

POLICY NOTE

THE INSOLVENCY ACT 1986 (SCOTLAND) AMENDMENT REGULATIONS 2020

SSI 2020/338

The above instrument was made in exercise of the powers conferred by paragraph 22 of schedule ZA1 of the Insolvency Act 1986. The instrument is subject to affirmative procedure.

Summary Box

The Corporate Insolvency and Governance Act 2020 inserted a new Part A1 and Schedule ZA1 into the Insolvency Act 1986. Part A1 provides for a freestanding moratorium for eligible companies to facilitate their rescue from financial difficulty. Schedule ZA1 specifies which companies are eligible for the moratorium under Part A1.

These Regulations amend the Insolvency Act 1986 to ensure that the provision enabling a moratorium does not apply to companies which are registered social landlords.

This provision gives struggling businesses a formal breathing space to pursue a rescue plan. It is deemed inappropriate for registered social landlords given housing legislation already contains measures to deal with registered social landlords that get into financial difficulty – including a moratorium.

These Regulations are required to ensure that the application of the new moratorium, which applies to all eligible companies, and automatically applies to registered social landlords which are companies in Scotland does not unnecessarily conflict with the existing provisions in relation to insolvency (including a debt moratorium) in the Housing (Scotland) Act 2010.

Policy Objectives

As detailed above, the moratorium introduced by the Corporate Insolvency and Governance Act 2020 is intended to give struggling businesses a formal breathing space to pursue a rescue plan. In Scotland there are only 10 Registered Social Landlords that are companies to which the new moratorium would apply.

Financial difficulties in the social housing sector are rare and where they have arisen in the past have been resolved within the sector. Maintaining the sector's no loss on default record is important because it ensures tenants remain in their homes and allows providers to continue to be able to access cheap borrowing to build more housing.

Housing legislation in Scotland already provides arrangements for dealing with financial difficulties in Registered Social Landlords.

In Scotland the moratorium on the disposal of land by a RSL is set out in s73-s79 of the Housing (Scotland) Act 2010. Section 73 sets out in a table who is required, and in what circumstances, to notify the Scottish Housing Regulator (“SHR”) that certain steps are being taken to enforce a security over land which is owned by an RSL. Taking one of the steps specified at section 73 automatically triggers a stop (a moratorium) on the disposal of land

held by the RSL. In terms of section 78, under a moratorium, the RSL's land cannot be disposed of without the consent of the SHR.

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).

In this context, the Scottish Government does not believe that it is appropriate to apply the moratorium provisions in the Corporate Insolvency and Governance Act 2020 to RSLs which are companies. The Scottish Government considers that the availability of the moratorium to RSLs would adversely impact the existing arrangements already in place by creating uncertainty about the interaction and primacy of the different regimes and is unlikely to offer greater protection for either RSLs or their tenants.

Consultation

We have consulted with the Scottish Housing Regulator. They have confirmed that the existing moratorium provisions in the 2010 Act have never been used. The work of the Regulator seeks, in diligently and systematically monitoring the financial health, governance and performance of RSLs, to ensure that they remain solvent and well governed. Thus these provisions have never had to be tested. They confirmed that should the existing provisions in the Housing (Scotland) Act 2010 be tested, they would provide sufficient time and space for RSLs to deal with financial difficulties in their business and thereby, the "new" general moratorium in the Corporate and Insolvency Act 2020 is unnecessary for RSLs which are companies.

The UK Government laid an order on 29th June which disapplied private registered providers of social housing which are companies, the equivalent of Registered Social Landlords. The Regulator of Social Housing in England and UK Finance supported this approach.

Impact Assessments

Given the limited number of RSLs that are companies and the frequency with which a moratorium might be used a full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

Financial Effects

The Minister for Local Government, Housing and Planning confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Housing and Social Justice

17th August 2020