



Housing and Regeneration Act 2008

2008 CHAPTER 17

PART 2

REGULATION OF SOCIAL HOUSING

CHAPTER 4

REGISTERED PROVIDERS

Insolvency etc.

144 Preparatory steps: notice

A step specified in the Table has effect only if the person specified has given the regulator notice.

<i>Step</i>	<i>Person to give notice</i>
Any step, of a kind prescribed for the purposes of this section by the Secretary of State by order, to enforce a security over land held by a registered provider	The person taking the step
Presenting a petition for the winding up of a registered provider which is— (a) a registered company, or (b) an industrial and provident society But not the presenting of a petition by the regulator under section 166	The petitioner
Passing a resolution for the winding up of a registered provider which is— (a) a registered company, or (b) an industrial and provident society	The registered provider

Status: This is the original version (as it was originally enacted).

<i>Step</i>	<i>Person to give notice</i>
But not the passing of a resolution for winding-up where the regulator's consent is required under section 162 or 164	
Making an administration application in accordance with paragraph 12 of Schedule B1 to the Insolvency Act 1986 in respect of a registered provider which is a registered company	The applicant
Appointing an administrator under paragraph 14 or 22 of that Schedule in respect of a registered provider which is a registered company	The person making the appointment
Filing with the court a copy of a notice of intention to appoint a person under either of those paragraphs in respect of a registered provider which is a registered company	The person filing the notice

145 Moratorium

- (1) If a step specified in the Table below is taken in respect of a registered provider, a moratorium on the disposal of land by the provider begins.
- (2) Where a step specified in the Table is taken in respect of a registered provider, the person specified must give the regulator notice as soon as is reasonably practicable.
- (3) If the notice is not given the step is not invalidated (but the end of the moratorium depends on the notice being given — see section 146(2)).
- (4) The regulator shall give the HCA a copy of any notice received under this section.

<i>Step</i>	<i>Person</i>
Any step, of a kind prescribed for the purposes of this section by the Secretary of State by order, to enforce a security over land held by a registered provider	The person taking the step
The presenting of a petition for winding up a registered provider which is— (a) a registered company, or (b) an industrial and provident society But not the presenting of a petition by the directors or other governing body of the registered provider or by the regulator under section 166	The petitioner
The passing of a resolution for the winding up of a registered provider which is— (a) a registered company, or (b) an industrial and provident society	The registered provider

Status: This is the original version (as it was originally enacted).

<i>Step</i>	<i>Person</i>
A decision by the directors or other governing body of a registered provider to present a petition for winding up where the registered provider is— (a) a registered company, or (b) an industrial and provident society	The directors or governing body
The making of an administration order in accordance with paragraph 13 of Schedule B1 to the Insolvency Act 1986 in respect of a registered provider which is a registered company	The person who applied for the order
The appointment of an administrator under paragraph 14 or 22 of that Schedule in respect of a registered provider which is a registered company	The person making the appointment

146 Duration of moratorium

- (1) The moratorium begins when the step specified in section 145 is taken.
- (2) The moratorium ends (unless extended or cancelled) with the period of 28 working days beginning with the day on which the regulator receives notice under section 145(2).
- (3) During a moratorium the regulator may extend it (or further extend it) for a specified period, with the consent of each secured creditor of the registered provider whom the regulator is able to locate after making reasonable enquiries.
- (4) If the regulator extends a moratorium it shall notify—
 - (a) the registered provider,
 - (b) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or its land, and
 - (c) the HCA.
- (5) During a moratorium the regulator may cancel it if satisfied that it is unnecessary to make proposals under section 152.
- (6) Before cancelling a moratorium the regulator must consult the person who took the step that triggered it.
- (7) When a moratorium ends the regulator shall give notice, and (except in the case of cancellation) an explanation of section 147, to—
 - (a) the registered provider, and
 - (b) such of its secured creditors as the regulator is able to locate after making reasonable enquiries.
- (8) When a moratorium ends the regulator shall also give notice to the HCA.
- (9) Taking a further step during a moratorium does not—
 - (a) start a new moratorium, or
 - (b) alter the existing moratorium's duration.

147 Further moratorium

- (1) This section applies if—
 - (a) a moratorium in respect of a registered provider ends otherwise than by cancellation, and
 - (b) a further step specified in section 145 is taken in relation to the provider within the period of 3 years beginning with the end of the moratorium.
- (2) The further step does not automatically trigger a further moratorium.
- (3) But the regulator may impose a further moratorium for a specified period, if each secured creditor of the registered provider whom the regulator is able to locate after making reasonable enquiries consents.
- (4) If the regulator imposes a new moratorium it shall notify—
 - (a) the registered provider,
 - (b) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land, and
 - (c) the HCA.
- (5) This group of sections applies to a further moratorium as to a first moratorium (except for section 146(2)).

148 Effect of moratorium

- (1) During a moratorium the HCA—
 - (a) may not give the registered provider a direction under section 32(4), and
 - (b) may not take steps to enforce such a direction against the registered provider.
- (2) During a moratorium a disposal of the registered provider's land requires the regulator's prior consent.
- (3) Section 149 sets out exceptions to subsection (2).
- (4) Consent—
 - (a) may be given before the moratorium begins, and
 - (b) may be subject to conditions.
- (5) This section does not prevent a liquidator from disclaiming land as onerous property during a moratorium.
- (6) In this section "land" includes a present or future interest in rent or other receipts arising from land.

149 Exempted disposals

- (1) The regulator's consent is not required under section 148 for the following exceptions.
- (2) Exception 1 is a letting under—
 - (a) an assured tenancy, or
 - (b) an assured agricultural occupancy.
- (3) Exception 2 is a letting under what would be an assured tenancy or an assured agricultural occupancy but for any of paragraphs 4 to 8, 12(1)(h) and 12ZA to 12B

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of Schedule 1 to the Housing Act 1988 (c. 50) (tenancies which cannot be assured tenancies).

- (4) Exception 3 is a letting under a secure tenancy.
- (5) Exception 4 is a letting under what would be a secure tenancy but for any of paragraphs 2 to 12 of Schedule 1 to the Housing Act 1985 (c. 68) (tenancies which are not secure tenancies).
- (6) Exception 5 is a disposal for which consent is required under—
 - (a) section 81 or 133 of the Housing Act 1988 (c. 50), or
 - (b) section 173 of the Local Government and Housing Act 1989 (c. 42).
- (7) Exception 6 is a disposal under Part V of the Housing Act 1985 (right to buy).
- (8) Exception 7 is a disposal under the right conferred by—
 - (a) section 180, or
 - (b) section 16 of the Housing Act 1996 (c. 52) (tenant’s right to acquire social housing in Wales).

150 Disposals without consent

- (1) A purported disposal by a registered provider is void if—
 - (a) it requires the regulator’s consent under section 148, and
 - (b) the regulator has not given consent.
- (2) But subsection (1) does not apply to a disposal by a non-profit registered provider to one or more individuals (“the buyer”) if—
 - (a) the disposal is of a single dwelling, and
 - (b) the registered provider reasonably believes at the time of the disposal that the buyer intends to use the property as the buyer’s principal residence.

151 Interim manager

- (1) During a moratorium the regulator may appoint an interim manager of the registered provider.
- (2) An appointment may relate to the registered provider’s affairs generally or to affairs specified in the appointment.
- (3) Appointment shall be on terms and conditions (including as to remuneration) specified in, or determined in accordance with, the appointment.
- (4) An appointment under this section shall come to an end with the earliest of the following—
 - (a) the end of the moratorium,
 - (b) the agreement of proposals under section 152, or
 - (c) a date specified in the appointment.
- (5) An interim manager shall have—
 - (a) any power specified in the appointment, and
 - (b) any other power in relation to the registered provider’s affairs required by the manager for the purposes specified in the appointment (including the power

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to enter into agreements and take other action on behalf of the registered provider).

- (6) But an interim manager may not—
- (a) dispose of land, or
 - (b) grant security over land.

152 Proposals

- (1) During a moratorium the regulator may make proposals about the future ownership and management of the registered provider's land, with a view to ensuring that the property will be properly managed by a registered provider.
- (2) In making proposals the regulator shall—
 - (a) have regard to the interests of the registered provider's creditors as a whole, and
 - (b) so far as is reasonably practicable avoid worsening the position of unsecured creditors.
- (3) Proposals may provide for the appointment of a manager in accordance with section 155 to implement all or part of the proposals.
- (4) Proposals may not include anything which would result in—
 - (a) a preferential debt being paid otherwise than in priority to a non-preferential debt, or
 - (b) a preferential creditor (PC1) being paid a smaller proportion of a preferential debt than another preferential creditor (PC2) (unless PC1 consents).
- (5) Proposals relating to a registered provider which is a charity (C1)—
 - (a) may not require it to act outside the terms of its trusts, and
 - (b) may provide for the disposal of accommodation only to another charity whose objects the regulator thinks are similar to those of C1.

153 Proposals: procedure

- (1) Before making proposals the regulator shall consult—
 - (a) the registered provider,
 - (b) its tenants (so far as is reasonably practicable),
 - (c) if the registered provider is an industrial and provident society, the Financial Services Authority, and
 - (d) if the registered provider is a registered charity, the Charity Commission.
- (2) The regulator shall send a copy of proposals to—
 - (a) the registered provider and its officers,
 - (b) such of its secured creditors as the regulator is able to locate after making reasonable enquiries, and
 - (c) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land.
- (3) The regulator shall also make arrangements for bringing proposals to the attention of—
 - (a) the registered provider's members,
 - (b) its tenants, and

- (c) its unsecured creditors.
- (4) If each secured creditor to whom proposals were sent agrees to the proposals by notice to the regulator, the proposals have effect.
- (5) Proposals may be agreed with modifications if—
 - (a) each secured creditor to whom the proposals were sent consents by notice to the regulator, and
 - (b) the regulator consents.
- (6) The regulator shall send a copy of agreed proposals to—
 - (a) the registered provider and its officers,
 - (b) its secured creditors to whom the original proposals were sent,
 - (c) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land,
 - (d) if the registered provider is an industrial and provident society, the Financial Services Authority, and
 - (e) if the registered provider is a registered charity, the Charity Commission.
- (7) The regulator shall also make arrangements for bringing agreed proposals to the attention of—
 - (a) the registered provider’s members,
 - (b) its tenants, and
 - (c) its unsecured creditors.
- (8) Proposals may be amended by agreement between the secured creditors to whom the original proposals were sent and the regulator; and this section and section 152 apply to an amendment as to the original proposals.

154 Proposals: effect

- (1) The following are obliged to implement agreed proposals—
 - (a) the regulator,
 - (b) the registered provider,
 - (c) its creditors, and
 - (d) any liquidator, administrator, administrative receiver or receiver appointed in respect of the registered provider or any of its land.
- (2) The following shall co-operate with implementation of agreed proposals—
 - (a) in the case of a charitable trust, its trustees,
 - (b) in the case of an industrial and provident society, its committee members, and
 - (c) in the case of a registered company, its directors.
- (3) Subsection (2) does not require or permit a breach of a fiduciary or other duty.

155 Manager: appointment

- (1) This section applies where agreed proposals provide for the appointment of a manager.
- (2) The proposals must provide for the manager to be paid reasonable remuneration and expenses.

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- (3) The regulator shall appoint a manager.
- (4) The regulator may give the manager directions (general or specific).
- (5) The manager may apply to the High Court for directions (and directions of the regulator are subject to directions of the High Court).
- (6) If the registered provider is a charity, the regulator must notify the Charity Commission that a manager has been appointed.
- (7) The regulator may appoint a new manager in place of a person who ceases to be manager (in accordance with terms of appointment specified in the proposals or determined by the regulator).

156 Manager: powers

- (1) A manager—
 - (a) may do anything necessary for the purpose of the appointment,
 - (b) acts as the registered provider’s agent (and is not personally liable on a contract), and
 - (c) has ostensible authority to act for the registered provider (so that a person dealing with the manager in good faith and for value need not inquire into the manager’s powers).
- (2) In particular, the terms of a manager’s appointment may confer power—
 - (a) to sell or otherwise dispose of land by public auction or private contract;
 - (b) to raise or borrow money;
 - (c) to grant security over land;
 - (d) to grant or accept surrender of a lease;
 - (e) to take a lease;
 - (f) to take possession of property;
 - (g) to appoint a solicitor, accountant or other professional to assist the manager;
 - (h) to appoint agents and staff (and to dismiss them);
 - (i) to make payments;
 - (j) to bring or defend legal proceedings;
 - (k) to refer a question to arbitration;
 - (l) to make any arrangement or compromise;
 - (m) to carry on the business of the registered provider;
 - (n) to carry out works and do other things in connection with the management or transfer of land;
 - (o) to take out insurance;
 - (p) to use the registered body’s seal;
 - (q) to execute in the name and on behalf of the registered provider any deed, receipt or other document;
 - (r) to do anything incidental to a power in paragraphs (a) to (q).
- (3) A manager shall so far as is reasonably practicable consult and inform the registered provider’s tenants about an exercise of powers likely to affect them.

157 Manager of industrial and provident society: extra powers

- (1) This section applies to a manager appointed to implement proposals relating to an industrial and provident society.
- (2) The appointment may confer on the manager power to make and execute on behalf of the society—
 - (a) an instrument providing for the amalgamation of the society with another industrial and provident society, or
 - (b) an instrument transferring its engagements.
- (3) An instrument providing for the amalgamation of a society (“S1”) with another has the same effect as a resolution by S1 under section 50 of the Industrial and Provident Societies Act 1965 (c. 12) (amalgamation of societies by special resolution).
- (4) An instrument transferring engagements has the same effect as a transfer of engagements under sections 51 and 52 of the Industrial and Provident Societies Act 1965 (transfer by special resolution to another society or company).
- (5) A copy of the instrument shall be sent to and registered by the Financial Services Authority.
- (6) An instrument does not take effect until the copy is registered.
- (7) The copy must be sent for registration during the period of 14 days beginning with the date of execution; but a copy registered after that period is valid.

158 Assistance by regulator

- (1) The regulator may give financial or other assistance to a registered provider for the purpose of preserving its position pending the agreement of proposals.
- (2) The regulator may give financial or other assistance to a registered provider, or a manager appointed under section 155, to facilitate the implementation of agreed proposals.
- (3) In particular, the regulator may—
 - (a) lend staff;
 - (b) arrange payment of the manager’s remuneration and expenses.
- (4) The regulator may do the following only with the Secretary of State’s consent—
 - (a) make grants,
 - (b) make loans,
 - (c) indemnify a manager,
 - (d) make payments in connection with secured loans, and
 - (e) guarantee payments in connection with secured loans.

159 Applications to court

- (1) A registered provider may apply to the High Court where the registered provider thinks that action taken by a manager is not in accordance with the agreed proposals.
- (2) A creditor of a registered provider may apply to the High Court where the creditor thinks that action taken by a manager is not in accordance with the agreed proposals.

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- (3) The High Court may—
 - (a) confirm, annul or modify an act of the manager;
 - (b) give the manager directions;
 - (c) make any other order.
- (4) If a person bound by agreed proposals (P1) thinks that action by another person (P2) breaches section 154, P1 may apply to the High Court.
- (5) The High Court may—
 - (a) confirm, annul or modify the action;
 - (b) grant relief by way of injunction, damages or otherwise.