

Housing association circular

The term “housing association (HA)” in this and related documents means registered social landlord.

RSL 005/10

Permitted payments and benefits

This circular sets out guidance on permitted payments and benefits to staff and Board members of housing associations (HAs) registered in Wales. It replaces RSL 001/09, all previous Tai Cymru Circulars and ‘Dear Director’ letters relating to this topic.

Effective date: 01/11/10

Status: Guidance on permitted payments and benefits to staff and board member of HAs in Wales.

Distribution: To all HAs registered in Wales.

1. Introduction

- 1.1 Section 15 of the Housing Associations Act 1985 was replaced by paragraph 2 of Schedule 1 to the Housing Act 1996, referred to as ‘Paragraph 2’ from here forward. On 25 September 1996 the Board of Housing for Wales approved the making of a Determination specifying a number of permitted classes of payments and benefits. The 1996 Determination has now been replaced with a 2010 version approved by the Welsh Assembly Government on 2 November 2010.
- 1.2 The text of Paragraph 2 is attached at Annex 1 and the October 2010 Determination itself is attached at Annex 2.
- 1.3 Paragraph 2 puts officers and employees of a housing association which is an Industrial and Provident Society or a company registered under the Companies Act 1985 in much the same position as if they were charitable trustees of the landlord’s property. This means that they must not put themselves in a position where their duty and their own interests conflict, or might conflict, and they must not benefit from their position except in the ways permitted by the paragraph.
- 1.4 This guidance is mainly about the legal interpretation of Paragraph 2 but it is important that associations uphold the spirit as well as the letter of the law, in all their operations.

2. Charitable trusts

- 2.1 Paragraph 2 does not apply to associations which are charitable trusts registered with the Charity Commission. Such trusts are governed by the principles of general charity law, which have a similar effect.

- 2.2 Under general charity law trustees may not normally receive any payment from the charity other than reasonable out-of-pocket expenses. In broad terms, trustees are also prevented from benefiting personally from the charity by, for example, taking a lease of the charity's property or borrowing its money. Charitable Industrial and Provident societies and companies are covered by general charity law as well as by Paragraph 2.
- 2.3 As a matter of policy the Welsh Assembly Government expects HAs which are charitable trusts to honour the spirit of Paragraph 2 and to adopt its standards.

3. Other parts of Schedule 1 to the Housing Act 1996

- 3.1 HAs should also be aware that Paragraph 1 of Schedule 1 to the Housing Act 1996 prevents the making of any gift or the payment of any dividend or bonus to:
- (a) a present or former member (i.e. shareholding member) of the body;
 - (b) a member of a present or former member's family; or
 - (c) a company of which a person within (a) or (b) is a director.
- 3.2 The only exceptions to this are payments of interest on capital lent to or subscribed by way of shares in the body in accordance with its constitution and payments by fully mutual HAs to former members of sums due to them under the terms of their tenancy or membership agreement.

4. Interpretation of terms used in Paragraph 2

- 4.1 The following interpretations are based on precedents which have arisen and on legal advice which has been taken.

Benefit

- 4.2 A benefit includes but is not confined to:
- (a) the grant of a tenancy or licence;
 - (b) the grant of a shared ownership lease;
 - (c) the sale of property, whether or not at full market value, with the exception of sales following the exercise of a statutory right to buy;
 - (d) the award of a contract of employment; and
 - (e) the award of any other type of commercial contract such as a building contract or contract for professional services.

Officer

- 4.3 This term is defined so as to include a committee member of an Industrial and Provident Society, a director of a company registered under the Companies Act 1985 and a trustee of a charitable trust as well as the holder of a particular office such as that of secretary or treasurer. Auditors, who cannot be either officers or employees, are not included.

Employee

- 4.4 An employee is a person who has a contract of employment with the housing association and can include anyone who is employed to do a particular job. Normally an employee is paid a salary or wages and the employer deducts income tax and National Insurance contributions through the PAYE system, but it is possible in law for a contract of employment to exist where someone is apparently working on a freelance basis. This will depend on the amount of control which the employer has over the individual's time and methods of performing the task.
- 4.5 A contract of employment should cover all the terms and conditions required by employment legislation. The standard terms and conditions of service of an employer also form part of each employee's contract. A contract of employment may be varied in correspondence, orally or through "custom and practice". The terms of the contract may therefore be found in different places and have been prepared at different times.
- 4.6 The Welsh Assembly Government recommends that HAs review contracts of employment on a regular basis, to ensure that the formal document incorporates all variations which may have been made in practice. This will help to avoid a breach of Paragraph 2.

Close relative

- 4.7 No definition of this term exists for the purposes of Paragraph 2 and each case must therefore be judged on its merits. A close relative is a relative by blood or marriage who is so close to the officer or employee that there is a real risk that a decision to make a payment or to grant a benefit to him or her could be influenced by that relationship.
- 4.8 The term will normally include a person's spouse, parent, grandparent, child, grandchild (including illegitimate children and grandchildren), brother and sister. Technically, the term "relative" does not include any relationship that is not by blood or marriage, however close. Where such a relationship exists, and is close, associations are strongly advised to act as though Paragraph 2 does in fact apply.

Business trading for profit

- 4.9 A business trading for profit is one which is able to distribute its surpluses or profits to its members, shareholders or directors for their personal use.

Principal proprietor

- 4.10 This term relates to a person whose stake in the business is large enough for there to be a real risk that a decision to make a payment or grant a benefit to the business could be influenced by that fact. The size of the stake cannot be set at any particular percentage share but will depend on the facts of the case.
- 4.11 A person is a proprietor if he or she can vote on questions affecting the management and conduct of the business or its internal constitution, or has the right to a share of the business or to any share of the capital of the business on a winding-up.

'Directly concerned in the management'

- 4.12 A person is directly concerned in the management of a business if he or she has the power to make decisions on behalf of the business so that there is a real risk that a decision to make a payment or grant a benefit to the business could be influenced by that fact.

5. Guidance on the application of Paragraph 2

- 5.1 Since 1980, a considerable body of "case law", based largely on legal advice, has built up on how Paragraph 2 (in the form of its predecessor, Section 15 of the Housing Associations Act 1985) applies in practice. The following guidance is based on this experience.

Officers' expenses and remuneration

- 5.2 The payment of expenses must be limited to meeting actual out-of-pocket expenses, all of which must have been necessarily incurred in connection with the officer's duties. Payments to babysitters, or to other carers for dependent relatives are lawful, so long as they relate to actual expenses incurred. Payments for loss of earnings are not classified as out-of-pocket expenses and are therefore not allowable.
- 5.3 If allowances rather than actual expenses are paid to meet out-of-pocket expenses (e.g. for subsistence and travelling), the scale of the allowances must be modest and in line with public sector equivalents.
- 5.4 The amount of any remuneration or expenses paid to an officer who does not have a contract of employment with the association must not in any event exceed any maximum which may be specified by the Welsh Assembly Government under paragraph 3 of Schedule 1 to the 1996 Act.
- 5.5 Associations must not pay fees or other remuneration to an individual Board member or member of the Committee of Management in respect of attendance at meetings of the governing body. Associations can pay out of pocket expenses in accordance with a formal policy detailing rates and specific circumstances under which expenses will be reimbursed.

Contracts of employment

- 5.6 Paragraph 2 does not prevent a housing association from changing the contract of employment of any of its staff, but any such changes must be agreed formally and recorded in writing. A contract of employment cannot be amended retrospectively after an employee has left.

Loans

- 5.7 A loan to a person within the scope of Paragraph 2 is prohibited unless express provision for it has been made in the person's contract of employment, such as a staff car loan.

Gifts/bonuses/dividends

- 5.8 A gift of any value to a person within the scope of Paragraph 2 is a benefit and as such is not lawful. This includes leaving presents for staff and Board members, which must be paid for by a collection from those wishing to contribute.. Standard long service or similar awards to staff can, however, reasonably be regarded as a 'custom and practice' part of the contract of employment.

Bank managers

- 5.9 Banks are businesses trading for profit and their branch and other managers are directly concerned in their management. This means that a housing association may not maintain an account at a bank if a manager of the bank is within the scope of Paragraph 2. If an association has as a Board member or director a senior director or manager of the whole bank, it may not do any business with that bank. If the Board member or director is a more junior manager (i.e. a branch or department manager), the association should not do any business with that part of the bank.

Building Societies

- 5.10 In strictly legal terms, building societies are not regarded as trading for profit (unless they have converted into a company). A housing association is thus not prevented from having an account with a building society if a manager of the building society falls within the scope of Paragraph 2.
- 5.11 In practice, however, the relationship between a housing association and a building society will be the same as with any other lender. To avoid any conflict of interest, associations must therefore treat building societies as though they were banks.

Purchase of property

- 5.12 The purchase of property, whether for full market value or at a discount, from a person within the scope of Paragraph 2, or a business trading for profit of which such a person is a principal proprietor or in whose management he or she is directly concerned, is unlawful, except as permitted by the Determination.

Tenants as Board members or directors

- 5.13 Tenant committee members or directors are entitled to all the usual rights associated with their tenancy, such as statutory right to buy, rights to a transfer, home loss and disturbance payments, and any other statutory or contractual rights.

Declarations

- 5.14 HAs must ensure that applicants for accommodation or employment declare whether or not they are within the scope of paragraph 2. The relevant application form should include an appropriate question.
- 5.15 All associations must disclose in their annual statement to the Welsh Assembly Government any interests which have been declared by Board members, officers or employees in any business trading for profit in which they or a close relative are concerned.

6. Breaches of Paragraph 2

Legal advice

- 6.1 Where a housing association has any doubt whether a particular transaction might contravene Paragraph 2, it must seek legal advice. The Welsh Assembly Government may provide informal guidance, but this must not be regarded as a substitute for the association's own legal advice. Community Housing Cymru and other representative bodies may also be able to provide guidance in specific cases.

Recovery

- 6.2 Where a sum has been paid or a benefit has been granted in contravention of Paragraph 2, an association may recover the amount of payment or the value of the benefit, and will normally be expected to do so. HAs are required to take proceedings for such recovery if the Welsh Assembly Government so directs.

Void contracts

- 6.3 According to legal advice any contract made in breach of Paragraph 2 is null and void. This means that it is as if it had never been made, so that all payments made and the value of all benefits granted are recoverable. If, for example, a tenancy is granted in breach of Paragraph 2 the association should be able to recover possession.

Evasion

- 6.4 The use of a third party to pass payments or benefits to a person within the scope of Paragraph 2 risks being unlawful and in any case the Welsh Assembly Government advises strongly against such measures on policy grounds.

7. Commentary on the Determination

- 7.1 The Determination covers fourteen classes of exemption, previously seven, and the following is only a summary guide. HAs are under no obligation to take advantage of any exemption and some may prefer not to as a matter of policy.

1st exemption: Employment of employees' relatives

- 7.2 This exemption is designed to permit the employment of a close relative of an employee.

2nd exemption: Re-employment of former employees

- 7.3 This exemption permits the re-employment of a person who was employed during the previous twelve months.

3rd exemption: Housing of employees and their relatives

- 7.4 This exemption permits the grant of a tenancy or the disposal of a house to an employee or former employee, or a close relative of either.

- 7.5 The principle behind the conditions of this exemption is that the person in question should receive exactly the same consideration as any other applicant. This means, for example, that a new employee who is moving from another area cannot be given priority over another job mover in the same position.

- 7.6 Under no circumstances should accommodation be offered with jobs except where it is necessary for the performance of the job (e.g. scheme manager, caretaker etc.). In such cases, the contract of employment must refer specifically to the provision of accommodation. Where an association wishes to be able to re-house a former scheme manager, the matter must be the subject of a term in the scheme manager's contract of employment rather than being dealt with under the exemption, which may not be appropriate.

- 7.7 Where an employee has been housed under the exemption, procedures for dealing with maintenance, rent arrears, neighbour disputes and other housing management matters must be implemented in a scrupulously fair way to avoid any possibility of discrimination in the employee's favour. Situations where a conflict of interest might arise should be avoided: an employee must not for instance be responsible for chasing his or her own rent arrears.

4th exemption: Housing of officers and their relatives

- 7.8 This exemption permits the grant of a tenancy or the disposal of a house to an officer or to a close relative of an officer provided that the written consent of the Welsh Assembly Government has been obtained.

5th exemption: Purchase of houses from officers, employees or their close relatives

- 7.9 This exemption permits the purchase of a house from an officer, employee, former officer, former employee, or the close relative of any of them provided that the written consent of the Welsh Assembly Government has been obtained

6th exemption: Payments to organisations in the management of which the registered social landlord's employees or officers are directly concerned

- 7.10 This exemption enables permitted payments to be made, subject to the requirements of sub-paragraphs (3) and (4) of the determination being followed:

- (a) 'the procurement process is fair and accountable procurement process and in accordance with good practice in procurement and the registered social landlord'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 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'.

- 7.11 Registered Social Landlords should have appropriate processes and procedures in place, including monitoring, so that their use of the exemption is managed appropriately.

7th exemption: Permitted payments and benefits of a general nature

- 7.12 The Determination now enables the Welsh Assembly Government to periodically review the amount of the payment or benefit. The exemption figure has increased from £300 to £500

8th exemption: Payments for tenants who are employees or officers

- 7.13 This exemption permits officers, employees and their close relatives to participate in the Welsh Assembly Government's Home Release or Homebuy Option Schemes and any other voluntary purchase scheme which may be approved by the Welsh Assembly Government.

9th exemption: Purchase of services by fully mutual and tenant based housing associations

- 7.14 This exemption permits a fully mutual or tenant based housing association to pay a former officer or employee, or the close relative of a former officer or employee, to carry out casual work. Officers, employees and their close relatives would therefore be able to tender for work but, if successful, would have to resign. They

would not, however, have to wait for twelve months before they or their relatives began the paid work.

10th exemption: Payments and benefits to departing employees outside of their contracts of employment

- 7.15 Following consultation, the exemption has no time limits for length of service affecting eligibility. The exemption enables a maximum payment of one year's gross remuneration.

11th exemption: Payments in full and final settlement of employment related disputes

- 7.16 The revised Determination makes a number of changes to the consultation draft:

- (i) Registered Social Landlords are required to seek professional advice, rather than legal advice. This could include, for example, advice from a professionally qualified Human Resources member of staff or adviser.
- (ii) The eligible payment for employment-related disputes has been raised to £50,000. The Determination now enables the Welsh Assembly Government to periodically review the amount payable
- (iii) Chief executives and directors are included in the exemption.

12th exemption: Provision of indemnity

- 7.17 This exemption allows registered social landlords to indemnify a relevant officer against expenses incurred by that officer in connection with any civil or criminal proceedings in relation to the registered social landlord unless the officer unless the final judgement in civil or criminal proceedings is against the officer.

- 7.18 The next two exemptions have been introduced to enable Registered Social Landlords to develop services and benefits within their remit as community mutual organisations.

13th exemption: Provision of services to employees and officers and their relatives

- 7.19 This exemption allows Registered Social Landlords to provide services, as opposed to payments and benefits. Examples might include older persons support, adaptations or renewable energy.

14th exemption: Payments and benefits to shareholder members

- 7.20 Community mutual housing associations have shareholding membership arrangements which encourage tenant shareholding membership. Significant numbers of tenants are becoming shareholding members by this route. This exemption enables Registered Social Landlords to operate incentive schemes which will benefit shareholding members. An example might be a cash incentive

to a tenant surrendering accommodation in a condition suitable for immediate re-letting.

Safeguards

- 7.21 The exemptions are subject to general conditions aimed at ensuring that they are applied in a fair and open manner. They are set out at Paragraph (2) of the Determination and the attention of charitable HAs is drawn in particular to (2)(b). Some of the exemptions are subject to further specific conditions. Unless all conditions are met in full, an exemption will not apply.
- 7.22 Common to all the exemptions is the requirement that in each case the decision must be taken by the committee of management or board of directors and recorded in the minutes. Decisions may, however, be formally delegated to a properly constituted sub-committee with appropriate terms of reference.
- 7.23 HAs that wish to take advantage of any of the exemptions must have a register of cases falling within the exemptions. The register details should include: the name of the person concerned, their connection with the landlord, the address of the property or job title of the post concerned and the date and minute number of the meeting at which the decision was made.

Annual Statement

- 7.24 The annual statements requires Registered Social Landlords to notify the number of exempt cases, for each category of exemption, during a financial period. This statement should be made in the form of a letter and forwarded to the Senior Regulation Managers of the Housing Regulation Unit no later than 2 months following the financial period (e.g. 31 May for periods ending 31 March). Should no exemptions be made during a period, a statement stating this is still required.

TEXT OF PARAGRAPH 2 OF SCHEDULE 1 TO THE HOUSING ACT 1996

- (1) A registered social landlord which is an industrial and provident society or a company registered under the Companies Act 1985 shall not make a payment or grant a benefit to:-
- (a) an officer or employee of the society or company,
 - (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 society or company under his contract of employment with the society or company;
 - (b) the payment of remuneration or expenses to an officer of the society or company who does not have a contract of employment with the society or company;
 - (c) any such payment as may be made in accordance with paragraph 1(2);
 - (d) the grant or renewal of a tenancy by a co-operative housing association;
 - (e) where a tenancy has been granted to, or to a close relative of, a person who later became 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 in accordance with any determination made by the Corporation.
- (3) A determination for the purposes of sub-paragraph (2)(f) may specify the class or classes of case in which a payment may be made or benefit granted and specify the maximum amount.
- (4) Where a society or company pays a sum or grants a benefit in contravention of this paragraph, the society or company may recover the sum or value of the benefit; and proceedings for its recovery shall be taken if the Corporation so directs.

PERMITTED PAYMENTS AND BENEFITS (WALES) DETERMINATION 2010

WELSH ASSEMBLY GOVERNMENT

PREAMBLE

- (1) The Welsh Ministers in the exercise of their powers under paragraph 2(2)(f) of Part 1 to Schedule 1 of the Housing Act 1996 make the following Determination, after consultation with such bodies as appear to the Welsh Ministers to be representative of registered social landlords in Wales, with respect to the class or classes of payments which may be made or benefits which may be granted by a registered social landlord which is a society registered under the Industrial and Provident Societies Act 1965 or a company registered under the Companies Act 1985 to its officers, employees and their close relatives,
- (2) This Determination specifies fourteen classes of payments and benefits, which may be made or granted provided that:
 - (a) such payment can be made or benefit granted within the objects and powers as set out in the registered social landlord's governing instrument;
 - (b) no person receiving any payment made or benefit granted under this Determination is given any priority, beneficial treatment or beneficial terms because of any connection with the registered social landlord or any of its officers, employees, former officers, former employees, or close relatives of such persons;
 - (c) any decision taken as to whether or not to make a payment or grant a benefit under this Determination is taken by the registered social landlord's governing body or a sub-committee of that body with delegated authority, any member with an interest having declared the fact and having left the meeting during discussion of the case; and
 - (d) all decisions taken under this Determination are recorded as such, with the date and summary details of payments made or benefits granted, in the minutes of the meeting and in a separate register kept for the purpose that is to be available for public inspection at the head office of the registered social landlord at all reasonable times.

TITLE, COMMENCEMENT AND REVOCATION

- (1) The title of this Determination is the Permitted Payments and Benefits (Wales) Determination 2010 and it comes into force on 1st November 2010. The Permitted Payments and Benefits Determination 1996 is revoked.

INTERPRETATION

In this Determination, unless the context otherwise requires:-

- (1) “disposal of a house” means:
 - (a) the disposal of a house following staircasing under a shared ownership lease; or
 - (b) the disposal of a house pursuant to equity percentage arrangements; or
 - (c) the disposal of a house (by sale or lease) which has been acquired, or repaired and improved, or created by the improvement of houses or other property, or
 - (d) the disposal of a house pursuant to the exercise by the tenant of any statutory or other right to buy and (if applicable) at a discounted price;
- (2) “governing body” means in the case of a registered social landlord which is a society registered under the Industrial and Provident Societies Act 1965 the committee of management and in the case of a social landlord which is a company registered under the Companies Act 1985 the board of directors;
- (3) “governing instrument” means in the case of a registered social landlord which is a society registered under the Industrial and Provident Societies Act 1965 the registered rules of the society and in the case of a social landlord which is a company registered under the Companies Act 1985 the memorandum and articles of association of the company;
- (4) “prospective tenant” means a person to whom a social landlord has allocated a tenancy which has not yet been taken up, or to whom a social landlord has decided in principle to allocate a tenancy;
- (5) “registered social landlord” means a social landlord which is registered with the Welsh Ministers under Chapter 1 of Part 1 of the Housing Act 1996;
- (6) “tenancy” means:
 - (a) an assured tenancy within the meaning of Section 1 of the Housing Act 1988 including a shared ownership lease; or
 - (b) a tenancy granted by a fully mutual registered social landlord; or
 - (c) a licence to occupy;
- (7) “tenant based registered social landlord” means a registered social landlord where:
 - (a) not less than one third of the registered social landlord’s governing body consists of persons who are tenants of the registered social landlord; and

- (b) not less than one half of the registered social landlord's membership consists of persons who are tenants or prospective tenants of the registered social landlord; and
 - (c) the number of the registered social landlord's members who are tenants or prospective tenants is either more than one hundred, or more than half the number of units of accommodation owned by the registered social landlord, whichever is the smaller;
- (8) except as otherwise provided, all words used in this Determination have the meaning given to them in the Housing Act 1996.

CLASSES OF PAYMENTS AND BENEFITS

(A) GRANT OF CONTRACTS OF EMPLOYMENT

- (1) A registered social landlord may, after following a full and fair process for competitive recruitment and selection in accordance with the principles of equal opportunities and established good practice, grant a contract of employment and make payments to a person within sub-paragraph (2) or sub-paragraph (3).

1st Exemption: Employment of employees' relatives

- (2) The benefit referred to in sub-paragraph (1) may be granted to a person who is the close relative of a person who is, or at any time in the preceding twelve months has been, an employee of the registered social landlord, provided that the employee or former employee has or had no involvement in or influence over the process by which the registered social landlord conducts its recruitment and selection for the post in question.

2nd Exemption: Re-employment of former employees

- (3) The benefit referred to in sub-paragraph (1) may be granted to a person who at any time in the preceding twelve months has been an employee of the registered social landlord.

(B) GRANT OF TENANCIES, DISPOSAL AND PURCHASE OF HOUSES

- (1) A registered social landlord may grant a tenancy or dispose of a house to a person within sub-paragraph (2) or (3) who is in housing need and who fully meets the published criteria by which the registered social landlord allocates housing.

3rd Exemption: Housing of employees and their relatives

- (2) The benefit referred to in sub-paragraph (1) may be granted to a person who is or who at any time in the preceding twelve months has been, an employee of the registered social landlord or who is a close relative of such a person, provided that:-

- (a) the employee or former employee has or had no involvement in or influence over the process by which the registered social landlord allocated the tenancy or disposal in question: and
- (b) the person demonstrates that appropriate alternative sources of housing are not available.

4th Exemption: *Housing of officers and their relatives*

- (3) The benefit referred to in sub-paragraph (1) may be granted to a person who is or at any time in the preceding twelve months has been, an officer of the registered social landlord, or is a close relative of such a person.

5th Exemption: *Purchase of houses from officers, employees or their close relatives*

- (4) A registered social landlord may purchase a house from a person, who is, or at any time in the preceding twelve months has been an officer or employee of the registered social landlord or is a close relative of such a person.

(C) PAYMENTS TO ORGANISATIONS

- (1) With the objective of furthering its social housing objectives, a registered social landlord may make a payment or grant a benefit to an organisation in which the registered social landlord has a significant interest in the management of which the registered social landlord's officers or employees are directly concerned, subject to the conditions in sub-paragraph (2) below and in certain specified circumstances as set out in sub-paragraphs (3) and (4).

6th Exemption: *Payments to organisations in the management of which the registered social landlord's employees or officers are directly concerned.*

- (2) Any benefit, reward or remuneration arising out of the course of the involvement of a registered social landlord's officer or employee in such management shall only be payable by the registered social landlord. The officer or employees of the registered social landlord shall not receive any other benefit, reward or remuneration from his involvement.
- (3) A registered social landlord may in some cases make a payment or grant a benefit to an organisation in which a close relative of a governing body member is a principal proprietor or is directly concerned in the management of the organisation with which the registered social landlord has a commercial relationship where the organisation is able to offer better value for money than any alternative in line with sub-paragraph (a) below.
- (4) A registered social landlord may also make a payment or grant a benefit to a relevant organisation in which a close relative of an employee is a principal

proprietor or is directly concerned in the management of the organisation with which the registered social landlord has a commercial relationship. This would only apply where no other alternative, reasonable option exists for procuring the product or service.

In both circumstances, as set out in sub-paragraphs (3) and (4), the exception is permitted providing that:

- (a) the procurement process is fair and accountable and in accordance with good practice in procurement and the registered social landlord'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 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.

(D) SMALL PAYMENTS AND BENEFITS

- (1) A registered social landlord may make such payments or grant such benefit as are permitted by this exemption to any eligible person.

7TH Exemption: Permitted Payments and Benefits of a general nature

- (2) A registered social landlord may make a payment or grant a benefit directly to an eligible person where the value of that payment or benefit does not, when taken with all other payments and benefits granted pursuant to this paragraph in the preceding 12 month period, exceed £500.
- (3) For the purpose of this exemption: 'benefit' means a non-contractual benefit; 'payment' means a non-contractual payment; 'eligible person' means a person who, at the date the payment was made or the benefit was granted is, or within the preceding 12 months was, and employee or officer of the registered social landlord making or granting it.

(E) PROVISION OF FINANCIAL ASSISTANCE

- (1) A registered social landlord may provide financial assistance by way of the giving of a grant, loan or discount to a person within sub-paragraph (2) below with a view to enabling that person;
 - (a) to acquire or to acquire and enter into occupation of a house

- (b) to procure the construction of a separate dwelling for occupation by that person or to procure such construction and enter into occupation of the dwelling so constructed.
 - (c) to carry out work to a house which otherwise be prohibited, in respect of any payments due to all tenants which arise from an agreed RSL policy.
- in accordance with any HomeBuy or Voluntary Purchase Scheme for the time being approved by Welsh Ministers, if applicable.

8TH Exemption: *Payments for tenants who are employees or officers*

- (2) The financial assistance referred to in sub-paragraph (1) may be provided to a tenant of the registered social landlord who is, or at any time in the preceding twelve months has been, an officer or employee of the registered social landlord, or a close relative of such a person, provided that the person meets the published criteria by which the registered social landlord provides such payments to its tenants.
- (3) The assistance referred to in sub-paragraph (1)(c) is made provided that the registered social landlord 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
- (4) the person to whom the payment is made meets the qualifying criteria.

(F) PURCHASE OF SERVICES

9TH Exemption: *Purchase of services by fully mutual and tenant based registered social landlords*

- (1) A fully mutual registered social landlord or a tenant based registered social landlord may enter into a contract to purchase services and make payments under that contract to a person within sub-paragraph (2).
- (2) The benefit referred to in sub-paragraph (1) may be granted to a person who at any time in the preceding twelve months has been an officer of the registered social landlord or a close relative of such a person provided that:-
 - (a) the contract is the subject of a full and fair sealed bid competitive tender process with at least two independent tenderers and is for a period of not more than twelve months and is awarded to the person submitting the lowest tender; and
 - (b) the person does not rejoin the governing body during the period of the contract; and
 - (c) the registered social landlord **either**:

- (i) takes out full liability insurance for the contract and makes all payments of income tax and National Insurance arising from its discharge; or
- (ii) obtains proof in writing that the contracting person has made full and proper arrangements to do so; and
- (d) any decision materially affecting the contract once granted is taken as a decision under this Determination.

(G) NON-CONTRACTUAL SEVERANCE AND REDUNDANCY PAYMENTS

- (1) A registered social landlord may make a non-contractual payment or grant a non-contractual benefit to a person within sub-paragraph (2) below under the conditions outlined below.

10th Exemption: Payments and benefits to departing employees outside of their contracts of employment

- (2) The payments and benefits referred to in sub-paragraph (1) above may be made or granted to a person who is, or was within the preceding 12 months, an employee of the registered social landlord provided that;
 - (a) they directly arise from the registered social landlord's decision to determine the employee's contract;
 - (b) the employee's contract is being determined because of early retirement, redundancy or restructuring for efficiency gains;
 - (c) the employee is not currently the subject of any related disciplinary action;
 - (d) the total value of the non-contractual payments and benefits do not exceed the equivalent of one year's gross remuneration for employees..

(H) SETTLEMENT OF EMPLOYMENT RELATED DISPUTES

- (1) A registered social landlord may make a payment to a person in full and final settlement of an employment-related dispute against the RSL subject to the conditions in sub-paragraph (2) below.

11th Exemption: Payments in full and final settlement of employment related disputes

- (2) The conditions that apply to the making of a payment under sub-paragraph (1) above are:
 - (a) the registered social landlord must have sought professional advice; and
 - (b) the payment must not exceed £50,000; and

(I) INDEMNITY

- (1) A registered social landlord may indemnify a relevant officer against expenses incurred in accordance with sub-paragraph (2) below.

12th Exemption: Provision of indemnity

- (2) A registered social landlord may indemnify a relevant officer against any expenses which that officer incurs in connection with any civil or criminal proceedings in relation to the registered social landlord or any application for relief from liability for negligence, default, breach of duty or breach of trust in relation to the registered social landlord unless:
- (a) in criminal proceedings, the officer is convicted and the conviction is final;
 - (b) in civil proceedings judgment is given against the officer and the judgment is final;
 - (c) in any application for relief the court refuses to grant the officer relief and refusal is final; or
 - (d) it is in respect of any liability of the officer to pay:
 - i. a fine imposed by criminal proceedings;
 - ii. a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising);
- (3) For the purposes of this exemption: 'relevant officer' means any director or board member or former director or board member of the registered social landlord;

A judgment, conviction or refusal of relief becomes final if;

- (a) the period for bringing an appeal (or further appeal) has ended; and
- (b) any appeal brought is determined, abandoned or otherwise ceases to have effect.

(J) PROVISION OF SERVICES TO EMPLOYEES AND OFFICERS AND THEIR RELATIVES

- (1) A registered social landlord may provide services to employees and officers and their relatives in accordance with sub-paragraphs (2),(3) and (4) below

13th Exemption: Provision of services to employees and officers and their relatives

- (2) A registered social landlord may provide a service to a qualifying person provided the qualifying conditions have been met.
- (3) For the purposes of this exemption, a “qualifying person” means:
 - a) an employee of the registered social landlord or anyone who has been an employee within the past twelve months
 - b) a close relative of a person referred to in subparagraph (a)
 - c) an officer of the registered social landlord or anyone who has been an officer within the past twelve months
 - d) a close relative of a person referred to in subparagraph (c)
- (4) For the purposes of this exemption the “qualifying conditions” are:
 - a) that neither the qualifying person nor any close relative has or had any involvement in or influence over the process by which the registered social landlord determined whether or not to provide a service to such a person.
 - b) that the qualifying person qualifies for the service in accordance with the published eligibility policy of the registered social landlord applicable to the service concerned.

K Payments and benefits to shareholder members

- (1) A registered social landlord can operate incentive schemes to benefit members, so as to both encourage membership and incentivise tenants in accordance with sub-paragraphs (2) and (3) below

14th Exemption: Payments and benefits to shareholder members

- (2) A registered social landlord may make a payment or provide a benefit to members of the registered social landlord provided the qualifying conditions have been met.
- (3) For the purposes of this exemption the “qualifying conditions” are:
 - (a) that the payment or benefit falls within a published membership or volunteer incentive scheme available to all members of the registered social landlord or available to all volunteers working with the registered social landlord

- (b) that the payment is made for travel, subsistence or other out of pocket expenses incurred by the member or volunteer
- (c) that the benefit is the provision of subsistence provided to volunteers or members of the registered social landlord provided during their period of volunteering.
- (d) that the payment is made in accordance with the published compensation policy of the registered social landlord as a result of some failure in service resulting in injury, loss or inconvenience to the member concerned and the payment is approved by the Chief Executive or a Director.
- (e) that the payment is made in accordance with some other published policy of the registered social landlord and the member qualifies for the payment under the policy.

Signed

Jocelyn Davies

Deputy Minister for Housing & Regeneration

Date 2nd November 2010

We are having to prioritise our use of the finite translation resources available to the Welsh Assembly Government. Unfortunately, on that basis, we are unable to provide a Welsh version of the RSL 005/10. This is because other items have been given a higher priority rating and have thus taken precedence in the allocation of resources. The approach for setting priorities is set out in the Welsh Language Scheme for the Welsh Assembly Government prepared under the Welsh Language Act 1993.

Mae'n rhaid i ni flaenoriaethu'r ffordd yr ydym yn defnyddio'r adnoddau cyfieithu sydd ar gael i ni oherwydd y pwysau mawr sydd ar yr adnoddau hynny. Felly, yn anffodus ni allwn ddarparu fersiwn Cymraeg o'r RSL 005/10, gan fod eitemau eraill yn cael mwy o flaenoriaeth o ran dyrannu'r adnoddau. Mae'r dull a ddefnyddir i bennu blaenoriaeth wedi'i amlinellu yng Nghynllun Iaith Gymraeg Llywodraeth Cynulliad Cymru a baratowyd o dan Ddeddf yr Iaith Gymraeg 1993.