

HOUSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

STRUCTURE OF THE ACT

Part 7 – Insolvency Etc

89. This Part of the Act sets out the action to be taken in the event of a registered social landlord becoming, or at risk of becoming, insolvent.
90. Throughout this Part of the Act references to notifying and consulting secured creditors are qualified to refer only to those creditors the regulator is able to contact after making reasonable inquiries.

Arrangements for and effect of a moratorium

91. [Section 73](#) sets out in a table who is required, and in what circumstances, to notify the regulator that certain steps are being taken to enforce a security over land. Notice is required both before and after taking one of the actions specified. Subsection (2) allows the regulator to define what is meant by a step “to enforce a security over a registered social landlord’s land”.
92. [Section 74\(1\)](#) provides that a step will have no effect unless the person taking it has notified the regulator in advance of their intention. However, failure to notify the regulator *after* the step has been taken will not make the step invalid (section 74(2)).
93. Taking one of the steps specified at section 73 automatically triggers a stop (a moratorium) on the disposal of land held by the registered social landlord (section 75). Section 91 defines land as including “any existing or future interest of the landlord in rent or other receipts arising from land”. Taking another specified step during the period the moratorium is in place will not result in a new moratorium or affect the length of the existing one. Any moratorium must, unless cancelled or extended, end 56 days after notice is given that the specified step has been taken (section 76).
94. [Section 76](#) also provides for the regulator, with the consent of all the RSL’s secured creditors (who can be located after reasonable enquiries), to extend the moratorium from time to time. Notice of such an extension must be given to the RSL and any liquidator, administrative receiver, receiver or administrator appointed in relation to the RSL or its land. Where the regulator considers the proper management of the RSL’s land can be secured without making a proposal under section 80 - and following consultation with the person whose step triggered the moratorium - the regulator can cancel the moratorium. The regulator must notify the RSL and its secured creditors when a moratorium ends. Where a moratorium has ended, other than by cancellation, the notice given must also provide an explanation of section 77.
95. Under section 77 if, after a moratorium has ended (other than by cancellation), a specified step is taken against the same RSL within three years, a new moratorium will not be triggered. The regulator may, with the consent of the RSL’s secured creditors, renew the original moratorium for a specified time. The regulator must give notice of the

renewal to the RSL and any liquidator, administrative receiver, receiver or administrator appointed in relation to the RSL or its land.

96. [Section 78](#) ensures that, under a moratorium, the RSL's land cannot be disposed of without the regulator's consent (unless the regulator's consent is not required under section 108 of this Act). The regulator may consent to a disposal before the moratorium begins and it may place conditions on its consent.
97. [Section 79](#) gives the regulator powers to appoint, or require a registered social landlord to appoint, an interim manager with powers to manage some or all of its affairs during a moratorium. The interim manager must, however, comply with any direction given by the regulator and may not dispose of land or grant security over land.

Making proposals for future ownership and management

98. During the moratorium the regulator can make proposals for the future ownership and management of the RSL's land in an attempt to ensure the land's future and proper management by a registered social landlord (section 80). Before making proposals it must consult those people listed at subsection (2). The regulator must consider the interests of all the RSL's creditors and must aim to avoid worsening the position of any unsecured creditors. The proposals may provide for the appointment and remuneration of a manager to implement the proposals. The proposals must not result in non-preferential debts being paid before preferential ones or preferential creditors being paid different proportions of preferential debt, unless they have agreed to being paid a smaller proportion. (The term "preferential debt" refers to money owed to Her Majesty's Revenue and Customs for income tax deducted at source, VAT, car tax, betting and gaming duties, social security and pension scheme contributions, and remuneration of employees.)
99. The regulator must submit its proposals to all those of the RSL's secured creditors who can be located after reasonable enquiries have been made; the RSL and its committee or board; and any liquidator, receiver or administrator. The regulator must also arrange to make the RSL's members, tenants and unsecured creditors aware of its proposals (section 81).
100. [Section 82](#) allows secured creditors to either agree (with or without changes) or reject proposals about future management and ownership of a registered social landlord. The regulator must agree any changes to the proposals before those changes have effect. Subsection (3) lists those whom the regulator must notify about the agreed proposals.
101. The regulator may, under section 83, and with the agreement of the RSL and the secured creditors to whom the original proposals were submitted, modify agreed proposals from time to time. Sections 80 on the formulation of proposals and 82(3) on giving notice of agreed proposals apply equally to any such modifications.

Implementing the proposals

102. Once agreed the proposals are binding on the regulator, the registered social landlord, the RSL's secured and unsecured creditors and any liquidator, administrator or receiver appointed in respect of the RSL's land (section 84). The RSL's officers must co-operate in implementing the proposals but they are not required or allowed to do anything in breach of their duty as a trustee or other duty owed by them (section 84(2)).
103. The regulator must appoint a manager to implement the agreed proposals if these provide for such an appointment (section 85). The manager can do anything that is needed to implement the proposals and a number of specific powers are set out in section 86. A manager must, so far as practicable, consult a registered social landlord's tenants on anything likely to affect them and explain the effect such a thing is likely to have.

*These notes relate to the Housing (Scotland) Act 2010
(asp 17) which received Royal Assent on 9 December 2010*

104. A manager appointed to a registered social landlord that is a registered society is also able to transfer the engagements of that RSL to, or amalgamate it with, another RSL that is a registered society (section 87).
105. [Section 88](#) provides that the regulator may give financial or other assistance to the landlord to preserve its position while proposals are being designed and agreed, and to an officer of a registered social landlord or a manager appointed to implement the agreed proposals. The regulator may, in particular, lend staff and arrange payment of a manager's remuneration and expenses. But the regulator cannot pay grants, make loans, indemnify an officer or manager, make payments or give guarantees connected with loans without the consent of the Scottish Ministers.
106. [Section 89](#) applies where the RSL or any creditor applies to the Court of Session on the basis that they believe the manager is not acting within the agreed proposals. If it finds that this is the case then the Court has the power to confirm, modify or reduce any decision or other act of the manager, give directions to the manager or make any other order it sees as necessary.
107. [Section 90](#) allows anyone bound by the agreed proposals to apply to the Court of Session if he or she believes another person who is also bound by them is not acting in accordance with them. The Court can then confirm, modify or declare the action ineffective; or make any order it thinks appropriate by way of interdict, award of damages or otherwise.