

HOUSING ASSOCIATIONS ACT

Principal Act

Act. No. 1982-02	<i>Commencement</i>	25.3.1982
	<i>Assent</i>	25.3.1982

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AN ACT TO PROVIDE FOR THE INCORPORATION OF ASSOCIATIONS FOR HOUSING PURPOSES, AND FOR MATTERS INCIDENTAL THERETO.

Short title.

1. This Act may be cited as the Housing Associations Act.

Interpretation.

2. In this Act, unless the context otherwise requires—

“common areas” in relation to a housing estate, means those areas of the estate which each of the occupiers holds in common with the other occupiers;

“dwellinghouse” includes any flat or other separate residential unit;

“housing association” means a housing association registered under section 9;

“housing estate” means any two or more dwellinghouses that together comprise a distinct estate or set of premises, where the occupiers hold in common with each other, but with no other person, rights over any areas of the estate or premises;

“member”, in relation to a housing association, means a subscriber to the memorandum of association of that housing association and also means a person who is a member of the association under section 15;

“memorandum” in relation to a housing association, means the memorandum of association;

“occupier” in relation to a dwellinghouse,—

- (a) where the person occupying the dwellinghouse does so pursuant to a lease for a term of not less than three years certain, and every person holding an interest in reversion consents in writing, means the first person; and
- (b) in every other case means the person who owns the estate in fee simple of that dwellinghouse or, if the land is leased from the Crown, means the Governor—

and in every case includes the personal representative of the occupier;

“Registrar” means the Registrar of Housing Associations appointed under section 3;

“register” means the register to be maintained under section 4(1);

“rules” in relation to a housing association, means the rules of the association, registered under section 9, including the rules set out in the Schedule;

“unanimous resolution” means a resolution passed in a general meeting of a housing association by all the members present.

ADMINISTRATION.

Registrar of Housing Associations.

3.(1) The Governor shall from time to time appoint a public officer to be the Registrar of Housing Associations.

(2) Notice of every such appointment shall be published in the Gazette.

(3) The Registrar shall have a seal, which shall bear the words Registrar of Housing Associations, Gibraltar”.

Register of associations.

4.(1) The Registrar shall maintain in the prescribed manner a register of all housing associations registered under this Act.

(2) The register shall be available for inspection by any person during normal working hours on payment of the prescribed fee.

(3) The Registrar shall provide to any person, at that person's request and on payment of the prescribed fee-

- (a) a certificate under the Registrar's hand of the registration of any housing association under this Act; or
- (b) a copy or extract of any other document contained in the register, certified by the Registrar under his hand as being a true copy or extract.

(4) In all legal proceedings, a certificate or a certified copy or extract under the hand of the Registrar under subsection (3) shall be sufficient evidence of the matters contained in it.

REGISTRATION OF HOUSING ASSOCIATIONS.

Mode of forming association.

5.(1) Subject to the provisions of this Act, any two or more persons being the occupiers of a housing estate, by subscribing their names to a memorandum of association, and complying with the requirements of this Act as to registration, may form a housing association.

(2) No housing association may be registered under this Act unless every occupier of the housing estate in respect of which the association is to be formed subscribes to the memorandum.

(3) No person who is not an occupier of the housing estate in respect of which a housing association is to be formed may subscribe to the memorandum in respect of that association.

Requirements for memorandum.

6.(1) Every memorandum of a housing association shall be as nearly as possible in the prescribed form, and shall specify-

- (a) the name of the association, in the form “.....Housing Association”; and
- (b) the purposes for which the association is formed.

(2) No association shall be registered under any name that is so similar to that of any other body corporate as to be likely to mislead.

Purposes for which association may be formed.

7.(1) A housing association may be formed for all or any of the following purposes:

- (a) the management and administration of the common areas of the housing estate;
- (b) the maintenance, repair and improvement of the common areas of the housing estate; and

- (c) such other purposes, not being the purpose to which subsection (2) refers, as the subscribers may specify in the memorandum.

(2) A housing association may not have as one of its purposes the carrying on of any trading activity or any activity for gain or profit.

Rules.

8.(1) There shall be registered with the memorandum of a housing association rules signed by every subscriber to the memorandum and regulating the administration and management of the association.

(2) The rules shall be as nearly as possible in the prescribed form.

(3) The rules set out in the Schedule shall apply to every housing association.

(4) In the event of any conflict between the rules referred to in subsection (3) and any rule referred to in subsection (1), the rules referred to in subsection (3) shall prevail.

Registration.

9.(1) On receipt of the memorandum of association of a housing association, and of the rules, duly signed by the subscribers, and on payment of the prescribed fee, the Registrar shall if he is satisfied that the memorandum and the rules in all respects comply with this Act, but not otherwise, retain and register the documents.

(2) On the registration of the memorandum and the rules of a housing association, the Registrar shall certify under his hand in the prescribed form that the housing association is registered.

Housing associations to be bodies corporate.

10. On registration, a housing association shall become a body corporate having as its corporate name the name specified in the memorandum, and consisting of the subscribers as members, and shall be capable of suing and being sued in its corporate name and of doing and suffering all other things that bodies corporate may do and suffer.

Memorandum and rules to bind members.

11. The memorandum and rules of a housing association shall be binding on the members of the association.

Powers of associations.

12.(1) Subject to the provisions of this Act, and to its rules, every housing association shall have such powers as are reasonably necessary to enable it to carry out its purposes.

(2) Without limitation of the generality of subsection (1), a housing association may, subject to its rules—

- (a) on behalf of the occupiers of the housing estate, effect, pay for and enforce contracts of insurance in respect of the improvements on the estate and in respect of the liability of the occupiers of the estate, as occupiers, to any person;
- (b) keep the common areas of the estate in a state of good repair;
- (c) on behalf of the occupiers of the estate, comply with any statutory notice, order or document duly served on the occupiers, or any of them, requiring any repairs or work to be performed on or in respect of the estate;
- (d) establish and maintain a fund for the administrative and operating expenses of the association and for the payment of any money payable by the association in the carrying out of its purposes;
- (e) determine the amounts to be raised from time to time from the members for the purposes of the fund referred to in paragraph (d), and raise such amounts by levying the members accordingly; and
- (f) invest, in any manner in which trustees are for the time being authorized to invest trust funds, any parts of the fund referred to in paragraph (d) that are not for the time being required to be expended.

Registered office.

13.(1) Every housing association shall have a registered office, at or to which all notices and other communications may be addressed or made, and at which all documents relating to the association (other than those that are required to be held by the Registrar of Housing Associations) shall be kept.

(2) Any person may at any time during normal working hours inspect at the registered office any document that is required to be kept at that office.

Register of members.

14. Every housing association shall keep a register of its members, in such form (if any) as may be prescribed, specifying the full name, residential address, and occupation of every member.

Transfer of membership.

15.(1) Where any person who is a member of a housing association disposes of the interest by virtue of which he is a member, or for any other reason ceases to hold that interest, he shall thereupon cease to be a member and the person to whom he disposes of that interest in the first case, and the person to whom the interest reverts or passes in the second case, shall thereupon become a member of the association.

(2) The fact that a person ceases to be a member of a housing association shall not affect any right or liability incurred by him while he was a member.

(3) Where a person ceases to be a member of a housing association, he shall within 14 days thereafter inform the association of that fact and of the full name, residential address, and occupation of the person who becomes a member in his place, and the association shall cause the register of members to be amended accordingly.

GENERAL PROVISIONS.

Recovery of levies and other money from members.

16.(1) Subject to its rules, a housing association may in any court of competent jurisdiction recover from any past or present member as a debt due to it by the member, any amount referred to in section 12 (2) (e) that has been levied on that member in respect of any period during which he was a member.

(2) Where a housing association undertakes any maintenance, repair, or other work or act which it is empowered to undertake under this Act or under its rules, and the maintenance, repair, or other work or act was rendered necessary by reason of any wilful or negligent act or omission on the part of, or any breach of any rule by, any member or a tenant, lessee, licensee, or invitee of that member, the association may in any court of competent jurisdiction recover from the person who is the member (whether or not he remains a member), as a debt due to it by him, any costs and expenses incurred by the association in undertaking that maintenance, repair, or other work or act.

Limitation of liability of members.

17. Subject to the provisions of this Act, and of its rules, a member of a housing association shall not be liable to pay or contribute to the funds of the association any amount other than the amounts levied on him under section 12(2)(e).

Relief for majority.

18.(1) Where—

- (a) under this Act or under its rules, a unanimous resolution of the members of a housing association is required before any matter or thing may be done by the association; and
- (b) such a resolution is not obtained, but not less than eighty per cent of the members do vote in favour of the resolution—

any member may apply to the Supreme Court for an order declaring the resolution to be deemed to be a unanimous resolution.

(2) On any such application, where the court is satisfied that the resolution ought reasonably to be passed, it may by order deem the resolution to have been a unanimous resolution and on the making of that order the resolution shall for the purposes of this Act and the rules be deemed accordingly to have been a unanimous resolution of all the members of the association.

Relief for minority.

19.(1) Where a housing association passes any resolution (other than a resolution that under this Act or under its rules must be unanimous), any member who voted against the resolution may apply to the Supreme Court for an order declaring the resolution to be of no effect on the grounds that in all the circumstances of the case, the effect of the resolution would be inequitable for the minority of members.

(2) On any such application, where the court is satisfied that the ground for relief is established, it may order that the resolution shall be of no effect, and the order shall have effect accordingly.

Annual audit.

20.(1) Within four months after the end of every financial year, every housing association shall cause its accounts for that financial year to be audited and certified by an approved auditor.

(2) The auditor shall examine and report on the accounts, certifying whether or not in his opinion they are true and proper accounts.

(3) Within six months after the end of every financial year, or within such further period as the Registrar of Housing Associations may in any case allow, the housing association shall cause a copy of its duly audited accounts for that year, and of the report and certificate of the auditor, to be served on every member.

Annual returns.

21.(1) Within six months after the end of every financial year, every housing association shall cause an annual return in the prescribed form, to be forwarded to the Registrar of Housing Associations to be kept in his register.

(2) The return shall state—

- (a) the name of the housing association;
- (b) the full names, residential addresses, and occupations of the members of the committee of the association; and
- (c) such other information as may be prescribed.

(3) There shall be attached to the return a copy of the audited accounts and the report and certificate of the auditor, for the financial year in respect of which the return is made, required under section 20.

Amendment of memorandum and rules.

22.(1) Subject to the provisions of this Act, the members of a housing association by a unanimous resolution in general meeting may amend the memorandum or the rules of the association.

(2) No amendment under subsection (1) shall take effect until it has been filed with the Registrar.

Offences.

23.(1) A member who contravenes section 15(3) is guilty of an offence.

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(2) Where any provision of any of sections 15(3), 20, or 21 is contravened by a housing association, every member of the committee is guilty of an offence.

(3) A person who is guilty of an offence under this section or under regulations made under this Act is liable on summary conviction to a fine not exceeding £25 and to a further fine not exceeding £5 for every day on which the offence has continued.

Cancellation of registration.

24.(1) Where the Supreme Court, on the application of any member or creditor of a housing association, is satisfied—

- (a) that the association has ceased to pursue the purposes for which it was registered; or
- (b) that the members of the association have in general meeting unanimously resolved that the registration of the association should be cancelled; or
- (c) that the association is unable to pay its debts; or
- (d) that it is otherwise just and equitable that the registration of the association should be cancelled—

the court may order that the registration of the association be cancelled.

(2) For the purposes of cancelling the registration of the association, the court shall give such directions as it thinks fit for the winding up of the affairs of the association, and may make cancellation subject to compliance with such directions.

(3) In the winding up of the affairs of the association, the debts of the association shall be a first charge on its assets.

(4) After payment of the debts of the association the remaining assets shall, subject to subsection (2) and to its rules, be distributed equally among the members.

Regulations.

25. The Governor may from time to time make regulations for all or any of the following purposes:

- (a) prescribing any form or other matter or thing to be prescribed under this Act;
- (b) prescribing the procedure to be followed on applications to register housing associations;
- (c) regulating the management of the funds of associations;
- (d) prescribing the procedure to be followed on applications to cancel the registration of housing associations;
- (e) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act.

Service of notices.

26.(1) Any document that is to be served on or given to a housing association may, without prejudice to any other mode of service, be served by leaving it at the registered office of the association.

(2) Any document that is to be served on a member of a housing association under this Act may, without prejudice to any other mode of service, be served by leaving it at or affixed to the entrance of the dwelling house of that member in the housing estate in respect of which the association is registered.

SCHEDULE

Mandatory Rules for Housing Associations.

Section 8(3)

1. The association shall hold an annual general meeting within three months after the date on which it is registered. If the members cannot agree on a date within this period, any member may apply to the Registrar to fix a date.
2. Thereafter in every subsequent financial year the association shall hold one annual general meeting. Each such meeting shall be held not later than fifteen months after the date of the previous annual general meeting.
3. All general meetings of the association, other than annual general meetings, shall be known as extraordinary general meetings. The committee shall convene an extraordinary general meeting whenever requested to do so in writing by any two members.
4. At every general meeting of the association, all questions before the meeting shall be decided by a majority of the votes of the members who are present and vote.
5. At every general meeting, every member present shall have one vote on every question before the meeting, and the person presiding shall have a casting vote.
6. At the first annual general meeting, and thereafter at each annual general meeting, the members present shall elect a chairman of the association, and in the case of an association consisting of more than five members they shall also elect not fewer than two other persons to be officers of the association.
7. The chairman, and where other officers are so elected, those officers, shall constitute the committee of the association. Until the first annual meeting, and whenever there are for any reason no elected chairman and no other elected officers, the members shall constitute the committee.
8. The committee shall hold office until the next annual general meeting after the one at which they were elected, and thereafter until their respective successors come into office, but may from time to time be re-elected.

9. Notwithstanding rules 6 and 8, the association may at any time in general meeting remove any member of the committee from office. Where it does so, it shall thereupon elect another member to be an officer in his place.
10. Every member of the association shall be given not less than seven days notice of the time and place appointed for every general meeting and of the agenda for the meeting. An inadvertent failure to comply with this rule shall not invalidate the proceedings of the meeting.
11. At every general meeting, three members or not fewer than twenty-five per cent of the members, whichever is the greater number, personally present, shall be a quorum.
12. At every general meeting, if the chairman is not present, the members present shall elect one of their number to preside.
13. At every general meeting, any member present may require a poll to be held on any question. The poll shall be taken in such manner as the person presiding thinks fit.
14. The committee shall cause full and proper accounts to be kept of the affairs and transactions of the association and the committee and full minutes to be kept of the proceedings of the association and the committee.
15. Every member shall be entitled, on payment of a reasonable charge, to copies of the rules of the association and of the minutes of every meeting of the association and of the committee.