

EXPLANATORY MEMORANDUM TO
THE HOUSING ADMINISTRATION (ENGLAND AND WALES) RULES 2018
2018 No. 719

1. Introduction

- 1.1. This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1. The Housing and Planning Act 2016 introduced a new housing administration regime for private registered providers of social housing. These Rules form a package with The Insolvency of Registered Providers of Social Housing Regulations 2018. The Insolvency of Registered Providers of Social Housing Regulations 2018 allows for parts of the Insolvency Act 1986 to apply to registered societies and charitable incorporated organisations which are in housing administration. These rules set out the detailed procedures for the conduct of housing administration.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1. None.

Other matters of interest to the House of Commons

- 3.2. As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1. The rules are made under section 411 of the Insolvency Act 1986 (“the 1986 Act”) as applied by the Housing and Planning Act 2016 (“the 2016 Act”). Section 411 of the 1986 Act empowers the Lord Chancellor, with the concurrence of the Lord Chief Justice, to make rules for the purpose of giving effect to Parts 1 to 7 of the 1986 Act. Schedule B1 to the 1986 Act provides for administration.
- 4.2. The Housing and Planning Act 2016 provides for a housing administration scheme to apply in relation to private registered providers of social housing, and provides that the Secretary of State or the Regulator of Social Housing can apply for a housing administration order, one of the objectives of which is to keep social housing in the regulated sector. Schedule B1 to the 1986 Act applies to administrations, and is applied, with modifications, by Schedule 5 of the Housing and Planning Act 2016 in relation to private registered providers of social housing that are companies.
- 4.3. The housing administration rules mirror as far as possible the Insolvency (England and Wales) Rules 2016, and depart from them only where necessary to accommodate the special provisions of housing administration.

- 4.4. These Rules form a package with The Insolvency of Registered Providers of Social Housing Regulations 2018. The Regulations were subject to the affirmative procedure. Both the Regulations and these Rules should come into force at the same time to commence the whole regime at the same to avoid any confusion should an insolvency case occur in when only part of the regime applies.

5. Extent and Territorial Application

- 5.1. The extent of this instrument is England and Wales.
- 5.2. The territorial application of this instrument is England and Wales. A housing administration order may be sought in respect of a private registered provider of social housing wherever in the United Kingdom that provider is based if it has housing stock in England. An application for a housing administration order would be made in the courts of England and Wales.

6. European Convention on Human Rights

- 6.1. As the instrument is subject to negative resolution procedure and is not subject to parliamentary procedure, no statement is required.

7. Policy background

What is being done and why

- 7.1. The powers in the Housing and Planning Act enable the Secretary of State or the Regulator of Social Housing (with the Secretary of State's consent) to apply to the court for a housing administration order, which would appoint a housing administrator. The administrator would manage the affairs, business and property of the registered provider of social housing for the duration of the housing administration.
- 7.2. Housing administration replicates normal company administration (Objective 1), which is to (a) rescue the registered provider as a going concern, (b) achieve a better result for the registered provider's creditors as a whole than would be likely if the registered provider were wound up (without first being in housing administration); or, (c) realise property in order to make a distribution to one or more secured or preferential creditors. In pursuing Objective 1(a),(b) or (c) the housing administrator must act in the interests of the registered provider's creditors as a whole so far as consistent with that Objective.
- 7.3. There is also a further (secondary) objective for the housing administrator to retain the social housing within the regulated sector. While Objective 1 takes priority, the housing administrator has to deliver both objectives as far as is possible. The housing administrator must not do anything that would result in a worse distribution to creditors than would be the case if the administrator did not need to pursue Objective 2.
- 7.4. The Regulator of Social Housing has existing powers to deal with the insolvency of a private registered provider of social housing. Many providers have taken on more debt to finance building more homes and maintaining their current homes. Their debt finance increased from £48 billion in 2012 to £70 billion in 2017. They are now also more exposed to the housing market as some build homes for market sale to cross subsidise their social housing business. Although the sector remains financially

robust, the increased level of market exposure means there needs to be a robust system to handle a financial failure, in the unlikely event of an insolvency.

8. Consultation outcome

- 8.1. Prior to the introduction of the Housing and Planning Act 2016 into Parliament, the Government carried out informal consultation on housing administration with representatives from insolvency practitioners, valuers and the main lenders into the sector. This group represented the organisations which would be engaged in a housing administration process. This group was also informally consulted on these Rules (no statutory consultation being required by the 2016 Act). Minor amendments were made as a result. A fuller public consultation was not carried out because these Rules will only be of interest to these organisations.

9. Guidance

- 9.1. Neither the Ministry of Housing, Communities and Local Government nor the Regulator of Social Housing plan to provide guidance on these Rules. If used, these Rules would be followed by insolvency practitioners, who are already well versed in insolvency proceedings, including special administration regimes.

10. Impact

- 10.1. The impact on business, charities or voluntary bodies is very difficult to assess, but would be very low. The regulations will not have any impact on solvent providers.
- 10.2. Incidences of insolvency in the sector have been extremely rare and putting in place more robust insolvency arrangements will not increase the likelihood of insolvency occurring. Currently, tenants and lenders are reliant on the existing powers of the Regulator of Social Housing to deal with insolvency. These powers give the Regulator of Social Housing 28 days to reach a solution with all the creditors. If a solution is not found, the creditors would then be able to enforce their security, which could result in an unstructured sale of the private registered providers' social housing stock, meaning tenants could lose their homes, or have their rents increased to market levels. Housing Administration means that a professional administrator will be appointed to manage the business and will have up to 12 months (with an option to extend) to form and execute a plan to meet the objectives of the regime.
- 10.3. These rules, together with the provisions in the Housing and Planning Act 2016 and the Insolvency of Registered Providers of Social Housing Regulations 2018, will ensure that housing administration will apply to all private registered providers, but will impact upon them only if they become insolvent. This has previously occurred only once, and we expect these provisions to be used very infrequently.
- 10.4. The impact on the public sector is bodies is very difficult to assess, but would be very low. This provides a more effective and efficient regime for the Regulator of Social Housing to deal with insolvency, but it does not change the likelihood of an insolvency occurring. It is not possible to quantify potential direct costs and benefits to the public sector.
- 10.5. An Impact Assessment has not been prepared for this instrument. However, an assessment of impact was prepared to accompany the Insolvency of Registered Providers of Social Housing Regulations 2018. The assessment considers the overall impact of the changes to the insolvency regime for registered providers.

11. Regulating small business

- 11.1. The legislation applies to activities that are undertaken by small businesses. The Government considers that these Rules impose negligible costs to small businesses because they will be used so infrequently. We expect that in the majority of circumstances the Regulator of Social Housing powers would be sufficient to address issues of small businesses without the necessity of seeking a housing administration order.

12. Monitoring & review

- 12.1. The Government plans to review these rules within 5 years after they come into force.

13. Contact

- 13.1. Teresa Parke at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 3777 or email: teresa.parke@communities.gsi.gov.uk can answer any queries regarding the instrument.