



Scottish Housing
Regulator

**Consent to
disposals of land
or assets**
April 2012
Regulatory Guidance

Consent to disposals of land or assets: Parts 9 and 11 of the Housing (Scotland) Act 2010

Introduction

1. Section 107 of the Housing (Scotland) Act 2010, (the Act), requires registered social landlords (RSLs) to seek our consent to dispose of land or to dispose of any other assets by granting security over them (referred to as disposals) unless the disposal is one that does not require our consent.
2. Our approach to exercising our powers to give our consent is set out in our Framework for the Regulation of Social Housing in Scotland which was published in February 2012.
3. We set out here the types of disposals which require our consent and those that do not. When our consent is required we may give General Consent to certain disposals or consent for particular purposes (Specific Consent). Appendix 1 lists when consent is needed and which type is required, general or specific
4. This guidance also sets out how we will consent to disposals. This guidance applies to all currently and previously registered RSLs and RSLs that have deregistered but owned land at the time of their removal from the register. It explains;
 - the disposals the RSL can deal with by a certification procedure under General Consent; and
 - our approach to subsequent disposals of properties acquired under section 135.
 - which disposals need our specific written consent;
 - the types of disposals that are exempt under section 108 of the Act and do not require our consent.
5. RSLs also need SHR's consent for other disposals which are the subject of separate guidance. These are;
 - disposals of transfer of assets following inquiries or asset transfer on dissolution or winding up;
 - disposal or restructuring under Part 10, Chapter 2 of the 2010 Act involving a change in landlord; and
 - constitutional change under Part 8 of the 2010 Act.

Context

6. When we consider whether to consent to a disposal, we will focus our regulatory interest and resources on the disposals which might present a risk to our regulatory objective which is to safeguard and promote the interests of persons who are or who may become:
 - (a) homeless,
 - (b) tenants of social landlords, or
 - (c) recipients of housing services provided by social landlords.
7. We will be risk based and proportionate in our approach and will make our approach as transparent and streamlined as possible while still safeguarding social housing assets in the sector.

8. RSLs will need to decide whether they require consent for a disposal and whether the disposal is covered by the General Consent or needs Specific Consent. In all cases the governing body will also need to ensure that disposal decisions are taken in line with the Regulatory Standards of Governance and Financial Management. Demolitions do not constitute a disposal.
9. Trustees of charitable RSLs will also need to take full account of their obligations and duties under charity law when they make decisions about disposals. In particular trustees of charitable RSLs have a duty to act with care and diligence when managing the charity's affairs and this means they must act as guardians of the charitable RSL's assets. Charity trustees can get further information about their obligations and duties from the website of the Office of the Scottish Charity Regulator (OSCR). Charity trustees should also consider if they need to seek advice from appropriately qualified individuals to help them make decisions about disposals.
10. Where a disposal is made without obtaining our consent, the disposal will be void (section 111 of the Act). It is therefore extremely important that RSLs are aware of when they will require our consent to a disposal, and which type of consent they should be seeking.

General Consent

11. The full Schedule of the General Consent and the conditions attached are detailed in Appendix 2. Conditions detailed in the Schedule are general, applying to all types of disposals requiring General Consent. Some types of disposals also attach tailored conditions specific to that type of disposal over and above the general conditions.

Types of Disposal Covered by the General Consent

12. The General Consent covers the following types of disposals:
 - (a) **sale of untenanted social housing dwellings to another RSL;** We consider that social housing dwellings are properties owned by a registered social landlord and let under a Scottish Secure Tenancy or Short Scottish Secure Tenancy.
 - (b) **sale of untenanted social and non social housing dwellings, land or other assets to another RSL as part of a development agreement made at the development stage. This would include both new build and redevelopment work.** Where one RSL is delivering a new build or redevelopment project in whole or in part for another RSL, it does not need to seek our consent at the point of disposal. But RSLs will need to take account of appropriate advice and expertise to ensure that these agreements are comprehensive; protect their interests and comply with our regulatory Standards of Governance and Financial Management.
 - (c) **sale of untenanted social housing dwellings bought originally for temporary use such as decant accommodation.**
 - (d) **sale or excambion of social and non social housing land, untenanted social housing dwellings, or other assets up to and including £100,000 (but excluding tenanted social housing dwellings).**

This would cover disposals which either individually or cumulatively amount to £100,000 or less. When we say cumulatively, we mean situations where an RSL makes the disposal on a piecemeal basis to a particular buyer or consortium of buyers,



either at the same time or over the course of a 12 month period, up to a cumulative value of £100 000. Where an RSL has disposed of, or plans to dispose of, assets in any one financial year to a buyer or consortium of buyers and the cumulative receipt from those disposals is likely to be more than £100,000 then an application for Specific consent must be made.

As conditions change over time however the £100,000 limit may not be sufficient in some housing markets to allow disposal of an individual property so we will review this in 2014.

- (e) grant or excambion of right of way, access, wayleaves or servitude over social or non social housing dwellings and land
- (f) **subsequent disposals of properties acquired under Part 11, Section 135(1) of the Act.** These are disposals to sitting tenants of properties acquired under the legislation.
- (g) **granting 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 named bodies listed in the General Consent.**
- (h) **leasing (residential and non-residential) to non- profit making (and in specific instances, profit making) bodies.** If the RSL intends to lease residential properties to a profit-making organisation then it must only be where it provides 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. The same restriction does not apply to leasing of commercial properties such as shop units. In addition to the general conditions attaching to this type of disposal, specific conditions will also apply, detailed in Appendix 2.

SHR expects RSLs to:

- maximise security of tenure for its tenants. Wherever possible RSLs should provide SSTs for tenants receiving support in mainstream, self contained housing. In circumstances where this is not possible it is acceptable to lease properties to an organisation with the appropriate skills and expertise.
- ensure where residential properties are leased for non-residential purposes it is to support a residential or day care project by, for example, providing staff sleepover or office accommodation; or it delivers some community benefit where this fits with the RSL's wider role activities and/or is property that is difficult to let.

Examples of community benefit include the lease of an accessible base which the community, or a number of people in the community, can get information and advice from. This could include advice for example on welfare rights, disability rights or money advice.

RSL may also want to lease a residential or non-residential property to allow staff from a project to deliver a service to the community. The base could be used as a drop in centre, a training venue, or could provide residential accommodation for staff while on duty (e.g. when providing support to residents in dispersed flats in the area).

- follow good practice and adopt appropriate model leases where these are



available. The SFHA provides a model lease. Where a property is being leased on a commercial basis there is no model lease available. In these circumstances RSLs should take legal advice when drawing up an appropriate agreement and should ensure that risks are managed and income is sufficient to cover all costs including major repairs.

- Ensure that the length of a lease is determined by sound business reasons and be appropriate to the nature of the project. Where properties are being leased to local authorities to provide temporary accommodation for homeless people the term should generally be limited to one year although leases may be for up to three years where there are sound management reasons such as the design of the property or level of investment by the local authority.

RSLs may enter into leases for longer than three years where the project is unlikely to alter in the foreseeable future. In some situations the support provider may find it difficult to plan for the longer term if the project's existence can be guaranteed only for three years.

- Ensure that there are regular reviews of how well a lease is operating. Where RSLs enter into leases for longer periods, such as ten years, and are not using a Model lease, the lease should contain break clauses every three to five years. These arrangements allow the parties to terminate the lease more easily where they believe it is no longer the most appropriate arrangement.

Longer leases, i.e. leases for longer than three years, are acceptable for commercial premises. However RSLs still need to ensure arrangements are sustainable and risks are managed.

- (i) **sale or standard security for low-cost home ownership; equity sharing or voluntary sales schemes. In addition to the general conditions attaching to this type of disposal, specific conditions will also apply, detailed in Appendix 2.**
- (j) **sale or excambion of untenanted social and non social housing dwellings or land over £100,000, where an asset management and disposals strategy is provided and agreed in advance.** RSLs can use the General Consent for this type of disposal on condition that the RSL has provided us **in advance** with sufficient assurance on its approach. This will include us taking account of any information we have from our regulatory engagement with an RSL. The land or property can only be marketed for sale after we grant consent.

Where there is a sale and purchase agreement governing a stock transfer from a local authority, the RSL must obtain written agreement from Scottish Government concerning any clawback arrangements as a condition of being able to conclude the disposal.

We will publish asset management guidance on our website. When we consider an RSL's approach to asset management and any resultant disposal strategy we will want to know that:

- the governing body has considered and agreed the strategy on the basis of appropriate professional advice and SHR guidance;
- it has been agreed with lenders and is fully reflected in the RSL's financial



- it is based on sound information about the RSL's stock, tenants needs and aspirations, demographic information and housing supply and demand;
- it has fully taken into account the Local Housing Strategy (LHS) and the Strategic Housing Investment Plan (SHIP), or provided an explanation of why complying with the LHS or SHIP is not appropriate and can demonstrate engagement with the local authority about this.
- it fits with the RSL's objectives and business plan and sets out the anticipated timescales for concluding the strategy;
- it covers projections for disposals from activities such as sales of shares in properties or final shares in equity type schemes, compulsory purchase, improvement for sale and any voluntary sales policy;
- the RSL has a good track record in submission of regulatory returns.

Our approval of an RSL's asset management and disposal strategy and therefore the RSL's ability to use the General Consent will last for a fixed period. We will take account of the information provided by the RSL about how long the strategy will take to implement and prevailing market conditions in setting the fixed period. And this will be clearly set out in the letter granting permission to use General Consent. If the RSL needs to extend the fixed period for any reason it will need to make a further application for permission to deal with such disposals under the General Consent.

The RSL will need to provide a detailed schedule of properties or land which it plans to dispose of. The RSL must request a revised approval from SHR if there are any changes to this schedule.

We envisage these arrangements being appropriate only where there is a significant volume of disposals. The RSL will need to list the properties for disposal to be covered by the strategy. In the event that there is any material change to the agreed strategy, the RSL will need to submit a new application to us.

Effect of Moratorium on a General Consent

13. For any RSL subject to a moratorium S78 (1) of the Act states that, "during a moratorium a registered social landlord's land may not be disposed of without the Regulator's consent". In these circumstances the terms of the General Consent will fall and the RSL will need to apply for specific consent for any disposals other than those which are exempt due to S108 of the Act. The Regulator will then decide whether or not to give consent and what conditions will be attached to any consent to dispose taking into account all the circumstances of the RSL at the time.

Recording disposals made under the General Consent

14. An RSL must record any disposals it makes under the General Consent. It is for the RSL to determine what is appropriate but it must maintain an audit trail and ensure accountability to SHR, members, tenants and other service users which is publicly available..

Specific consent

15. Where an RSL needs to seek our specific consent it should apply on the appropriate application form which can be found (INSERT LINK) on our website. The disposals where RSLs will require our consent are listed below.

Types of Disposals requiring Specific Consent

16. Disposals not included in the General Consent and not listed below will require our specific consent.

- a) **Disposal by way of sale or excambion of untenanted social and non social housing dwellings, land or other (including non residential) assets over £100,000, where we have not received advance or sufficient assurance from the RSL's asset management and disposal strategies**

For those RSLs where there is a sale and purchase agreement governing a stock transfer from a local authority, confirmation should be sought from Scottish Government (SG) about the implications for any clawback arrangements. RSLs do not need to have agreement from SG in advance of applying for specific consent as we will consider an application in parallel with the RSL's discussions with SG. However, as part of the application the RSL should confirm that it has approached SG.

Where a stock transfer contract with a clawback clause is in place we may give consent to a proposed disposal before the RSL has received SG's agreement. But where SG's agreement has not been provided as part of the supporting documentation with the RSL's application for consent to dispose, this will be made a condition of the disposal. The RSL will therefore not be in a position to enter into a valid disposal until the confirmation is received from SG.

- b) **Disposal by way of granting security over social and non social housing dwellings land or other assets;** The RSL must certify that it has met the following criteria before we will approve a consent application for granting a security for private finance.

The loan facility will be used by the RSL itself or, if the loan facility is raised by the legal entity in a group structure that raises and on-lends finance for the group, the on lend must be:

- to an RSL within the same group;
- to a non-RSL within the same group, only following approval of a specific business case by SHR;
- on terms that impose no cost on RSL tenants;
- where the funding agreement specifically allows on-lending;
- at arm's length and on terms that can demonstrate no loss to the RSL;
- on terms that make it a 'qualifying loan' in accordance with HMRC rules, if the RSL is charitable;
- confirmed as on-lent by the RSL attaching details to its application for consent;

Each governing body must have considered cross-default and other liabilities in respect of the other RSLs in the group and comply with the RSL's constitution.

We will also want to ensure that the RSL's assets are not "over securitised", i.e. the value of assets being offered as security for borrowings is not greater than necessary to comply with the "asset cover" requirements of the lender. Options to minimise potential for over-securitisation may include:

- if the RSL has repaid a proportion of its loan facility, extra finance may be requested from or offered by the lender using "free" security now available against



- these assets. This option can keep legal and other costs down;
- the RSL requesting a release of some assets from a standard security or fixed charge when the balance of a loan has reduced and the asset cover is well above the compliance requirements of the lender(s).
- The loan must comply with our Regulatory Standards of Governance and Financial Management and (if relevant) must not contravene charity law, the Co-operative and Community Benefit Societies Act 1968 or the Companies Acts.
- The governing body must have considered the financial impact of obtaining the loan funding and of the associated loan servicing, repayment and covenant terms. A governing body minute must show the governing body's consideration and approval of the RSL's entry into the funding agreement.
- The duties of the governing body mentioned above may be exercised by a sub-committee to which the governing body has delegated suitable powers.

We may withhold consent for private finance disposals under certain circumstances, for example, if the terms of the funding threaten the RSL's long-term sustainability. **However, by granting specific consent we are not taking a view on the RSL's financial well-being or business viability.**

We will consider granting consent for security over housing stock for non-social housing activities. However, consent will only be granted where the RSL has provided us with the appropriate assurances through a business case and there is no risk that by using housing stock as security, the RSL would be restricted in raising finance for housing activities, e.g. future maintenance and improvements in stock.

We will only give consent for fixed or floating charges (where these are available and have value) in respect of lenders, public bodies or voluntary organisations with a financial interest in a development and a builder, or developer, taking a charge limited to the development period. This is in order to make sure RSL assets are used to support core activities. We will not give consent for floating charges proposed by RSLs that are registered societies because these have no value as a receiver cannot be appointed.

The valuation basis for social housing assets being disposed of as security for private finance is a matter for negotiation between the RSL and lenders based on the professional advice of valuers. Some RSLs use 'market value with tenancies' as the basis for loans, even if these are secured on social housing stock. We may ask to see a copy of the valuation where we need assurance about the RSLs capacity

- c) **Disposal by way of sale of tenanted social housing dwellings.** We have set out in separate guidance how we will decide whether or not to give consent and the procedure to be adopted by the RSL under Part 10 of the 2010 Act, where either consent is required for a disposal of land by a registered social landlord, and the disposal will result in a change of landlord for tenants who have a Scottish secure tenancy; or consent is required in relation to restructuring of a registered social landlord in terms of section 97 or 101 and the disposal will result in a change of landlord for tenants who have a Scottish secure tenancy.
- d) **Disposal by way of lease to another organisation, whether profit making or otherwise, which does not fall under the General Consent.** For example, disposals by way of lease of social housing dwellings to support new funding initiatives will require Specific Consent. In deciding whether or not specific consent will be granted



for disposals by way of lease to support new funding initiatives we will:

- want assurance that there are no legal or regulatory impediments to the proposals; and
- that there is a strong business case in terms of our regulatory objective as well as the RSL's objectives.

For all such proposals we will need to see:

- an explanation of how the proposal will work in practice;
- details of partnerships or arrangements with other RSLs and organisations;
- comprehensive financial modeling with assumptions clearly explained, setting out how the project will be funded; what the funding will support and arrangements for securing that funding. This should also clearly set out the governance and financial implications for the RSL.
- a detailed examination of the risks involved; how these will be managed and how tenants' interests will be protected.

Exempt Disposals

17. Section 108 of the Act (reproduced at Appendix 3) lists types of disposals which do not require our consent. Included in the types of disposals not requiring such consent is a provision enabling us to determine types and manners of disposals which will not require consent. At present we do not intend to make any such Determination, but if an RSL considers that such a Determination would be appropriate to a disposal for which consent will otherwise be required, we will need to see a business case detailing the benefits for current and future tenants and service users and how their interests will be protected

Applying for approval and consent

18. Governing bodies should receive appropriately detailed written report(s) explaining the rationale for each proposed disposal. These reports should be included as part of a specific consent application. We expect governing body members to ensure through these report(s) that all relevant conditions attached to the disposal are met and:

- consider the benefits and risks attached to each disposal including how risks will be managed;
- provide confirmation of how the proposed disposal fits with the Regulatory Standards of Governance and Financial Management;
- confirm that the proposed disposal fits with the Local Housing Strategy (LHS) and the Strategic Housing Investment Plan (SHIP) or explain why this is not appropriate;
- understand and fulfill their obligations as charitable trustees (where applicable);
- confirm, where the disposal is of Scottish Government grant funded land, discussions have been initiated or concluded as appropriate with the Scottish Government or the relevant local authority about any repayment or amendments to the grant;
- obtain details of any relevant specialist advice received in relation to the proposed disposals, for example, advice on complex financial or legal issues; and
- where the disposal is being made at below market value, confirm justification for this.

19. Where an RSL requires approval to dispose under the General Consent or to apply for

20. Application forms can be found on our website at www.scottishhousingregulator.gov.uk and can be e mailed to shr@scottishhousingregulator.gsi.gov.uk
21. If you have any queries about this guidance please contact us at:

The Scottish Housing Regulator
Highlander House
52 Waterloo Street
Glasgow
G2 7DA
Tel: 0141 271 3810

Appendix 1

When RSLs require our consent Disposals of land or other assets

Type of Disposal	Consent Required	General Consent	Specific Consent
Sales to Tenants with Statutory Right To Buy	No		
Leases to Tenants under Scottish Secured Tenancy or what would be SST but for Schedule 1 of the 2001 Act	No		
Leases to Tenants under a Short SST	No		
Leases under assured tenancy agreements or assured agricultural occupancies	No		
Leases under what would be an assured tenancy but for any of paragraphs 3 to 8 and 12 of Schedule 4 of the Housing (Scotland) 1988 Act	No		
Occupancy Agreement	No		
Sale of untenanted social housing dwellings to another RSL	Yes	Yes covered by general consent	Not required
Sale of untenanted social and non social housing dwellings, land or other assets to another RSL as part of a development agreement made at the development stage	Yes	Yes covered by general consent	Not required
Sale of untenanted social housing dwellings bought originally for temporary use such as decant accommodation	Yes	Yes covered by general consent	Not required
Sale or excambion of social or non social land, untenanted social housing dwellings or other assets up to and including £100,000	Yes	Yes covered by general consent	Not required
Grant or excambion of right of way, access, wayleaves or servitude over social or non social housing dwellings and land	Yes	Yes covered by general consent	Not required



Subsequent disposal of properties acquired under Section 135 (1) of the 2010 Act	Yes	Yes covered by general consent	Not required
Granting heritable securities to public bodies over property or land used for social housing in exchange for public funding for that housing in favour of named bodies listed in the General Consent	Yes	Yes covered by general consent	Not required
Leasing – both residential and non residential – to non profit making (and in specific instances, profit making) bodies subject to conditions	Yes	Yes covered by general consent	Not required
Disposal by way of sale or standard security for low cost home ownership; equity sharing or voluntary sales schemes subject to conditions	Yes	Yes covered by general consent	Not required
Leasing to another organisation, profit making or otherwise, which does not fall under the General Consent	Yes	No	Yes, apply for specific consent
Sale or excambion of untenanted social housing dwellings or land over £100,000	Yes	Yes, if prior agreement with SHR	Yes, if no prior agreement with SHR
Sale or excambion of untenanted non social housing dwellings, land over £100,000	Yes	Yes, if prior agreement with SHR	Yes, if no prior agreement with SHR
Granting standard security over social and non social housing dwellings, land or assets	Yes	No	Yes, apply for specific consent
Disposal by way of sale of tenanted social housing dwellings	Yes	No	Yes, apply for specific consent
Disposal by way of lease to another organisation, whether profit making or otherwise, which does not fall under the General Consent (for example to support new funding initiatives)	Yes	No	Yes, apply for specific consent

Schedule of the General Consent 2 April 2012

Introduction

1. This General Consent applies to any disposal on or after 1 April 2012 and supersedes the General Consent dated 24 March 2005 (SHR 14).
2. Under the Housing (Scotland) Act 2010 “the Act”, RSLs need to seek our consent to dispose of land or to dispose of any other assets by granting security over them (referred to as disposals). Section 107(2) of the Act enables the Regulator to give general consent to certain disposals.
3. Disposals eligible for General Consent and the relevant conditions applying to all such disposals are listed below. In addition, relevant conditions applicable to specific types of disposals are also listed below. Disposals made under the general consent must meet all of the relevant conditions applying to all disposals, and if relevant, any additional conditions applicable to that particular type of disposal.
4. Any reference to a qualified valuer in this consent means MRICS, ARICS, FRICS, ASVA or FSVA qualified. Valuations are only required where a monetary value is set.

Types of disposals

5. The General Consent covers the following types of disposals:
 - a) sale of untenanted social housing dwellings to another RSL;
 - b) sale of untenanted social and non social housing dwellings, land or other assets to another RSL as part of a development agreement made at the development stage.

This will include the sale of:

- non-residential land or property within or adjoining a tenement not acquired with public funding to improve housing in the tenement; and
- a house or part of a house in a tenement, to an adjoining owner for amalgamation and improvement in a housing improvement scheme;
- land to any person or body responsible for supplying gas, water, electricity, drainage, telephone or other communication services to an RSL’s stock;

- c) sale of untenanted social and non social housing dwellings bought originally for temporary use such as decant accommodation;
- d) sale or excambion of social and non social housing land, untenanted social housing dwellings, or other assets up to and including £100,000 (but excluding tenanted social housing dwellings).

This will include the;

- sale to a local authority by a Compulsory Purchase Order (CPO) which has been confirmed by Scottish Ministers;
- the 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;
- 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;
- 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.

Where the value of a disposal is greater than £100,000 then General Consent can still be used where an asset management and disposals strategy is provided and agreed in advance. See (j) below.

- e) grant or excambion of right of way, access, wayleaves or servitude over land;
- f) subsequent disposals of properties acquired under Part 11, Section 135(1) of the Act;
- g) granting 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; and
 - other public lending authorities.

We consider public funding to be grant funding. Where the funding is in the form of a loan this will require Specific Consent.

- h) leasing (residential and non-residential) to non- profit making (and in specific instances, profit making) bodies where this is not to support new funding initiatives;
- i) sale or standard security for low-cost home ownership; equity sharing or voluntary sales schemes. This includes improvement for sale schemes; and
- j) sale or excambion of untenanted social and non social housing dwellings, land or other assets over £100,000, where an asset management and disposals strategy is provided and agreed in advance.

Conditions attached to disposals under the General Consent

Conditions applying to all disposals

6. An RSL may make a disposal under this General Consent if all the relevant conditions below are met.
 - a) Funds from disposals will be used by the RSL to invest in its social housing activities.
 - b) The disposal is within the terms of the RSL's governing instrument and charity law where applicable.
 - c) The disposal does not affect the quiet enjoyment of the RSL's residential tenants.
 - d) The property is to be disposed of in such a way that there is no failure to comply with the terms and conditions of the offer of any public subsidy or any other grant funding conditions imposed by Scottish Ministers, a local authority or any other public body.
 - e) If the disposal is of Scottish Government grant funded land, the RSL is in discussion with Scottish Government or the relevant local authority about any repayment or amendments to the grant and an agreement on this will be reached before the disposal is concluded.
 - f) This disposal has governing body authority and decisions have been properly minuted. Where the RSL is a charity, the governing body is satisfied that the disposal; is in line with its charitable objects; is in the best interests of the charity and makes appropriate use of charitable funds.

- g) The disposal does not affect the RSL's ability to meet its financial obligations or breach the covenants or other loan conditions contained in any loan agreements entered into with any of its lenders.
- h) The disposal or any related transactions do not constitute a breach of SHR's Regulatory Standards.
- i) The disposal will be recorded in the RSL's Register of Disposals. The register will be kept at the RSL's head office and be available for SHR's examination at all times. Supporting papers for that disposal should also be easily accessible for verification by the Regulator.

Conditions applying to disposals by way of lease

- 7. An RSL may make a disposal by way of lease if all the relevant conditions below are met.
 - a) The RSL can show good reason for leasing a dwelling-house to another organisation rather than issuing a Scottish Secure Tenancy to an individual tenant.
 - b) The RSL will not lease residential 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.
 - c) 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.
 - d) 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.
 - e) Where the lessee is a local authority, the lease is part of an agreed plan for supporting people in their community.
 - f) 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.
 - g) Ensure the property is managed in accordance with the SHR's Regulatory standards of Governance and Financial Management

The terms of the lease:

- h) accord with this guidance on consent to disposals of land or assets.
- i) ensure that ultimate control of the land or property remains with the RSL.
- j) ensure that the RSL can monitor the management of the property.

The RSL is satisfied that the:

- k) 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.
- l) lessee has, or can generate, the financial resources needed to manage the accommodation in line with the terms of the lease.

Conditions applying to disposals by way of grant or excambion of right of way, access, wayleaves or servitude.

- 8. An RSL may make a disposal by way of grant or excambion of right of way, access, wayleaves or servitude if the disposal does not adversely affect its stock or its tenants.
- 9. If the disposal is by way of sale or excambion, a qualified valuer has confirmed the open market value. Confirmation must be dated three months or less before the disposal takes place.

Conditions applying to disposals by way of sale or standard security for low-cost home ownership; equity sharing or voluntary sales schemes;

10. An RSL may make a disposal by way of sale or standard security for low-cost home ownership; equity sharing or voluntary sales schemes if all the relevant conditions below are met;
- The sale of a share (including a final share) in a shared ownership property is in accordance with the shared ownership agreement and relevant guidance by the Scottish Government and Scottish Ministers.
 - The sale of a share in a shared equity property or sale of the whole property is in accordance with the shared equity agreement and relevant guidance by the Scottish Government and Scottish Ministers.
 - Where the sale is to a tenant under a voluntary sales policy previously agreed by SHR on no better terms and conditions than those offered under the relevant Right to Buy provisions (the Housing (Scotland) Act 2001 or the 2010 Act).
 - Where an RSL has agreed with us previously a contractual scheme it operates for a disposal not covered by the statutory scheme on the basis that the policy is on no better terms and conditions than those offered under the Right to Buy scheme as amended by the 2010 Act.

Housing (Scotland) Act 2010 Section 108 Disposals not requiring consent

1. The Regulator's consent under this Part is not required for a disposal—
 - (a) by way of a lease under a Scottish secure tenancy (or what would be such a tenancy but for Schedule 1 to the Housing (Scotland) Act 2001 (asp 10)),
 - (b) by way of a lease under a short Scottish secure tenancy,
 - (c) by way of a lease under an assured tenancy or an assured agricultural occupancy,
 - (d) by way of a lease under what would be an assured tenancy but for any of paragraphs 3 to 8 and 12 of schedule 4 to the Housing (Scotland) Act 1988 (c.43),
 - (e) by way of an occupancy arrangement,
 - (f) made in pursuance of the right to buy conferred by Part 3 of the Housing (Scotland) Act 1987 (c.26),
 - (g) made in pursuance of a direction given by the Regulator under section 67 or 106,
 - (h) for which the Regulator's consent is required under section 78,
 - (i) made in implementation of agreed proposals under section 86 or 87,
 - (j) arising from a restructuring for which the Regulator's consent is required under Part 8, or
 - (k) of such type and made in such manner as the Regulator may determine.
2. For the purposes of subsection (1) (e) an occupancy arrangement is an arrangement other than a lease—
 - (a) under which a person has the lawful right to occupy living accommodation (within the meaning of section 194 of the Housing (Scotland) Act 2006 (asp 1)) which forms part of premises or a group of premises owned by the landlord, and
 - (b) where the occupants of the premises share with each other one or more of—
 - (i) a toilet,
 - (ii) personal washing facilities, or
 - (iii) facilities for the preparation or provision of cooked food.
3. Before making, revising or withdrawing a determination under subsection (1)(k), the Regulator must consult—
 - (a) Ministers,
 - (b) registered social landlords or their representatives, and
 - (c) secured creditors of registered social landlords or their representatives.
4. The Regulator must make arrangements for bringing a determination (and any revision or withdrawal) to the attention of those affected by it.