



THE SCOTTISH  
HOUSING  
REGULATOR

## GUIDANCE NOTE

**To:** All Registered Social Landlords (RSLs)  
**Subject:** The Requirements of Writing (Scotland) Act 1995  
**Issued by:** The Scottish Housing Regulator  
**Ref no:** SHR 02  
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### Summary

This guidance note sets out the implications of the Requirements of Writing (Scotland) Act 1995 for registered social landlords and gives guidance on the actions RSLs are recommended to take in the light of the Act to ensure that the management committee remains in full control of the RSL's affairs.

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 The Requirements of Writing (Scotland) Act 1995 (the 1995 Act) made new provisions for the formal execution of deeds in Scotland.
- 2 Broadly, the formal execution of a deed should mean that the deed proves itself and its contents in legal proceedings without need for further evidence. Formal execution should mean that the party or parties signing it are in full agreement with the terms of the document. It should be noted that this is a very general account in layman's terms of a very complicated area of law.
- 3 Again very generally, any deed or document relating to a long term contract and/or involving a significant amount of money should be formally executed. All deeds relating to land or buildings should be formally executed and recorded in the Land Register or Register of Sasines.

## **BEFORE THE 1995 ACT**

- 4 Section 36 of the Industrial and Provident Societies Act 1965 (the 1965 Act) presumed any deed to be duly executed if it carried the common seal of the society and the subscription of two committee members and the secretary. In accordance with these provisions, all registered housing associations and co-operatives (associations) using unamended versions of the present Model Rules currently have the following as one of their Rules:-

"The Association shall have a seal which shall be kept under the custody of the secretary unless the committee direct that it should be kept in the custody of some other officer and shall be used only under the authority of a resolution of the committee, and affixing of the seal shall be attested by the signatures of two committee members and the counter- signature of the secretary for the time being and recorded in the register kept for that purpose."

- 5 Section 1(1) of the 1965 Act made it a condition of registration by the Registrar that the Rules made provision for custody and use of the seal. The Rules do not specify the purposes for which the seal must or may be used or even that it must be used at all.
- 6 Prior to the 1995 Act, however, an association having the Rule quoted above

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would always have had to use its seal in the prescribed manner for the formal execution of any important deed or document. For its own protection, any party to an agreement with an association which it wished to be legally binding would have insisted on the association using its seal in the manner prescribed in the 1965 Act and echoed in the Rules.

- 7 Use of the seal, as well as being the proper method of executing deeds and documents binding the association to agreements with others, also ensured, because of the terms of the Rule, that no agreement which would bind the association legally could be signed other than by authority of a specific resolution of the committee. The arrangements for the custody of the seal and the keeping of the seal register also provided safeguards against the improper granting or renouncing of rights and obligations, and against improper handling of property and assets of the association.

#### **EFFECTS OF THE 1995 ACT**

- 8 The 1995 Act repealed Section 36 of the 1965 Act. It did not, however, alter the contents of the Rules concerning custody and use of the seal. Neither did it repeal the registration requirement enforced by the Registrar, that the Rules must provide for the custody and use of the seal. Indeed Section 3 of the 1965 Act refers to possession of a common seal as an essential attribute of a registered society.
- 9 The 1995 Act provides that all deeds and documents of whatever kind will be presumed to have been subscribed by an association if they bear to have been subscribed on behalf of the association by:-
  - a a member of the committee; **or**
  - b the secretary of the association; **or**
  - c a person bearing to have been authorised to sign such a deed or document on behalf of the association

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**AND EITHER**

- i signed by a person as a witness of the signature of such member, secretary or person authorised to sign AND the deed or document states the name and address of such witness; **OR**
  - ii where the deed or document is not signed by a witness, it is sealed with the Seal of the association.
- 10 Provided an association still has a seal and keeps it in accordance with its Rules, since the Rules do not actually require the association to use the seal - only direct how it must be used if it is used - an association no longer requires to use its seal in executing deeds and documents in order to satisfy persons with whom it deals that a deed or document has been properly executed.
- 11 The 1995 Act means that:-
- a any member of an association's committee or its secretary can sign documents which will be legally binding on the association provided only that s/he has her/his signature witnessed. The witness can be anyone who sees the person signing or receives her/his acknowledgement of the signature. The name and address of the witness must be stated on the document; and
  - b any person bearing to have been authorised to sign the deed or document can do so provided her/his signature is witnessed by anyone whose name and address are also stated on the deed or document.

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### **PERFORMANCE STANDARDS**

- 12 Performance Standards require management committees to control and be responsible for the conduct of all the business of the association. This means that it is unacceptable for a single committee member or the secretary alone to legally bind the association to something without the prior approval of the committee. Unfortunately the operation of the 1995 Act means that a deed or document signed by one of them, with a witness to the signature, is presumed to have been signed by the association. If a deed or document is signed by a committee member or the secretary and witnessed as required, whether or not the committee as a whole approve of what has been done, there may be no way of extricating the association from the position it has been put in without litigation, the outcome of which may be highly uncertain. The possibility that a person may "bear" to have been authorised to sign, but in fact may not have been, may also be a risk to the association.
- 13 Committees will therefore have to consider how to control commitments the association is entering into and how to ensure that such commitments are made only by duly authorised committee and staff members.

### **RECOMMENDATIONS**

- 14 Scottish Homes recommends that all associations take action on this matter as follows:-
- a Adopt a policy of using the seal for important documents and of not using witnesses. If witnesses are to be used, then a policy should be adopted whereby equally effective safeguards are in place as where the seal is, or was, used. This gives the committee full control since the seal can only be used under the authority of a resolution of the committee.

#### **AND**

- b Adopt a policy of express committee authorisation, regularly updated, for named individuals as authorised persons to sign on authority of any

resolution of the committee and for such signing to be recorded in a register.

**AND**

- c set out, in a formal document, the authorised signatories for important documents and ensure the document is regularly updated. These arrangements can be used to allow certain members of staff also to sign documents with the safeguard of a prior resolution of the committee.

**NB However, having the above safeguards in place will not prevent a document being legally binding on the association if a committee member or the secretary or an apparently authorised person does sign it and the signature is witnessed.**

- d decide to act as above at least in the case of:-
  - i all deeds relating to land or buildings;
  - ii all long term contracts such as leases, management agreements etc; and
  - iii all arrangements involving significant amounts of money.
- e Ensure that all committee members, including the secretary if s/he is a committee member, fully understand the implications of signing any deed or document on behalf of the association and having it witnessed.
- f Ensure that written guidance, adequate initial training and regular reminders are provided for all committee members to keep them aware of their responsibilities in this area.
- g Ensure that a reference to the issue of signatures and witnesses is included in the Code of Conduct for Committee Members.
- h Ensure that committee members are fully aware of their responsibility for

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- ensuring that effective internal safeguards exist to prevent the association being committed in any deed or document without due authorisation.
- i Ensure that all resolutions by committee for the signing of documents are duly recorded in an appropriate register.

#### **NEW MODEL RULES**

- 15 Since the requirement for I & P Act Societies to have a seal and to keep and use it in a defined way still exists under the I & P Act legislation, the reference to the seal remains in the new Model Rules. It is possible to reduce the number of signatures required from three to one, being either a committee member or the secretary, since in any event the seal may only be used on a resolution of the committee. The new Model Rules in preparation by the SFHA will contain an appropriate Rule and a reference to the 1995 Act.