevant person or any company or firm of which an existing or former governing body member or their family is a director or member.
- **Businesses trading for profit:** a business trading for profit is one that can distribute its surpluses, profits or capital to its members or shareholders for their personal use.
- **Person directly concerned in the management:** a person is “directly concerned in the management” of a business trading for profit if he or she has the power to make decisions for the business such that there is a real risk that the RSL’s decision to make a payment or grant a benefit to the business could be influenced by the interests of the business.
- **Principal Proprietor:** someone whose degree of ownership is such that there is a real risk that the RSL’s decision to make a payment or grant a benefit to that business could be influenced by that fact. This degree cannot be set at any particular percentage of share ownership or equity partnership – it will depend on the facts of each case. However, a person may be considered a principal proprietor if he/she:
  - can vote on questions affecting the management and conduct of the business or its internal constitution;
  - has the right to any shares of the business; or
  - has the right to any share capital of the business on the winding-up.

A person will not normally be considered a principal proprietor if they have a small shareholding in a large company and in the case of large businesses that operate nationally, such as banks, building societies and public utilities, this condition will only apply to parts of the business with which the RSL has a direct relationship.