

Schedule of the General Consent (24 March 2005)

The Scottish Ministers in exercise of the powers conferred by Section 66 of the Housing (Scotland) Act 2001 (the 2001 Act) and of all other powers enabling them in that behalf, consent to any disposal by a registered social landlord registered under section 57 of that Act where such a disposal is included in Part 1 of this Consent and complies with any relevant condition that may apply to that disposal in terms of Part 2 of this Consent.

The General Consent dated 20 June 1996 (SHGN 96/12) is hereby revoked. This General Consent applies to any disposal on or after 1 April 2005.

Introduction

The General Consent allows registered social landlords to make certain disposals without having to apply for specific written consent from Scottish Ministers. Communities Scotland as an executive agency of the Scottish Executive deals with all consents under Section 66 of the 2001 Act.

This General Consent supersedes the General Consent dated 20 June 1996 (SHGN) 96/12 and comes into force on 1 April 2005. The changes to the consent have been agreed by the Regulation Board of Communities Scotland in accordance with Communities Scotland's Framework document of November 2001.

The Terms of the Consent are set out as follows:

- Part 1 Types of disposal.
- Part 2 Conditions applying to disposals
- Part 3 Approval of General consent by Scottish Ministers

Disposals that do not meet the terms of this consent will result in a breach of Section 66 provisions. Such disposals will be subject to whatever action we consider may be necessary.

Any reference to a qualified valuer in this consent means MRICS, ARICS, FRICS, ASVA or FSVA qualified (see *). Valuations are only required where a monetary value is set.

PART 1 TYPES OF DISPOSAL

1 Sale of land or property

- a) Sale of non-residential property or land that was not acquired or developed with public funding, valued by a qualified valuer (*) at £50,000 or less.
- b) Sale of non-residential land or property within or adjoining a tenement not acquired with public funding to improve housing in the tenement.
- c) Sale of a house or part of a house in a tenement, to an adjoining owner for amalgamation and improvement in a housing improvement scheme.
- d) Sale of untenanted property or land to a local authority by a Compulsory Purchase Order (CPO) which has been confirmed by Scottish Ministers.
- e) Sale of land back to a local authority that transferred the land to the RSL (for example, after demolition) under the terms of a stock transfer agreement.

2 Sales of small areas of land

- a) Sale of land to any person or body responsible for supplying gas, water, electricity, drainage, telephone or other communication services to an RSL's stock.
- b) Sale of land to a local authority for the purposes of completing the adoption of any sewers, water mains, roads, footpaths and other areas of land used for maintenance or for providing and improving roads or footpaths.
- c) Sale of any untenanted land not required by an RSL for any purpose valued by a qualified valuer (*) at £5,000 or less.
- d) Sale of land to a local authority which is identified in planning conditions agreed with the local planning authority as open space or amenity land.
- e) An excambion with an adjacent owner of no more than 36 square metres to/from each party to correct a boundary discrepancy.
- f) Sale of small areas of land such as garden ground (no more than 36 square metres) to an adjacent owner or a tenant of the RSL.
- g) Sale of areas of public open space not suitable for development to the local authority.

3 Sales and heritable securities - Low-cost home ownership

- a) Sale of a share (including a final share) in a shared ownership property in accordance with the shared ownership agreement and relevant guidance by Scottish Ministers.
- b) A standard security over a house or a share of a house to enable a sharing owner under a shared equity scheme to secure borrowing.
- c) Sale of a share in a shared equity property or sale of the whole property in accordance with the shared equity agreement and relevant guidance by Scottish Ministers.
- d) Sale of houses improved under an Improvement for Outright Sale scheme.
- e) Sale to a tenant under a voluntary sales policy previously agreed by Scottish Ministers on no better terms than those offered under the statutory Right to Buy.

4 Heritable securities - social housing

A heritable security over land or property to be used for providing social housing in exchange for public funding for that housing in favour of :

- a local authority
- a local health authority or NHS Trust
- a local enterprise company
- Scottish Ministers
- Public Works Loan Commissioners
- The Lottery Board
- other public lending authorities

5 Leases

All leases of residential and non residential property and land.

6 Rights of way, servitudes, wayleaves, excambions

- a) Grants of rights of way or servitudes over land to any person or body responsible for supplying gas, water, electricity, drainage, telephone and other communication services.
- b) Grants of rights of way or servitudes over land to other RSLs, where there is a joint development agreement with another RSL on an adjacent or jointly owned site.
- c) Grants of rights of way or servitudes over land to parties other than RSLs valued by a qualified valuer (*) at £5,000 or less.
- d) An excambion (not covered by 2(e) where the difference between the market values of the land to be disposed of and the land to be acquired does not exceed £5,000 as determined by a qualified valuer (*)).
- e) Grants of rights of way or servitudes over land that the RSL does not own which does not adversely affect its stock or its tenant.

PART 2 -CONDITIONS APPLYING TO DISPOSALS

An RSL may make a disposal under Part 1 of this General Consent if all the relevant conditions below are met.

1. Certification –all cases

- a) Before any disposal takes place a governing body member, or member of staff acting under delegated authority of the RSL (see d below), must complete a written certification, in the form S66Con/GC 'Record of General Consent' provided by Communities Scotland. A certification may relate to an individual disposal or to a number of identical disposals. Certification should also be used to record any changes to an existing consent solely because of a misspelling (not a change) in a purchaser's name, the RSL's name, or an inclusion or deletion (not a change) of a spouse or partner's name. The payment or other legal consideration must not have altered.
- b) The signature on the S66Con/GC 'Record of General Consent' form should be witnessed.
- c) A record of the disposal must be made in the RSL's Register of Disposals (the register). The register will be kept at the RSL's head office and be available for inspection by Communities Scotland at all times for regulation purposes. All S66Con/GC forms and all supporting papers, including (where appropriate) valuations, other consents, copies of legal documents and site plans, should also be easily accessible for inspection purposes.
- d) Subject to the RSL's constitution, governing bodies may only delegate authority to sub-committees or employees to certify a disposal to which this General Consent applies where employees or officers are suitably experienced and where the terms of the delegated authority are set out (eg, in a minute, policy or scheme of delegated authority). Governing bodies must not delegate authority for major disposals, for example refinancing or multiple disposals.

2. Conditions for a lease

- a) The lease complies with any Housing Association Grant conditions or any other grant funding conditions imposed by Scottish Ministers, a local authority or any other public body.
- b) The RSL can show good reason for leasing a dwelling-house to another organisation rather than issuing a Scottish Secure Tenancy to individual tenants.
- c) The terms of the lease accord with Communities Scotland's guidance on Section 66 of the 2001 Act.
- d) The terms of the lease ensure the property is managed in accordance with Communities Scotland's published performance standards.
- e) The terms of the lease ensure that ultimate control of the land or property remains with the RSL.
- f) The terms of the lease ensure that the RSL can monitor the management of the property.

- g) The RSL considers that the lessee has the ability, record or character appropriate to the management of the property and that no undue risk is being incurred for the residents or the RSL.
- h) The RSL considers the lessee has, or can generate, the financial resources needed to manage the accommodation in line with the terms of the lease.
- i) Where the lessee is a local authority, the lease is part of an agreed plan for supporting people in their community.
- j) Where the property is leased for community benefit, it falls within the RSL's wider action strategy and/or is property that has been difficult to let.
- k) The rent covers all the RSL's costs in providing the accommodation and administering the lease (including a provision for major repairs), unless the RSL's wider action strategy allows for a reduced rent to not-for-profit organisations where there is a community benefit.
- l) The RSL will not lease properties to a profit-making organisation except where they are a with profit organisation providing a care, support or accommodation service to Scottish or UK Ministers, a Scottish local authority or any other public body or officeholder in Scotland and the UK.
- m) There is an appropriate legal agreement between the lessee and any of its staff members who are to reside in the property, which would enable the RSL to recover possession of the property if the lease were terminated.

2 Conditions in other disposals

- a) On a sale, excambion or servitude or other grant of interest in land, where there is a valuation requirement, a qualified valuer (*) has confirmed that the price is at least equal to its likely value on the open market which confirmation needs to be dated three months or less before the disposal takes place.
- b) If the disposal is of HAG-funded land, the RSL is in discussion with the appropriate Communities Scotland Area Office about the repayment of grant.
- c) If the disposal is of land acquired through Large Scale Voluntary Transfer, the relevant sale and purchase agreement does not say that any payment is due to Scottish Homes or its successor body, or to a local authority, by way of clawback.
- d) If a disposal is made under category 3 (e) of Part 1 of the General Consent the RSL must have obtained Scottish Ministers' written agreement to the introduction of a voluntary sales policy.

3 All disposals

- a) The disposal is within the terms of the RSL's governing instrument and charity law where applicable.
- b) The property is to be disposed of in a way that fully complies with Housing Association Grant conditions or any other grant funding conditions imposed by Scottish Ministers, a local authority or any other public body.
- c) The disposal has governing body authority and decisions have been properly minuted.

- d) The disposal does not, in the opinion of the RSL's governing body, affect the RSL's ability to meet its financial obligations or breach the covenants contained in any loan agreements entered into with any of its lenders.
- e) The disposal or any related transactions do not constitute a breach of Schedule 7 of the 2001 Act and will not be made to a person or organisation listed in the Schedule which includes the RSL's officers, employees, and their relatives, and businesses trading for profit in which those parties have an interest.
- f) The disposal should not affect the quiet enjoyment of the RSL's residential tenants, should be for a single transaction only, and should not be linked with any other disposal made under this Consent.
- g) Scottish Ministers have not notified the RSL in writing that it may not make a specific disposal or class of disposals under the terms of this Consent.

4 Disposals excluded from consent

- a) The disposal is not made by an RSL during any period when it is subject to an enquiry in terms of Schedule 7 of the 2001 Act.

Part 3 – Approval of General Consent by Scottish Ministers

Signed by Karen Watt

Date 24 March 2005

Name Karen Watt

Position Director of Regulation & Inspection, Communities Scotland.

A duly authorised officer on behalf of Scottish Ministers