SCOTTISH STATUTORY INSTRUMENTS

2004 No. 117

HOUSING

The Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004

Made - - - -	*10th March 2004*
Laid before the Scottish Parliament - - - -	*11th March 2004*
Coming into force - -	*1st April 2004*

The Scottish Ministers in exercise of the powers conferred by section 93(2) and section 109(2) of the Housing (Scotland) Act 2001(**1**), and of all other powers enabling them in that behalf, and after consultation with such bodies representing local authorities and registered social landlords and such other persons as they think fit in accordance with section 93(4) of that Act, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004 and shall come into force on 1st April 2004.

Interpretation and application

2.—(1) In these Regulations–

"the Act" means the Housing (Scotland) Act 2001;

"actual cashflow" means the cashflow approved by a local authority after completion of a project;

"appraisal" means, in relation to any grant, a process that enables a local authority to determine on the basis of all information available to that authority, whether contained in a document or otherwise, whether grant may be provided and the amount of any such grant;

"approved cashflow" means the projected cashflow approved by a local authority before commencement of a project;

(**1**) 2001 asp 10.

"approved documents" means all specifications, designs, bills of quantity, plans, forms of building contract, professional appointments and tender reports submitted to and approved by a local authority in respect of a project;

"bank guarantee" means a bank guarantee provided by a commercial bank as security for a grant, the terms of which have been approved by a local authority;

"business" means any person or body that carries out a commercial activity;

"chartered surveyor" means a surveyor registered with the Royal Institution of Chartered Surveyors;

"client group" means a category of individual which a local authority agrees is eligible to purchase or rent a unit in respect of which grant is paid;

"GPSE" has the meaning given by paragraph 1 of Schedule 4 to these Regulations;

"grant" means a grant included in the categories of grant assistance specified in regulation 3;

"grant applicant" means a person who has applied for a grant but who has not had that application for grant approved by a local authority;

"grant recipient" means a person who has received a grant or has had a grant application approved by a local authority;

"GRO for owner occupation" has the meaning given by paragraph 1 of Schedule 2 to these Regulations;

"HAG" has the meaning given by paragraph 1 of Schedule 1 to these Regulations;

"housing trust" has the same meaning as in section 2 of the Housing Associations Act 1985(**2**);

"housing association" has the same meaning as in section 1 of the Housing Associations Act 1985;

"individual with particular needs" means an individual who requires housing designed to meet that individual's specific requirements as a result of mental illness, mental disability or physical disability;

"licence agreement" means a licence agreement to allow a grant recipient to occupy and develop the subjects;

"local housing strategy" has the same meaning as in section 89 of the Act;

"market value" means the value of a unit as determined by a chartered surveyor as if that unit was available for sale on the open market with vacant possession;

"non registered housing association" means a housing association that is not an RSL;

"offer of grant" means an offer of grant made by a local authority to a grant recipient;

"performance bond" means a performance bond which is provided by a commercial insurance company as security for a grant, the terms of which have been approved by a local authority;

"permitted security" means a standard security, whenever granted, the terms of which have been approved by a local authority (and such approval shall be deemed to have been given in any case where it has been withheld unreasonably);

"private developer" means any person operating a business that develops property with a view to making profit, but does not include any public or local authority or an RSL;

"progress report" means the progress report and application for payment of grant submitted to a local authority in the form to be specified by that local authority at intervals specified by that local authority;

"project" means any project within the meaning of any of the Schedules to these Regulations;

(**2**) 1985 c. 69.

"retail prices index" means the General Index of Retail Prices (all items) issued by the Office of National Statistics or any successor Ministry or Department;

"RHOG" has the meaning given by paragraph 1 of Schedule 3 to these Regulations;

"RSL" means a registered social landlord in terms of section 57 of the Act;

"shared ownership" has the same meaning as in section 83(3) of the Act;

"subjects" means any land or buildings that are provided, improved, adapted and repaired, developed and redeveloped, or acquired or constructed with grant assistance;

"term of the grant" means the term of the grant within the meaning of each of the Schedules to these Regulations;

"unit" means an individual flat or house that is provided by a project;

"voluntary organisation" means a body whose activities are not carried on for profit, but does not include any public or local authority, RSL, housing trust or non registered housing association; and

"in writing" includes reference to an electronic communication, as defined in the Electronic Communications Act 2000(**3**), which has been recorded and is consequently capable of being reproduced.

(2) Any reference in these Regulations to a numbered regulation or Schedule shall, unless the context otherwise requires, be construed as a reference to the regulation or Schedule bearing that number in these Regulations and any reference in a regulation of, or a Schedule to, these Regulations to a numbered paragraph is to a paragraph bearing that number in that regulation or Schedule, as the case may be.

(3) These Regulations shall only apply in the case of financial assistance provided out of grants paid to the local authority by the Scottish Ministers but shall not apply where the relevant offer (as accepted) of grant by the Scottish Ministers so indicates.

Categories of grant assistance

3. These Regulations apply to the following categories of grant assistance provided by a local authority:–

(a) HAG, to which the provisions of Schedule 1 apply;

(b) GRO for owner occupation, to which the provisions of Schedule 2 apply;

(c) RHOG, to which the provisions of Schedule 3 apply; and

(d) GPSE, to which the provisions of Schedule 4 apply.

Provisions applying to each category of grant assistance

4. Schedules 1 to 4 to these Regulations have effect for the purposes of the grants to which they apply as follows–

(a) Part 1 provides the purposes for which local authorities may provide grant assistance;

(b) Part 2 provides the classes of person to whom local authorities may provide grant assistance;

(c) Part 3 provides the procedures to be followed by a local authority in considering whether to provide grant assistance; and

(d) Part 4 provides the terms and conditions on which grant assistance is to be provided.

(**3**) 2000 c. 7.

Procedures applying to all categories of grant assistance

5. In addition to the procedures referred to in regulation 4(c) the procedures set out in the following paragraphs are to be followed by a local authority in considering whether grant assistance of any category is to be provided–

(a) all applications for grant, offers of grant, acceptances of offers of grant, and applications for payment of grant shall be in writing;

(b) all applications for grant shall be subject to an appraisal to ensure that–

(i) any project for which grant is provided is consistent with priorities identified in that local authority's local housing strategy; and

(ii) the grant does not exceed the minimum required to enable a project to proceed taking into account funding available from all other sources;

(c) the grant applicant must demonstrate to the local authority's satisfaction that it shall have sufficient funding from all sources to complete the project for which the grant is provided; and

(d) no grant is paid in advance of or in excess of expenditure incurred for a project, save where the grant recipient is an RSL and the grant is required in respect of the acquisition of the subjects in which circumstances grant may be paid within 14 days prior to the expenditure being incurred by that RSL in respect of that acquisition.

Terms and conditions applying to all categories of grant assistance

6. In addition to the terms and conditions referred to in regulation 4(d) the terms and conditions set out in the following paragraphs shall apply on the provision of all categories of grant assistance and shall be incorporated in every offer of grant–

(a) no payment of grant shall be made until an offer of grant is accepted;

(b) failure to comply with the terms and conditions in this regulation and those applying to the category of grant to which the offer of grant relates shall be deemed to be a default on the part of the grant recipient and the local authority may, on such a default, enforce its rights in accordance with that offer of grant and these Regulations;

(c) the grant recipient shall make payment of any sum due to the local authority in terms of the offer of grant by a date specified by that local authority for that purpose and interest at a rate as may be reasonably determined by that local authority shall be payable by that grant recipient to that local authority on any sum which is overdue;

(d) the grant recipient and the local authority shall bear their own legal fees which arise in connection with the grant and the grant recipient will pay all registration and recording dues in connection with the taking of any security;

(e) the project shall comply with all applicable statutory requirements;

(f) the grant recipient shall indemnify the local authority from and against all actions, proceedings, claims, losses, expenses and damages arising from any breach by that grant recipient of any undertaking or obligation in connection with the grant and for all liability in respect of personal injury to or death of any person or of any damage to any property arising out of or in the course of or caused by the carrying out of the project by that grant recipient or those authorised by it;

(g) the subjects and the units shall be adequately insured to the satisfaction of the local authority and in the case of the units for at least full reinstatement value;

(h) the grant recipient shall not breach any agreement with the local authority in respect of the project;

(i) the project shall be carried out with all due diligence, completed to the satisfaction of the local authority and no material changes shall be made to the approved documents without the prior written consent of that local authority;

(j) the offer of grant shall be deemed to be withdrawn where the project does not commence or proceed within time periods specified in that offer of grant unless the local authority consents in writing to extend those specified periods;

(k) save for grant assistance provided by GPSE in terms of Schedule 4 to these Regulations, either the grant recipient or the granter of a licence agreement to the grant recipient has or can obtain a good and marketable title to the subjects with no burdens, conditions, restrictions or servitudes affecting the subjects which would adversely affect the project;

(l) in the event of the grant recipient receiving, or being entitled to receive, any other monies for the project not disclosed by that grant recipient to the local authority at the time of the grant application, that grant recipient shall disclose the nature and the amount of the other such monies to that local authority within 7 days of being advised that it is to receive, or is entitled to receive, other such monies and that local authority shall be entitled at its sole discretion to–

(i) reduce the amount of grant then unpaid by such sum as that local authority reasonably considers appropriate; or

(ii) require repayment of any grant then paid up to the full amount of the grant;

(m) for the term of the grant–

(i) the grant recipient shall not be, nor be deemed for the purpose of any law to be, unable to pay its debts as they fall due;

(ii) the grant recipient shall not be insolvent nor apparently insolvent, nor admit inability to pay its debts as they fall due and an insolvency practitioner, administrative receiver, receiver or liquidator or administrator shall not be appointed to that grant recipient or in respect of any of its assets, and steps shall not be taken to appoint any of the foregoing;

(iii) save where the grant recipient is an RSL or a public company, there shall be no change in the composition, constitution or control of the grant recipient without the prior written consent of the local authority;

(iv) the grant recipient will not assign its rights or obligations in respect of the grant or any part of it to any other person or body without the prior written consent of the local authority;

(v) the grant recipient shall not be wound up, struck off or dissolved, other than for the purpose of restructuring of that grant recipient for trading purposes;

(vi) the grant recipient shall not cease or threaten to cease operating or trading;

(vii) there shall be no legal diligence or execution affecting any material asset of the grant recipient required for the project;

(n) the grant recipient shall not provide false or misleading information to the local authority or omit to provide information that has been requested by that local authority;

(o) for the term of the grant no security over the subjects shall be called up or enforced; and

(p) save where the grant recipient is an RSL, for the term of the grant the grant recipient shall not create or permit any security, encumbrance or diligence over or affecting the subjects other than–

(i) any permitted security; or

(ii) any security granted in favour of the local authority.