

SCHEDULE 8
(introduced by section 64)
INSOLVENCY ETC. OF REGISTERED SOCIAL LANDLORDS

Interpretation

- 1 (1) In this schedule—
- “disposal” means sale, lease, security, charge or any other disposal and includes the grant of an option,
 - “secured creditor” means a creditor who holds a security over land held by the landlord or any existing or future interest of the landlord in rents or other receipts from land,
 - “security” means any security or charge (including a floating charge).
- (2) The Scottish Ministers may make provision by order defining for the purposes of this schedule what is meant by a step to enforce a security over land.

Initial notice to be given to the Scottish Ministers

- 2 (1) Notice must be given to the Scottish Ministers—
- (a) by a person proposing to take any step to enforce a security over land held by a registered social landlord, before taking that step,
 - (b) where the landlord is a company registered under the Companies Act 1985 (c. 6), by a person proposing to apply for an administration order, before applying for the order,
 - (c) by a person proposing to present a petition for the winding up of the landlord, before presenting the petition,
 - (d) by the landlord, before passing a resolution for its winding up.
- (2) Sub-paragraph (1) does not require notice to be given in relation to a resolution for voluntary winding up where the consent of the Scottish Ministers is required under paragraph 9(4) or 10(6) of schedule 7.
- (3) Any action mentioned in sub-paragraph (1)(a) to (d) is ineffective if the notice required by that sub-paragraph to be given before taking it has not been given.

Further notice to be given to the Scottish Ministers

- 3 (1) Notice must be given to the Scottish Ministers—
- (a) by a person who has taken any step to enforce a security over land held by a registered social landlord, as soon as may be after taking that step,
 - (b) where the landlord is a company registered under the Companies Act 1985 (c. 6), by the person who applied for an administration order, as soon as may be after the making of such an order,
 - (c) by the person who presented a petition for the winding up of the landlord, as soon as may be after the making of an order for such winding up,
 - (d) by the landlord, as soon as may be after passing a resolution for its winding up.
- (2) Failure to give notice required by sub-paragraph (1) does not affect the validity of the action in relation to which notice is required to be given.

Moratorium on disposal of land etc.

- 4 (1) Where any of the actions mentioned in paragraph 3 is taken in relation to a registered social landlord, there is a moratorium on the disposal of land held by the landlord.
- (2) During the moratorium the consent of the Scottish Ministers under this paragraph is required for any disposal of land held by the landlord, whether by the landlord itself or any person having a power of disposal in relation to the land.
- (3) Such consent may be given in advance and may be given subject to conditions.
- (4) Sub-paragraph (2) does not apply to a disposal which, by virtue of section 67, does not require consent under section 66 (or, in the case of a disposal by a person other than the landlord, would not require such consent if the disposal were by the landlord).
- (5) This paragraph applies in relation to any existing or future interest of the landlord in rent or other receipts arising from land as it applies in relation to an interest in land.

Period of moratorium

- 5 (1) The moratorium under paragraph 4(1)—
- (a) begins when the action which brought about the moratorium is taken, and
 - (b) ends at the end of the period of 56 days beginning with the day on which notice of its having been taken was given to the Scottish Ministers under paragraph 3,
- subject to the following provisions.
- (2) The taking of any further action as mentioned in paragraph 3 at a time when a moratorium is already in force does not start a further moratorium or affect the duration of the existing one.
- (3) A moratorium may be extended from time to time with the consent of all the landlord's secured creditors.
- (4) Notice of any such extension must be given by the Scottish Ministers to—
- (a) the landlord, and
 - (b) any liquidator, administrative receiver, receiver or administrator appointed in respect of the landlord or its land.
- (5) If during a moratorium the Scottish Ministers consider that the proper management of the landlord's land can be secured without making proposals under paragraph 6, they may, after consulting the person who took the action which brought about the moratorium, direct that the moratorium ceases to have effect.
- (6) When a moratorium comes to an end, or ceases to have effect under sub-paragraph (5), the Scottish Ministers must give notice of that fact to the landlord and the landlord's secured creditors.
- (7) Sub-paragraphs (8) to (11) apply where a moratorium comes to an end (but not when it ceases to have effect under sub-paragraph (5)).
- (8) A notice under sub-paragraph (6) must include information about the effect of sub-paragraphs (9) to (11).

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

- (9) If any further action mentioned in paragraph 3 is taken within the period of 3 years after the end of the original period of the moratorium, the moratorium may be renewed with the consent of all the landlord's secured creditors (which may be given before or after the step is taken).
- (10) Notice of any such renewal must be given by the Scottish Ministers to the persons to whom notice of an extension is required to be given under sub-paragraph (4).
- (11) If a moratorium ends without any proposals being agreed, then, for a period of 3 years, the taking of any further action mentioned in paragraph 3 does not start a further moratorium except with the consent of the landlord's secured creditors as mentioned in sub-paragraph (9).

Proposals as to ownership and management of landlord's land

- 6 (1) During a moratorium the Scottish Ministers may make proposals as to the future ownership and management of land held by the registered social landlord, designed to secure the continued proper management of the landlord's land by a registered social landlord.
- (2) In drawing up their proposals the Scottish Ministers—
 - (a) must consult—
 - (i) the landlord and, so far as is practicable, its tenants, and
 - (ii) where the landlord is an industrial and provident society, the Financial Services Authority, and
 - (b) must have regard to the interests of all the landlord's creditors, both secured and unsecured.
- (3) No proposals are to be made under which—
 - (a) a preferential debt (within the meaning of the Insolvency Act 1986 (c. 45)) of the landlord is to be paid otherwise than in priority to debts which are not preferential debts, or
 - (b) a preferential creditor (within the meaning of that Act) is to be paid a smaller proportion of that creditor's preferential debt than another preferential creditor, except with the concurrence of the creditor concerned.
- (4) So far as practicable no proposals are to be made which have the effect that unsecured creditors of the landlord are in a worse position than they would otherwise be.
- (5) The Scottish Ministers must serve a copy of their proposals on—
 - (a) the landlord and its officers,
 - (b) the secured creditors of the landlord, and
 - (c) any liquidator, administrative receiver, receiver or administrator appointed in respect of the landlord or its land,and must make such arrangements as they think fit for informing the members, tenants and unsecured creditors of the landlord of the proposals.

Effect of agreed proposals

- 7 (1) This paragraph applies where proposals made by the Scottish Ministers under paragraph 6 are agreed, with or without modifications, by all the secured creditors of the registered social landlord.

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

- (2) Once agreed, the proposals are binding on the Scottish Ministers, the landlord, all the landlord's creditors (whether secured or unsecured) and any liquidator, administrative receiver, receiver or administrator appointed in respect of the landlord or its land.
- (3) It is the duty of—
- (a) the members of the committee, where the landlord is an industrial and provident society,
 - (b) the directors, where the landlord is a company registered under the Companies Act 1985 (c. 6),
- to co-operate in the implementation of the proposal; but this sub-paragraph does not require them to do anything contrary to any fiduciary or other duty owed by them.
- (4) The Scottish Ministers must serve a copy of the agreed proposals on—
- (a) the landlord and its officers,
 - (b) the secured creditors of the landlord,
 - (c) the liquidator, administrative receiver, receiver or administrator appointed in respect of the landlord or its land, and
 - (d) where the landlord is an industrial and provident society, the Financial Services Authority,
- and must make such arrangements as they think fit to see that the members, tenants and unsecured creditors of the landlord are informed of the proposals.
- (5) The proposals may be subsequently amended with the consent of the Scottish Ministers and all the landlord's secured creditors.
- (6) Paragraph 6(2) to (5) and sub-paragraphs (2) to (4) of this paragraph apply in relation to the amended proposals as in relation to the original proposals.

Appointment of manager to implement agreed proposals

- 8 (1) Where the proposals agreed as mentioned in paragraph 7 so provide, the Scottish Ministers may appoint a manager to implement the proposals or such of them as they may specify.
- (2) Where proposals make provision for the appointment of a manager, they must also provide for the payment of the manager's reasonable remuneration and expenses.
- (3) The Scottish Ministers may give the manager directions in relation to the carrying out of the manager's functions; and the manager must comply with any such direction.
- (4) The manager may apply to the Court of Session for directions in relation to any particular matter arising in connection with the carrying out of the manager's functions; and a direction of the Court of Session supersedes any direction of the Scottish Ministers in relation to the same matter.
- (5) If a vacancy occurs by death, resignation or otherwise in the office of manager, the Scottish Ministers may fill the vacancy.

Powers of the manager

- 9 (1) A manager appointed under paragraph 8(1) has power generally to do all such things as are necessary for carrying out the manager's functions.

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

- (2) That power includes, in particular, power—
- (a) to take possession of the land held by the landlord and for that purpose to raise any legal proceedings which the manager thinks fit,
 - (b) to sell or otherwise dispose of the land by public auction or private contract,
 - (c) to raise or borrow money and for that purpose to grant security over the land,
 - (d) to appoint a solicitor or accountant or other professionally qualified person to assist in the performance of the manager's functions,
 - (e) to raise or defend legal proceedings relating to the land in the name and on behalf of the landlord,
 - (f) to refer to arbitration any question affecting the land,
 - (g) to effect and maintain insurance in respect of the land,
 - (h) where the landlord is a body corporate, to use the seal of the body corporate for purposes relating to the land,
 - (i) to do all acts and to execute in the name of the landlord any deed or other document relating to the land,
 - (j) to appoint an agent to do anything which the manager is unable to do personally or which can more conveniently be done by an agent, and to employ and dismiss any employees,
 - (k) to do all such things (including the carrying out of works) as may be necessary in connection with the management or transfer of the land,
 - (l) to make any payment which is necessary for, or incidental to, the performance of the manager's functions,
 - (m) to carry on the business of the landlord so far as relating to the management or transfer of the land,
 - (n) to grant or accept a renunciation of a lease or tenancy of any of the land, and to enter into a lease or tenancy of any property required or convenient for the landlord's housing activities,
 - (o) to make any arrangement or compromise on behalf of the landlord in relation to the management or transfer of the land,
 - (p) to do all other things incidental to the exercise of any of the above powers.
- (3) In carrying out functions the manager acts as the landlord's agent; and the manager is not personally liable on a contract entered into as manager.
- (4) A person dealing with the manager in good faith and for value is not concerned to inquire whether the manager is acting within the powers conferred by virtue of this paragraph.
- (5) The manager must, so far as practicable, consult the landlord's tenants about any proposed exercise of the manager's powers which is likely to affect them and, if the proposed exercise takes place, inform them of its effect.

Powers of the manager: transfer of engagements

- 10 (1) Where the landlord is an industrial and provident society, the manager may make and execute on behalf of the society an instrument transferring the engagements of the society.
- (2) Any such instrument has the same effect as a transfer of engagements under section 51 or 52 (transfer of engagements by special resolution to another society or

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

company) of the Industrial and Provident Societies Act 1965 (c. 12) and, in particular, has effect subject to section 54 (saving for rights of creditors) of that Act.

- (3) A copy of the instrument, signed by the manager, must be sent to the Financial Services Authority and registered by the Authority; and the instrument does not take effect until the copy is so registered.
- (4) The manager must send a copy for registration within 14 days from the day on which the instrument is executed; but this does not invalidate registration after that time.

Assistance by the Scottish Ministers

- 11 (1) The Scottish Ministers may give such assistance as they think fit—
 - (a) to the landlord, for the purpose of preserving the position pending the making of and agreement to the proposals,
 - (b) to the landlord or a manager appointed under paragraph 8(1), for the purpose of carrying out any agreed proposals.
- (2) The Scottish Ministers may, in particular—
 - (a) lend staff,
 - (b) pay or secure the payment of the manager's reasonable remuneration and expenses,
 - (c) give such financial assistance as they think fit.

Application to court to secure compliance with agreed proposals

- 12 (1) The landlord or any creditor of the landlord may apply to the Court of Session on the ground that an action of the manager appointed under paragraph 8(1) is not in accordance with the agreed proposals.
- (2) The court may, on such an application, confirm, modify or reduce any act or decision of the manager, give the manager directions or make such other order as it thinks fit.
- (3) The Scottish Ministers or any other person bound by agreed proposals may apply to the Court of Session on the ground that any action, or proposed action, by another person bound by the proposals is not in accordance with those proposals.
- (4) The court may, on such an application—
 - (a) declare any such action to be of no effect, and
 - (b) make such order (whether by way of interdict, award of damages or otherwise) as the court thinks fit.