



# Housing and Planning Act 2016

## 2016 CHAPTER 22

### PART 4

#### SOCIAL HOUSING IN ENGLAND

### CHAPTER 5

#### INSOLVENCY OF REGISTERED PROVIDERS OF SOCIAL HOUSING

##### *Housing administration*

#### **95 Housing administration order: providers of social housing in England**

- (1) In this Chapter “housing administration order” means an order which—
- (a) is made by the court in relation to a private registered provider of social housing that is—
    - (i) a company,
    - (ii) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014, or
    - (iii) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011, and
  - (b) directs that, while the order is in force, the provider's affairs, business and property are to be managed by a person appointed by the court.
- (2) The person appointed for the purposes of the housing administration order is referred to in this Chapter as the “housing administrator”.
- (3) In relation to a housing administration order applying to a registered provider that is a foreign company, the reference in subsection (1)(b) to the provider's affairs, business and property is a reference to its UK affairs, business and property.

*Changes to legislation: Housing and Planning Act 2016, Cross Heading: Housing administration is up to date with all changes known to be in force on or before 05 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

#### Commencement Information

**II** [S. 95](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

### 96 Objectives of housing administration

- (1) A housing administrator has two objectives—
  - (a) Objective 1: normal administration (see section 97), and
  - (b) Objective 2: keeping social housing in the regulated sector (see section 98).
- (2) Objective 1 takes priority over Objective 2 (but the housing administrator must, so far as possible, work towards both objectives).
- (3) It follows that, in pursuing Objective 2, 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.
- (4) A reference in this Chapter to the objectives of a housing administration is to the objectives to be pursued by the housing administrator.

#### Commencement Information

**I2** [S. 96](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

### 97 Objective 1: normal administration

- (1) Objective 1 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.
- (2) The housing administrator must aim to achieve Objective 1(a) unless the housing administrator thinks—
  - (a) that it is not reasonably practicable to achieve it, or
  - (b) that Objective 1(b) would achieve a better result for the registered provider's creditors as a whole.
- (3) The housing administrator may aim to achieve Objective 1(c) only if—
  - (a) the housing administrator thinks that it is not reasonably practicable to achieve Objective 1(a) or (b), and
  - (b) the housing administrator does not unnecessarily harm the interests of the registered provider's creditors as a whole.
- (4) 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.

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#### Commencement Information

**I3** [S. 97](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

### 98 Objective 2: keeping social housing in the regulated sector

- (1) Objective 2 is to ensure that the registered provider's social housing remains in the regulated housing sector.
- (2) For this purpose, social housing remains in the regulated housing sector for so long as it is owned by a private registered provider.

#### Commencement Information

**I4** [S. 98](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

### 99 Applications for housing administration orders

- (1) An application for a housing administration order may be made only—
  - (a) by the Secretary of State, or
  - (b) with the consent of the Secretary of State, by the Regulator of Social Housing.
- (2) The applicant for a housing administration order in relation to a registered provider must give notice of the application to—
  - (a) every person who has appointed an administrative receiver of the provider,
  - (b) every person who is or may be entitled to appoint an administrative receiver of the registered provider,
  - (c) every person who is or may be entitled to make an appointment in relation to the registered provider under paragraph 14 of Schedule B1 to the Insolvency Act 1986 (appointment of administrators by holders of floating charges), and
  - (d) any other persons specified by housing administration rules.
- (3) The notice must be given as soon as possible after the making of the application.
- (4) In this section “administrative receiver” means—
  - (a) an administrative receiver within the meaning given by section 251 of the Insolvency Act 1986 for the purposes of Parts 1 to 7 of that Act, or
  - (b) in relation to a foreign company, a person whose functions are equivalent to those of an administrative receiver and relate only to its UK affairs, business and property.

#### Commencement Information

**I5** [S. 99](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

### 100 Powers of court

- (1) On hearing an application for a housing administration order, the court has the following powers—

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- (a) it may make the order,
  - (b) it may dismiss the application,
  - (c) it may adjourn the hearing conditionally or unconditionally,
  - (d) it may make an interim order,
  - (e) it may treat the application as a winding-up petition and make any order the court could make under section 125 of the Insolvency Act 1986 (power of court on hearing winding-up petition), and
  - (f) it may make any other order which it thinks appropriate.
- (2) The court may make a housing administration order in relation to a registered provider only if it is satisfied—
  - (a) that the registered provider is unable, or is likely to be unable, to pay its debts, or
  - (b) that, on a petition by the Secretary of State under section 124A of the Insolvency Act 1986, it would be just and equitable (disregarding the objectives of the housing administration) to wind up the registered provider in the public interest.
- (3) The court may not make a housing administration order on the ground set out in subsection (2)(b) unless the Secretary of State has certified to the court that the case is one in which the Secretary of State considers (disregarding the objectives of the housing administration) that it would be appropriate to petition under section 124A of the Insolvency Act 1986.
- (4) The court has no power to make a housing administration order in relation to a registered provider which—
  - (a) is in administration under Schedule B1 to the Insolvency Act 1986, or
  - (b) has gone into liquidation (within the meaning of section 247(2) of the Insolvency Act 1986).
- (5) A housing administration order comes into force—
  - (a) at the time appointed by the court, or
  - (b) if no time is appointed by the court, when the order is made.
- (6) An interim order under subsection (1)(d) may, in particular—
  - (a) restrict the exercise of a power of the registered provider or of its relevant officers, or
  - (b) make provision conferring a discretion on a person qualified to act as an insolvency practitioner in relation to the registered provider.
- (7) In subsection (6)(a) “relevant officer”—
  - (a) in relation to a company, means a director,
  - (b) in relation to a registered society, means a member of the management committee or other directing body of the society, and
  - (c) in relation to a charitable incorporated organisation, means a charity trustee (as defined by section 177 of the Charities Act 2011).
- (8) In the case of a foreign company, subsection (6)(a) is to be read as a reference to restricting the exercise of a power of the registered provider or of its directors—
  - (a) within the United Kingdom, or
  - (b) in relation to the company's UK affairs, business or property.

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- (9) For the purposes of this section a registered provider is unable to pay its debts if—
- (a) it is deemed to be unable to pay its debts under section 123 of the Insolvency Act 1986, or
  - (b) it is an unregistered company which is deemed, as a result of any of sections 222 to 224 of the Insolvency Act 1986, to be so unable for the purposes of section 221 of that Act, or which would be so deemed if it were an unregistered company for the purposes of those sections.

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**Commencement Information**

**I6** [S. 100](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

## **101 Housing administrators**

- (1) The housing administrator of a registered provider—
- (a) is an officer of the court, and
  - (b) in carrying out functions in relation to the registered provider, is the registered provider's agent.
- (2) The housing administrator of a registered provider must aim to achieve the objectives of the housing administration as quickly and as efficiently as is reasonably practicable.
- (3) A person is not to be the housing administrator of a registered provider unless qualified to act as an insolvency practitioner in relation to the registered provider.
- (4) If the court appoints two or more persons as the housing administrator of a registered provider, the appointment must set out—
- (a) which (if any) of the functions of a housing administrator are to be carried out only by the appointees acting jointly,
  - (b) the circumstances (if any) in which functions of a housing administrator are to be carried out by one of the appointees, or by particular appointees, acting alone, and
  - (c) the circumstances (if any) in which things done in relation to one of the appointees, or in relation to particular appointees, are to be treated as done in relation to all of them.

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**Commencement Information**

**I7** [S. 101](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

## **102 Conduct of administration etc**

- (1) Schedule 5 contains provision applying the provisions of Schedule B1 to the Insolvency Act 1986, and certain other legislation, to housing administration orders in relation to companies.
- (2) The Secretary of State may by regulations provide for any provision of Schedule B1 to the Insolvency Act 1986 or any other insolvency legislation to apply, with or without modifications, to cases where a housing administration order is made in relation to a registered society or a charitable incorporated organisation.

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- (3) The Secretary of State may by regulations modify any insolvency legislation as it applies in relation to a registered society or a charitable incorporated organisation if the Secretary State considers the modifications are appropriate in connection with any provision made by or under this Chapter.
- (4) In subsection (3) “insolvency legislation” means—
  - (a) the Insolvency Act 1986, or
  - (b) any other legislation (whenever passed or made) that relates to insolvency or makes provision by reference to anything that is or may be done under the Insolvency Act 1986.
- (5) The power to make rules under section 411 of the Insolvency Act 1986 is to apply for the purpose of giving effect to this Chapter as it applies for the purpose of giving effect to Parts 1 to 7 of that Act (and, accordingly, as if references in that section to those Parts included references to this Chapter).
- (6) Section 413(2) of the Insolvency Act 1986 (duty to consult Insolvency Rules Committee about rules) does not apply to rules made under section 411 of that Act as a result of this section.

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**Commencement Information**

- I8** [S. 102\(1\)](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)  
**I9** [S. 102\(2\)-\(6\)](#) in force at 3.2.2017 by [S.I. 2017/75](#), [reg. 3\(c\)](#)

### **103 Housing administrator may sell land free from planning obligations**

- (1) If the housing administrator of a registered provider disposes of land that is the subject of a planning obligation that contains relevant terms, the relevant terms are not binding on the person to whom the land is disposed of or any successor in title.
- (2) In this section—
  - “disposes of”, in relation to land, means sells a freehold or leasehold interest in the land or grants a lease of the land;
  - “planning obligation” means a planning obligation under section 106 of the Town and Country Planning Act 1990 (whether entered into before or after this section comes into force);
  - “relevant terms” in relation to a planning obligation, means any restrictions or requirements imposed by the planning obligation that are expressed not to apply in the event that the land is disposed of by a mortgagee.

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**Commencement Information**

- I10** [S. 103](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 172(1)(a) words renumbered as s. 172(1)(a) by [2017 c. 20 s. 26\(8\)\(a\)\(i\)](#)
- s. 172(1)(b) inserted by [2017 c. 20 s. 26\(8\)\(a\)\(ii\)](#)