



# Housing (Scotland) Act 2010

## 2010 asp 17

### PART 7

#### REGISTERED SOCIAL LANDLORDS: INSOLVENCY ETC.

##### *Moratorium*

#### 73 Notification of step towards insolvency etc.

- (1) A person specified in the following table must notify the Regulator—
- (a) before taking a step so specified, and
  - (b) as soon as reasonably practicable after such a step is taken.

<i>Person</i>	<i>Step</i>
The person taking the step	A step to enforce a security over a registered social landlord's land
The petitioner	Presenting a petition for the winding up of a registered social landlord (but not the presenting of a petition by the Regulator under section 105)
The registered social landlord	Notice being given (in accordance with the constitution of the body to those entitled to vote on the resolution) of the proposal of a resolution for the winding up of a registered social landlord
The person who applied for the order	Applying for, or making, an administration order in respect of a registered social landlord which is a registered company
The person making the appointment	Appointing an administrator in respect of a registered social landlord which is a registered company

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- (2) The Regulator may determine for the purposes of this Part what is meant by a step to enforce a security over a registered social landlord's land.
- (3) Before making, revising or withdrawing a determination, 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 any determination (and any revision or withdrawal) to the attention of those affected by it.

#### **74 Effect of failure to notify**

- (1) A step specified in the table in section 73 has no effect if the person so specified fails to give notice under section 73(1)(a) before the step is taken.
- (2) Failure to give notice of such a step under section 73(1)(b) does not invalidate the step.

#### **75 Moratorium**

- (1) A moratorium on the disposal of a registered social landlord's land begins when a step specified in the table in section 73 is taken in respect of the registered social landlord.
- (2) The taking of another such step during the moratorium does not trigger a new moratorium or affect the duration of the existing one.

#### **76 Period of moratorium**

- (1) A moratorium ends (unless extended or cancelled) 56 days after notice of the step in respect of which it began is given under section 73(1)(b).
- (2) The Regulator may extend the moratorium from time to time (but may do so only with the consent of all of the registered social landlord's secured creditors whom the Regulator can locate after making reasonable enquiries).
- (3) The Regulator must give notice of any extension to—
  - (a) the registered social landlord, and
  - (b) any liquidator, administrative receiver, receiver or administrator appointed in respect of the registered social landlord or its land.
- (4) The Regulator may, after consulting the person whose step triggered a moratorium, cancel the moratorium where it considers that the proper management of the registered social landlord's land can be secured without making proposals under section 80.
- (5) The Regulator must give notice of a moratorium ending to—
  - (a) the registered social landlord, and
  - (b) all of the registered social landlord's secured creditors whom the Regulator can locate after making reasonable enquiries.
- (6) Such a notice must (except where the moratorium has been cancelled) include an explanation of section 77.

## **77 Further moratorium**

- (1) If a moratorium ends (other than by cancellation), taking a step specified in the table in section 73 in respect of the registered social landlord concerned within 3 years of the moratorium ending does not trigger another moratorium.
- (2) But the Regulator may, in such circumstances, renew the original moratorium for a specified period if all of the registered social landlord's secured creditors whom the Regulator can locate after making reasonable enquiries consent to the renewal.
- (3) The Regulator must give notice of a renewal of a moratorium to—
  - (a) the registered social landlord, and
  - (b) any liquidator, administrative receiver, receiver or administrator appointed in respect of the registered social landlord or its land.

## **78 Effect of moratorium**

- (1) During a moratorium a registered social landlord's land may not be disposed of without the Regulator's consent.
- (2) Subsection (1)—
  - (a) applies to disposals by the registered social landlord and by any other person having power to dispose of the registered social landlord's land, but
  - (b) does not apply to a disposal for which the Regulator's consent is not required because of section 108.
- (3) The Regulator's consent to a disposal may be given—
  - (a) before or after the moratorium begins,
  - (b) subject to such conditions as the Regulator considers appropriate.
- (4) A purported disposal during a moratorium without consent is void.

## **79 Interim manager**

- (1) During a moratorium the Regulator may appoint, or require the registered social landlord to appoint, an interim manager—
  - (a) to manage its housing activities or its financial and other affairs generally, or
  - (b) to manage particular aspects of those activities or affairs.
- (2) It is for the Regulator to determine the terms on which an interim manager is to be appointed (including as to period of appointment and remuneration and expenses).
- (3) An interim manager's appointment ends with the earliest of the following—
  - (a) any date specified in the appointment,
  - (b) the end of the moratorium, or
  - (c) the agreement of proposals under section 82.
- (4) An interim manager has—
  - (a) general powers to do anything required to perform the interim manager's functions (including power to enter into agreements or do anything else which the registered social landlord has power to do), and
  - (b) such specific powers as the Regulator may specify.
- (5) But an interim manager—

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- (a) must comply with any direction by the Regulator about the performance of the interim manager’s functions (and may be removed on failure to so comply), and
  - (b) may not dispose of land.
- (6) An interim manager acts as the registered social landlord’s agent and is accordingly not personally liable on an agreement entered into as interim manager.
- (7) Anyone dealing with a manager in good faith and for value need not inquire whether the interim manager is acting within the powers conferred by virtue of this section.

### *Making proposals*

#### **80 Proposals: formulation**

- (1) The Regulator may, during a moratorium, make proposals about the future ownership and management of the registered social landlord’s land with a view to ensuring that land is managed properly in the future by a registered social landlord.
- (2) Before making proposals, the Regulator must consult—
- (a) the registered social landlord,
  - (b) all of the registered social landlord’s secured creditors whom the Regulator can locate after making reasonable enquiries,
  - (c) the registered social landlord’s tenants (so far as practicable),
  - (d) where the registered social landlord is a registered society, the Financial Services Authority, and
  - (e) where the registered social landlord is a charity, the Office of the Scottish Charity Regulator.
- (3) The Regulator must, when formulating proposals—
- (a) have regard to the interests of the registered social landlord’s creditors as a whole (both secured and unsecured), and
  - (b) so far as practicable, aim to avoid worsening the position of the registered social landlord’s unsecured creditors.
- (4) Proposals may provide for the appointment of a manager to implement the proposals (and proposals which do so must provide for the payment of the manager’s remuneration and expenses).
- (5) Proposals must not include anything which would result in—
- (a) non-preferential debts being paid before preferential debts,
  - (b) preferential creditors being paid different proportions of preferential debts (except where affected preferential creditors agree to be paid a smaller proportion).
- “preferential debt” and “preferential creditor” have the same meaning as in the Insolvency Act 1986 (c.45).

#### **81 Proposals: submission**

- (1) The Regulator must submit its proposals to all of the registered social landlord’s secured creditors whom the Regulator can locate after making reasonable enquiries.

- (2) The Regulator must give notice of submitted proposals to—
  - (a) the registered social landlord and its officers, and
  - (b) any liquidator, administrative receiver, receiver or administrator appointed in respect of the registered social landlord or its land.
- (3) The Regulator must also make arrangements for bringing submitted proposals to the attention of the registered social landlord’s members, tenants and unsecured creditors.

## **82 Proposals: agreement**

- (1) Secured creditors to whom proposals are submitted under section 81 may—
  - (a) agree to the proposals (with or without modification), or
  - (b) reject the proposals.
- (2) Proposals agreed with modifications have effect only if the Regulator agrees to the modifications.
- (3) The Regulator must give notice of agreed proposals to—
  - (a) the registered social landlord and its officers,
  - (b) all of the registered social landlord’s secured creditors whom the Regulator can locate after making reasonable enquiries,
  - (c) any liquidator, administrative receiver, receiver or administrator appointed in respect of the registered social landlord or its land,
  - (d) where the registered social landlord is a registered society, the Financial Services Authority, and
  - (e) where the registered social landlord is a charity, the Office of the Scottish Charity Regulator.
- (4) The Regulator must also make arrangements for bringing agreed proposals to the attention of the registered social landlord’s members, tenants and unsecured creditors.

## **83 Modifying proposals**

- (1) Agreed proposals may be modified from time to time with the agreement of—
  - (a) the Regulator, and
  - (b) all of the registered social landlord’s secured creditors to whom the original proposals were submitted.
- (2) Sections 80 and 82(3) apply to modified proposals as to the original proposals (and references in sections 84 to 90 to agreed proposals include references to modified proposals).

### *Implementing proposals*

## **84 Implementation of agreed proposals**

- (1) Agreed proposals are binding on and accordingly must be implemented by—
  - (a) the Regulator,
  - (b) the registered social landlord,
  - (c) the registered social landlord’s creditors (both secured and unsecured), and

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- (d) any liquidator, administrative receiver, receiver or administrator appointed in respect of the registered social landlord or its land.
- (2) The registered social landlord's officers must co-operate in the implementation of agreed proposals.

But this subsection does not require or allow officers to do anything in breach of a fiduciary or other duty owed by them.

## **85 Appointment of manager to implement proposals**

- (1) The Regulator must appoint a manager to implement agreed proposals (where the proposals so provide).
- (2) A manager must comply with any direction by the Regulator about the performance of the manager's functions (and may be removed on failure to so comply).
- (3) A manager may apply to the Court of Session for directions about the performance of the manager's functions (and a direction by the court supersedes any contrary direction by the Regulator).
- (4) The Regulator may appoint another manager in place of a person who for any reason ceases to be manager.

## **86 Manager: powers**

- (1) A manager appointed to implement agreed proposals may do anything necessary to secure that implementation.
- (2) A manager may, in particular—
  - (a) take possession of land (and raise legal proceedings for that purpose),
  - (b) sell or otherwise dispose of land by public auction or private contract,
  - (c) raise or borrow money,
  - (d) grant security over land,
  - (e) grant or enter into, or accept a renunciation of, a lease or tenancy,
  - (f) carry on the registered social landlord's business (in so far as relating to management and transfer of land),
  - (g) carry out works, or do anything else, in connection with the management or transfer of land,
  - (h) execute deeds or other documents on behalf of the registered social landlord,
  - (i) use the registered social landlord's seal (if it has one),
  - (j) make any arrangement or compromise on behalf of the registered social landlord,
  - (k) appoint (and dismiss) agents and staff,
  - (l) appoint a solicitor, accountant or other professional to assist the manager,
  - (m) make payments,
  - (n) take out insurance,
  - (o) raise or defend legal proceedings,
  - (p) refer a dispute to arbitration,
  - (q) do anything incidental to the exercise of the above powers.

- (3) A manager acts as the registered social landlord's agent and is accordingly not personally liable on an agreement entered into as manager.
- (4) Anyone dealing with a manager in good faith and for value need not inquire whether the manager is acting within the powers conferred by virtue of this section.
- (5) A manager must, so far as practicable—
  - (a) consult the registered social landlord's tenants before doing anything likely to affect them, and
  - (b) inform them of the effect of any such action.

## **87      Manager of registered society: extra powers**

- (1) This section applies where a manager is appointed to implement proposals relating to a registered social landlord which is a registered society.
- (2) The manager may make and execute, on behalf of the society—
  - (a) an instrument providing for the amalgamation of the society with another registered society (“amalgamation instrument”), or
  - (b) an instrument transferring the society's engagements.
- (3) An amalgamation instrument executed by a manager has the same effect as a resolution by the society under section 50 of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12) (amalgamation of societies by special resolution).
- (4) An instrument transferring the engagements has the same effect as a transfer of engagements under section 51 or 52 of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 (c.12) (and, in particular, has effect subject to section 54 of that Act).
- (5) The manager must send a copy of the instrument (signed by the manager) to the Financial Services Authority.
- (6) The copy instrument must be registered by that Authority and the instrument does not take effect until the copy is so registered.
- (7) A copy instrument must be sent for registration within 14 days of execution (but a copy registered after that period is valid).

## **88      Regulator assistance**

- (1) The Regulator may give financial or other assistance to a registered social landlord in order to—
  - (a) preserve its position pending the making or agreement of proposals, or
  - (b) facilitate implementation of agreed proposals.
- (2) In order to facilitate implementation of agreed proposals, the Regulator may give financial or other assistance to—
  - (a) a manager appointed to implement agreed proposals,
  - (b) an officer of the registered social landlord.
- (3) The Regulator may, in particular—
  - (a) lend staff,

(b) arrange payment of a manager's remuneration and expenses.

(4) But the Regulator may not—

- (a) pay grants,
- (b) make loans,
- (c) indemnify a manager or officer, or
- (d) make payments, or give guarantees, connected with loans (whether secured or otherwise),

without the consent of Ministers.

### **89 Failure by manager to implement agreed proposals**

(1) This section applies where a registered social landlord, or any of its creditors, applies to the Court of Session on the ground that a manager has acted otherwise than in accordance with agreed proposals.

(2) The Court may—

- (a) confirm, modify or reduce any decision or other act of the manager,
- (b) give the manager directions, or
- (c) make such other order as the court thinks fit.

### **90 Other failure to implement agreed proposals**

(1) This section applies where any person bound by agreed proposals applies to the Court of Session on the ground that another person so bound has acted, or proposes to act, otherwise than in accordance with the proposals.

(2) The Court may—

- (a) confirm or modify the act,
- (b) declare the act to be of no effect, or
- (c) make such other order (by way of interdict, award of damages or otherwise) as the court thinks fit.

### **91 Meaning of “land”**

References in this Part to a registered social landlord's land include references to any existing or future interest of the landlord in rent or other receipts arising from land.