

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY OF REGISTERED PROVIDERS OF SOCIAL HOUSING
REGULATIONS 2018

2018 No. 728

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 in England. That regime will apply to all companies, registered societies and charitable incorporated organisations which are registered providers of social housing in England. The primary legislation only applies to Private Registered Providers of Social Housing who are companies, which only accounts for approximately 14% of social housing stock in England. The purpose of this instrument is apply the provisions in the Act to registered societies and charitable incorporated organisations by applying certain provisions of the Insolvency Act 1986. The Regulations also make an amendment consequent on the provisions set out in the Housing and Planning Act 2016 to the Land Registration Rules 2003 applicable to companies, registered societies and charitable incorporated organisations. This amendment requires the Land Registrar to record the fact that a housing administration order has been made on the land register where the Private Registered Provider of Social Housing is either the owner of a property or a charge.

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 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

- 4.1 The Housing and Planning Act 2016 introduced a new housing administration regime for private registered providers of social housing in England (at Chapter 5 of Part 4 of the Act), mainly, colloquially, Housing Associations. The Housing and Regeneration Act 2008 sets out many of the main features of the legislative framework governing social housing including the role and functions of the Regulator of Social Housing.
- 4.2 Schedule B1 of the Insolvency Act 1986 sets out the framework for administrations conducted under that Act. Schedule 5 of the Housing and Planning Act 2016 applies provisions of Schedule B1 of the Insolvency Act 1986, with modifications, to private registered providers of social housing which are companies. These regulations make

similar provision in relation to the application of Schedule B1 of the Insolvency Act 1986 to private registered providers which are registered societies or charitable incorporated organisations.

- 4.3 The Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (SI 2012/3013) set out the application of the Insolvency Act 1986 to charitable incorporated organisations which operate in any area, and also detail the modifications made to schedule B1 of the Insolvency Act 1986. These regulations disapply the 2012 Regulations to Charitable Incorporated Organisations which are in housing administration, applying instead bespoke provisions during a housing administration.

5. Territorial Extent and Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom. A housing administration order can only be sought in relation to a private registered provider with social housing in England and who is therefore registered with the Regulator of Social Housing in England. Should an entity be registered in Wales, Northern Ireland or Scotland the housing administration order would affect the entirety of that particular legal entity wherever situated.

6. European Convention on Human Rights

- 6.1 The Minister of State for Housing, Dominic Raab MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Insolvency of Registered Providers of Social Housing Regulations 2017 are compatible with the Convention rights.”

7. Policy background

- 7.1 The Regulator of Social Housing has existing powers to deal with the insolvency of a private registered provider of social housing. Many providers have diversified into different areas of business. They have also 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 system to handle a financial failure, in the unlikely event of an insolvency.
- 7.2 The new 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 in the event of a private registered provider of social housing becoming insolvent. The administrator would manage the affairs, business and property of the private registered provider of social housing for the duration of the housing administration.
- 7.3 These powers give the Regulator of Social Housing 28 calendar days to assess the problem, develop a plan for the organisations and agree the solution with all creditors. If this is not possible, the creditors would then be able to enforce their security, which would likely result in an unstructured sale of the private registered providers’ social housing stock putting tenants’ rights around rent rises and other matters at risk. A

review by the Regulator of Social Housing following a near insolvency of a medium-sized housing association in 2012 concluded that these powers would not be sufficient if a large and/or complex private registered provider got into financial difficulty. Therefore an effective response to a large-scale insolvency is important to protect tenants and to protect Government's investment in social housing. It is also critical to protect wider investment in the sector.

- 7.4 Housing administration has two objectives. Objective 1 replicates normal company administration: 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.
- 7.5 However, 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 of money to creditors than would be the case if the administrator did not need to pursue Objective 2.

8. Consultation outcome

- 8.1 Prior to the introduction of the Housing and Planning Act 2016 into Parliament, the Government carried out informal consultation with representatives from insolvency practitioners, valuers, UK Finance and private registered providers main lenders. This group represented the organisations who have the main interest in housing administration. The same stakeholders were informally consulted on these Regulations (no formal consultation being required by the 2016 Act). A few comments were received and taken into consideration in the development of the regulations. A fuller public consultation was not carried out due to extremely technical nature of the regulations and because the process of housing administration will only be required in the unlikely event of a housing association facing insolvency.

9. Guidance

- 9.1 Neither the Ministry of Housing, Communities and Local Government nor the Regulator of Social Housing intend to produce guidance on these regulations.

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. 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 an insolvency. These powers give the Regulator of Social Housing 28 calendar 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 tenants could face

having their rents increased to market levels. These provisions, together with the provisions in the Housing and Planning Act 2016, 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.

- 10.2 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.
- 10.3 An Impact Assessment has not been prepared for this instrument. However, an assessment of impact will be published alongside this instrument.

11. Regulating small business

- 11.1 The legislation applies to small businesses who are Private Registered Providers of Social Housing in England. The Government considers that these regulations impose a negligible cost to small firms because they would be used infrequently and only where they are already facing, or technically are already, insolvent. We expect that in the majority of circumstances the Regulator of Social Housing powers would be sufficient to deal with an insolvency without seeking a housing administration order.

12. Monitoring & review

- 12.1 The Minister of State for Housing, Dominic Raab MP, has made the following statement regarding a review:

“In my view the provisions of the Insolvency of Registered Providers of Social Housing Regulations 2017 do not require the addition of a review clause under the provisions of the Small Business, Enterprise and Employment Act 2015. The potential benefit of including a review clause would be outweighed by the disproportionate costs of conducting such a review, given that the Government expects housing administration orders to be only rarely sought.”

13. Contact

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