

HOUSING AND REGENERATION ACT 2008

EXPLANATORY NOTES

STRUCTURE OF THE ACT

Part 2 – Regulation of Social Housing

Chapter 7 – Enforcement powers

Compensation

683. Sections 236 to 245 describe the arrangements for the regulator to exercise a power to require a registered provider to pay compensation to certain classes of people.

Section 236 - Overview

684. This section describes the nature of the power to require a registered provider to pay compensation.

Section 237 - Grounds for award

685. This section specifies the grounds on which the regulator may require a registered provider to pay compensation. The regulator must be satisfied either that the registered provider has failed to meet a standard of social housing established by the regulator under sections 193 or 194 of this Part, or that the registered provider has failed to comply with an undertaking under section 125 that it has given to the regulator.
686. The regulator must also be satisfied that requiring a registered provider to pay compensation is appropriate, whether alone or in combination with the use of one or more of the regulator's other enforcement powers.

Section 238 - Nature

687. This section indicates those circumstances under which compensation may be awarded. *Subsection (1)* provides that it should be awarded to a person or persons who have suffered as a result of the failure that forms the basis for awarding compensation as defined by section 237.
688. *Subsection (2)* restricts the person or persons eligible for compensation to those who are tenants of social housing, but provides that compensation can be made to individual tenants of a registered provider, or to groups of them, or to all of a provider's tenants.

Section 239 - Housing ombudsman compensation

689. This section provides for the regulator's power to require a provider to pay compensation to be co-ordinated with the arrangements for approved ombudsman schemes. All registered providers must be a member of an approved ombudsman scheme under section 124 and those schemes may provide for the ombudsman to determine that one of its members should pay compensation in respect of a case brought by an individual against that member.

690. *Subsection (1)* provides that where this is the case, the regulator may not direct a registered provider to pay compensation to the same person for the same reason.
691. *Subsection (2)* however permits the regulator to direct the provider to pay compensation in such cases where the ombudsman has awarded compensation, but the provider has not paid it.

Section 240 - Award

692. This section specifies the process and content for imposing a direction to a provider to pay compensation. Compensation is awarded by the regulator giving written notice (a “compensation notice”) to the registered provider and the person or persons to be compensated.
693. *Subsection (2)* provides that compensation notices must set out:
- the grounds on which compensation is awarded, which must be one or more of the grounds specified in section 237,
 - the amount of the compensation award,
 - the person or persons who are to be compensated,
 - any interest or additional compensation payable in the event of late payment, and
 - the period within which that compensation must be paid.
694. *Subsection (4)* requires that the notice explain the effect of sections 244(1) and (3), and section 245.
695. *Subsection (5)* requires the Secretary of State to make regulations about the period within which compensation must be paid, and gives the Secretary of State the power to make regulations about the form and content of compensation notices and the manner in which a compensation notice may be given

Section 241 – Impact

696. This section requires the regulator to take account of any information available to it about the financial situation of the registered provider when considering awarding compensation and when considering the amount. In particular it must consider the likely impact on the provider’s ability to provide services and avoid jeopardising its financial viability, existing financial commitments, and ability to remedy the problem.

Section 242 - Warning

697. This section sets out a procedure which must be followed before compensation can be awarded. The regulator must give a registered provider a notice, called a “pre-compensation warning”, which must specify the grounds on which compensation could be awarded, warn the provider that the regulator is considering awarding compensation, include any indication the regulator can give of the likely amount, and explain the effect of sections 243, 244(1) and (3), and 245.
698. *Subsection (2)* requires that the regulator consult the ombudsman for the scheme to which the registered provider belongs before issuing a pre-compensation warning.
699. *Subsection (3)* requires the regulator to give the HCA, and any other person that it thinks appropriate, a copy of the pre-compensation warning. In doing so, *subsection (4)* sets out that it should particularly take into account, when considering to whom it would be appropriate to send a copy, any person who has provided information as a result of which the regulator is considering making an award of compensation.
700. *Subsection (5)* requires the regulator to refer to section 125 (which permits registered providers to offer, and the regulator to prescribe a procedure for, the use of voluntary

undertakings) and indicate in its pre-compensation warning whether the regulator would accept a voluntary undertaking under section 125 instead of or in mitigation of compensation.

701. *Subsection (6)* provides that the regulator may combine the pre-compensation warning with warnings about the use of its other enforcement powers.

Section 243 - Representations

702. This section makes arrangements for providers issued with a warning to make representations to the regulator about its proposed action. The warning issued under section 242 must provide for a minimum period for the provider to make representations to the regulator.
703. *Subsection (2)* specifies that the minimum period must be at least 28 days beginning with the date on which the registered provider receives the pre-compensation warning.
704. The representations may pertain to any matter connected with the contents of the warning, but in particular with whether compensation should be awarded, and the likely amount of the compensation.
705. *Subsection (4)* provides that at the end of the period for representations the regulation must consider any representations that have been made, and then decide whether to direct the registered provider to pay compensation.

Section 244 - Enforcement

706. This section specifies how compensation notices will be enforced, and makes provisions for late payment or non-payment of compensation. Compensation is treated as a debt to the person or persons to whom it has been awarded.
707. *Subsection (2)* gives the Treasury a power to make regulations permitting the regulator to charge interest on compensation that is not paid by the date specified in the compensation notice and to award additional compensation where the original compensation award is not paid by the specified deadline. *Subsection (3)* provides that in such cases, the additional sums are also treated as compensation.
708. *Subsection (4)* provides for how interest rates may be set for interest charges on late payment of penalties as provided for in subsection (2).

Section 245 - Appeal

709. This section gives a provider who has been served with a compensation notice the right to appeal to the High Court against the regulator's award of compensation, or the amount of compensation awarded, or both.