



# Housing and Planning Act 2016

## 2016 CHAPTER 22

### PART 4

#### SOCIAL HOUSING IN ENGLAND

### CHAPTER 1

#### IMPLEMENTING THE RIGHT TO BUY ON A VOLUNTARY BASIS

##### *Funding of discounts offered to tenants*

#### **64 Grants by Secretary of State**

- (1) The Secretary of State may make grants to private registered providers in respect of right to buy discounts.
- (2) A grant under this section may be made on any terms and conditions the Secretary of State considers appropriate.
- (3) See also section 47 of the Housing and Regeneration Act 2008 (which would allow the Secretary of State to direct the Homes and Communities Agency to use its powers to make grants of the kind mentioned above).

#### **Commencement Information**

**II** [S. 64](#) in force at 26.5.2016 by [S.I. 2016/609](#), [reg. 2](#)

#### **65 Grants by Greater London Authority**

- (1) The Greater London Authority may make grants to private registered providers in respect of right to buy discounts for dwellings in London.

*Status: This version of this part contains provisions that are prospective.*

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- (2) A grant under this section may be made on any terms and conditions the Greater London Authority considers appropriate.

#### Commencement Information

**I2** S. 65 in force at 26.5.2016 by S.I. 2016/609, reg. 2

### *Monitoring compliance*

## 66 Monitoring

- (1) The Regulator of Social Housing must, if requested to do so by the Secretary of State, monitor compliance with the home ownership criteria.
- (2) “The home ownership criteria” means criteria, specified in the request, that relate to the sale of dwellings by private registered providers to tenants otherwise than in exercise of a right conferred by an Act.
- (3) The criteria may be expressed by reference to other documents.
- (4) On making a request under subsection (1) the Secretary of State must publish the home ownership criteria specified in the request.
- (5) The Regulator must provide such reports or other information as the Secretary of State may request about compliance with the home ownership criteria.
- (6) The Secretary of State may publish information about a private registered provider that has not met the home ownership criteria.

#### Commencement Information

**I3** S. 66 in force at 13.7.2016 by S.I. 2016/733, reg. 3(b)

### *Amendments to other legislation*

## 67 Consequential changes to HCA’s duty to give grants

- (1) Section 35 of the Housing and Regeneration Act 2008 (duty to give financial assistance in respect of certain disposals) is amended as follows.
- (2) For subsection (1) substitute—
  - “(1) The HCA must exercise its powers under section 19 to give financial assistance by way of grant to a relevant provider of social housing in respect of any discount given by the provider by virtue of a person exercising the right to acquire conferred by section 180.”
- (3) Omit subsection (2).
- (4) In subsection (3), for “(1)(a)” substitute “(1)”.
- (5) In subsection (5), omit paragraph (b).

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#### Commencement Information

**I4** S. 67 in force at 26.5.2016 by [S.I. 2016/609](#), [reg. 2](#)

### *Interpretation*

## **68 Interpretation of Chapter**

In this Chapter—

“dwelling” has the meaning given by section 275 of the Housing and Regeneration Act 2008;

“private registered provider” means a private registered provider of social housing;

“right to buy discount” means a discount given to a tenant of a dwelling on the disposal of the dwelling to the tenant otherwise than in the exercise of a right conferred by an Act.

#### Commencement Information

**I5** [S. 68](#) in force at 26.5.2016 by [S.I. 2016/609](#), [reg. 2](#)

## **CHAPTER 2**

### **VACANT HIGHER VALUE LOCAL AUTHORITY HOUSING**

#### *Payments to Secretary of State by local housing authorities*

## **69 Payments to Secretary of State**

- (1) The Secretary of State may make a determination requiring a local housing authority in England to make a payment to the Secretary of State in respect of a financial year.
- (2) The amount of the payment must represent an estimate of—
  - (a) the market value of the authority's interest in any higher value housing that is likely to become vacant during the year, less
  - (b) any costs or other deductions of a kind described in the determination.
- (3) For the housing to be taken into account, see section 70.
- (4) A determination may only be made in respect of a local housing authority that keeps a Housing Revenue Account.
- (5) A determination must set out the method for calculating the amount of the payment.
- (6) A determination may, in particular, provide for all or part of the amount to be calculated using a formula.
- (7) A determination may provide for assumptions to be made in making a calculation whether or not those assumptions are, or are likely to be, borne out by events.

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- (8) The Secretary of State must by regulations define “higher value”, in relation to housing, for the purposes of this Chapter.
- (9) Regulations under subsection (8) may define “higher value” in different ways for different kinds of housing, different local housing authorities or different areas.
- (10) In determining how to define “higher value”, in relation to housing, the Secretary of State may—
  - (a) use any category of housing that the Secretary of State considers appropriate as a comparator (for example, housing in which a local housing authority has an interest or housing in a particular area);
  - (b) take into account any other factors that the Secretary of State considers appropriate.

## **70 Housing to be taken into account**

- (1) This section is about the housing to be taken into account under section 69(2).
- (2) Housing is to be taken into account only if—
  - (a) it appears in the list in section 74(1) of the Local Government and Housing Act 1989 (Housing Revenue Account), and
  - (b) it is not excluded by regulations made by the Secretary of State.
- (3) Where a local housing authority disposes of housing under section 32 or 43 of the Housing Act 1985 to a private registered provider of social housing the Secretary of State may for the purposes of this Chapter—
  - (a) treat the local housing authority as still having that housing, and
  - (b) treat the housing as being likely to become vacant whenever it would have been likely to become vacant if it had not been disposed of.
- (4) A determination under section 69 must identify any housing that the Secretary of State has taken into account under subsection (3).

## **71 Procedure for determinations**

- (1) Before making a determination under section 69 that relates to all local housing authorities or a description of local housing authority the Secretary of State must consult such representatives of local government and relevant professional bodies as the Secretary of State thinks appropriate.
- (2) Before making a determination under section 69 that relates to a particular local housing authority, the Secretary of State must consult that local housing authority.
- (3) As soon as possible after making a determination under section 69 the Secretary of State must send a copy of it to each local housing authority to which it relates.
- (4) Section 87(4) to (7) of the Local Government and Housing Act 1989 (electronic communications) applies to a determination under this Chapter as it applies to a determination under Part 6 of that Act.
- (5) A consultation requirement imposed by this section may be satisfied by consultation carried out before this Act was passed.

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## **72 More about determinations**

- (1) A determination under section 69 must be made before the financial year to which it relates.
- (2) But the determination may be varied or revoked by a subsequent determination under that section made before, after or during the financial year to which it relates.
- (3) A determination under section 69 may relate to one financial year or to more than one financial year.
- (4) A determination under section 69 may make provision about how and when a payment is to be made including, in particular, provision for payments by instalment.
- (5) A determination under section 69 may provide for interest to be charged in the event of late payment.
- (6) A determination under section 69—
  - (a) may make different provision for different areas;
  - (b) may make different provision for different local housing authorities;
  - (c) may otherwise make different provision for different purposes.

## **73 Determinations in the first year that section 69 comes into force**

If section 69 comes into force part way through a financial year, then, in relation to that financial year—

- (a) a determination under section 69 may be made at any time (despite section 72(1)), but
- (b) any reference in section 69 to housing becoming vacant during a financial year is to be read as limited to housing becoming vacant after the determination is made (or, in a case where it is varied in accordance with section 72(2), housing becoming vacant after the original determination in relation to that financial year is made).

## **74 Reduction of payment by agreement**

- (1) The Secretary of State and a local housing authority may enter into an agreement to reduce the amount that the authority is required to pay because of a determination under this Chapter.
- (2) The terms and conditions of an agreement must include—
  - (a) the amount of the reduction mentioned in subsection (1), and
  - (b) any terms and conditions required by subsection (3) or (4).
- (3) Where the agreement is with a local housing authority outside Greater London, it must include terms and conditions requiring the authority to ensure that at least one new affordable home is provided for each old dwelling.
- (4) Where the agreement is with a local housing authority in Greater London, it must include terms and conditions requiring the authority to ensure that at least two new affordable homes are provided for each old dwelling.
- (5) But if the Greater London Authority has agreed to ensure that a number of the new affordable homes are provided, that number is to be deducted from the number for

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which the local housing authority must be made responsible by terms and conditions under subsection (4).

(6) The Secretary of State may by regulations create other exceptions to subsection (3) or (4) in relation to one or more local housing authorities.

(7) In this section—

“new affordable home” means a new dwelling in England that—

- (a) is to be made available for people whose needs are not adequately served by the commercial housing market, or
- (b) is a starter home as defined by section 2;

“new dwelling” means a building or part of a building that—

- (a) has been constructed for use as a single dwelling and has not previously been occupied, or
- (b) has been adapted for use as a single dwelling and has not been occupied since its adaptation;

“old dwelling” means a single dwelling taken into account under section 69(2) for the purposes of the determination.

(8) If a determination under this Chapter relates to more than one financial year—

- (a) an agreement under this section may be made in relation to the determination so far as it relates to a particular financial year, and
- (b) in the definition of “old dwelling” in subsection (7) the reference to the determination is to the determination so far as it relates to the financial year to which the agreement relates.

(9) The Secretary of State may by regulations amend this section so as to change the meaning of “new affordable home”.

## **75 Set off against repayments under section 69**

Where the Secretary of State is liable to repay an amount that has been overpaid by a local housing authority under section 69, the Secretary of State may set off against the amount of the repayment any amount that the authority is liable to pay the Secretary of State under—

- (a) section 69, or
- (b) section 11 of the Local Government Act 2003.

### *Duty to consider selling*

## **76 Duty to consider selling vacant higher value housing**

- (1) A local housing authority in England that keeps a Housing Revenue Account must consider selling its interest in any higher value housing that has become vacant.
- (2) The duty in subsection (1) applies only in relation to housing that appears in the list in section 74(1) of the Local Government and Housing Act 1989 (Housing Revenue Account).
- (3) The Secretary of State may by regulations exclude housing from the duty in subsection (1).

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- (4) In discharging its duty under subsection (1) a local housing authority must have regard to any guidance given by the Secretary of State.

### *Amendments and interpretation*

## **77 Local authority disposal of housing: consent requirements**

- (1) The Housing Act 1985 is amended as follows.
- (2) In section 34(4A) (consents to disposals and conditions), after paragraph (ca) (but before the “and”) insert—
- “(cb) any reduction in the amount that the local authority may be required to pay under section 69 of the Housing and Planning Act 2016 (payments to Secretary of State in respect of vacant higher value housing in England) as a result of the disposal;”.
- (3) In section 43(4A) (consents to disposals and conditions), after paragraph (ca) (but before the “and”) insert—
- “(cb) any reduction in the amount that the local authority may be required to pay under section 69 of the Housing and Planning Act 2016 (payments to Secretary of State in respect of vacant higher value housing in England) as a result of the disposal;”.

## **78 Set off under section 11 of Local Government Act 2003**

- (1) Section 11 of the Local Government Act 2003 (use of capital receipts) is amended as follows.
- (2) In subsection (5), after “an authority” insert “ in Wales ”.
- (3) After subsection (5) insert—
- “(5A) Where the Secretary of State is liable to repay an amount that has been overpaid by a local housing authority in England under this section, the Secretary of State may set off against the amount of the repayment any amount that the authority is liable to pay the Secretary of State under—
- (a) this section, or
- (b) section 69 of the Housing and Planning Act 2016 (payments in respect of vacant higher value housing).”

## **79 Interpretation of Chapter**

- (1) In this Chapter—
- “becomes vacant”: housing in which a local housing authority has an interest “ becomes vacant ” when a tenancy granted by the authority comes to an end and is not renewed expressly or by operation of law (but see subsection (2));
- “financial year” means a period of 12 months beginning with 1 April;
- “higher value”, in relation to housing, has the meaning given by regulations under section 69;
- “housing” means a building, or part of a building, which is occupied or intended to be occupied as a dwelling or as more than one dwelling;

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“Housing Revenue Account” has the meaning given by section 74 of the Local Government and Housing Act 1989;

“interest” means a freehold or leasehold interest;

“local housing authority” has the meaning given by section 1 of the Housing Act 1985;

“tenancy” includes a licence to occupy.

- (2) The Secretary of State may by regulations specify circumstances in which housing is to be treated as not having become vacant for the purposes of this Part even if it otherwise would be.

## CHAPTER 3

### RENTS FOR HIGH INCOME SOCIAL TENANTS

#### *Mandatory rents for local authority tenants*

#### **80 Mandatory rents for high income local authority tenants**

- (1) The Secretary of State may by regulations make provision about the levels of rent that an English local housing authority must charge a high income tenant of social housing in England.
- (2) The regulations may, in particular, require the rent—
  - (a) to be equal to the market rate,
  - (b) to be a proportion of the market rate, or
  - (c) to be determined by reference to other factors.
- (3) The regulations may, in particular, provide for the rent to be different—
  - (a) for people with different incomes, or
  - (b) for social housing in different areas.
- (4) The regulations may create exceptions for high income tenants of social housing of a specified description.
- (5) The regulations may require a local housing authority to have regard to guidance given by the Secretary of State when determining rent in accordance with the regulations.
- (6) Regulations under this section are referred to in this Chapter as “rent regulations”.

#### **Commencement Information**

**I6** [S. 80](#) in force at 1.10.2016 by [S.I. 2016/956](#), [reg. 2\(a\)](#)

#### **81 Meaning of “high income” etc**

- (1) Rent regulations must—
  - (a) define what is meant by “high income” for the purposes of this Chapter, and
  - (b) make provision about how a person's income is to be calculated.
- (2) The regulations may, in particular—



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- (a) define “high income” in different ways for different areas;
- (b) specify things that are, or are not, to be treated as income;
- (c) make provision about the period by reference to which a person's income is to be calculated (which may be a period in the past);
- (d) make provision about how a person's income is to be verified;
- (e) require a person's household income (as defined by the regulations) to be taken into account;
- (f) require a local housing authority to have regard to guidance given by the Secretary of State when calculating or verifying a person's income.

#### Commencement Information

I7 [S. 81](#) in force at 1.10.2016 by [S.I. 2016/956](#), [reg. 2\(a\)](#)

## 82 Information about income

- (1) Rent regulations may give a local housing authority the power to require a tenant to provide information or evidence for the purpose of determining whether the local housing authority is obliged by the regulations to charge a specific level of rent and what that level is.
- (2) Rent regulations may require an English local housing authority to charge the maximum rent to a tenant who has failed to comply with a requirement.
- (3) Regulations made in reliance on subsection (1) may, in particular, make provision about—
  - (a) the kind of information or evidence that may be required;
  - (b) the time within which and the manner and form in which the information or evidence is to be provided.
- (4) In subsection (1) “tenant” includes prospective tenant.
- (5) In subsection (2) “the maximum rent” means the rent that a local housing authority is required to charge a high income tenant of the premises under section 80 (or, if regulations under section 80(3)(a) provide for different rents for people with different incomes, the rent that a person in the highest income bracket would be required to pay).

#### Commencement Information

I8 [S. 82](#) in force at 1.10.2016 by [S.I. 2016/956](#), [reg. 2\(a\)](#)

## 83 HMRC information

- (1) HMRC may disclose information for the purpose of enabling a local housing authority to determine whether it is obliged by rent regulations to charge a tenant a specific level of rent and what that level is.
- (2) The information may only be disclosed to—
  - (a) a local housing authority,
  - (b) the Secretary of State for the purposes of passing the information to local housing authorities,

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- (c) a public body that has been given the function of passing information between HMRC and local housing authorities by regulations under subsection (3), or
  - (d) a body with which the Secretary of State has made arrangements for the passing of information between HMRC and local housing authorities.
- (3) The Secretary of State may by regulations—
- (a) give a public body the function mentioned in subsection (2)(c), and
  - (b) make provision about the carrying out of that function.
- (4) The Secretary of State must obtain HMRC's consent before making—
- (a) arrangements under subsection (2)(d), or
  - (b) regulations under subsection (3).
- (5) Information disclosed under this section to the Secretary of State or to a body mentioned in subsection (2)(c) or (d) may be passed on to a local housing authority for which it is intended.
- (6) Information disclosed under this section may not otherwise be further disclosed without authorisation from HMRC.
- (7) Where a person contravenes subsection (6) by disclosing any revenue and customs information relating to a person whose identity—
- (a) is specified in the disclosure, or
  - (b) can be deduced from it,
- section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.
- (8) In this section—
- “HMRC” means the Commissioners for Her Majesty's Revenue and Customs;
  - “revenue and customs information relating to a person” has the meaning given by section 19(2) of the Commissioners for Revenue and Customs Act 2005;
  - “tenant” includes prospective tenant.

#### Commencement Information

**I9** S. 83 in force at 1.10.2016 by S.I. 2016/956, reg. 2(a)

## 84 Reverting to original rent levels

- (1) Rent regulations may include provision for the purpose of ensuring that where a requirement imposed under section 80(1) ceases to apply, the rent is changed to what it would have been if the requirement had never applied.
- (2) Rent regulations may include provision for the purpose of ensuring that where—
  - (a) a local housing authority is required by section 82(2) to charge the maximum rent because of a tenant's failure to provide information or evidence, and
  - (b) the tenant subsequently provides the necessary information or evidence,
 the rent is changed to what it would have been if section 82(2) had never applied.

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#### Commencement Information

**I10** [S. 84](#) in force at 1.10.2016 by [S.I. 2016/956](#), [reg. 2\(a\)](#)

### 85 Power to change rents and procedure for changing rents

- (1) Rent regulations may give a local housing authority power to change the rent payable under a tenancy for the purpose of complying with the regulations.
- (2) Rent regulations may make provision about the procedure for changing rent to comply with the regulations (whether the change is made using a power given by regulations under subsection (1) or otherwise).
- (3) Regulations made in reliance on subsection (2) may, in particular—
  - (a) make provision about the review of decisions to increase rent;
  - (b) give rights of appeal to the First-tier Tribunal and amend existing rights of appeal.
- (4) Regulations under this section may amend any provision made by or under an Act passed before this Act or in the same Session.

#### Commencement Information

**I11** [S. 85](#) in force at 1.10.2016 by [S.I. 2016/956](#), [reg. 2\(a\)](#)

### 86 Payment by local authority of increased income to Secretary of State

- (1) Rent regulations may require a local housing authority to make a payment or payments to the Secretary of State in respect of any estimated increase in rental income because of the regulations.
- (2) The amount of a payment is to be calculated in accordance with the regulations.
- (3) The regulations may provide for deductions to be made to reflect the administrative costs of local authorities in implementing the regulations.
- (4) The regulations may provide for interest to be charged in the event of late payment.
- (5) The regulations may provide for assumptions to be made in making a calculation, whether or not those assumptions are, or are likely to be, borne out by events.
- (6) The regulations may make provision about how and when payments are to be made including, in particular, provision for payments by instalment.

#### Commencement Information

**I12** [S. 86](#) in force at 1.10.2016 by [S.I. 2016/956](#), [reg. 2\(a\)](#)

### 87 Provision of information to Secretary of State

Rent regulations may give the Secretary of State a power to require a local housing authority to provide information in connection with the regulations.

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#### Commencement Information

**I13** S. 87 in force at 1.10.2016 by S.I. 2016/956, reg. 2(a)

### 88 Interaction with other legislation and consequential amendments

- (1) The Secretary of State must use the power in section 24(5) of the Welfare Reform and Work Act 2016 to provide that section 23 of that Act does not apply to a high income tenant of social housing to whom rent regulations apply.
- (2) In section 24 of the Housing Act 1985 (rent), after subsection (5) insert—
 

“(5A) See also Chapter 3 of Part 4 of the Housing and Planning Act 2016 (rents for high income social tenants in England).”
- (3) In Part 2 of Schedule 4 to the Local Government and Housing Act 1989 (the keeping of the Housing Revenue Account: debits), after item 10 insert—
 

“*Item 11: payments under section 86 of the Housing and Planning Act 2016*  
Any sums payable for the year to the Secretary of State under regulations made in reliance on section 86 of the Housing and Planning Act 2016 (rents for high income social tenants: payment by local authority of increased income to Secretary of State).”

#### Commencement Information

**I14** S. 88 in force at 1.10.2016 by S.I. 2016/956, reg. 2(a)

*Private registered providers: rent policies for high income tenants*

### 89 Private providers: policies for high income social tenants

- (1) A private registered provider of social housing that has a policy about levels of rent for high income social tenants in England must publish that policy.
- (2) The policy must include provision for requesting reviews of, or appealing, decisions under the policy.

#### Commencement Information

**I15** S. 89 in force at 1.10.2016 by S.I. 2016/956, reg. 2(a)

### 90 HMRC information for private registered providers

- (1) HMRC may disclose information for the purpose of enabling a private registered provider of social housing to apply any relevant policy about levels of rent for high income social tenants in England.
- (2) The information may only be disclosed to—
  - (a) the private registered provider of social housing,

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- (b) the Secretary of State for the purposes of passing the information to registered providers,
  - (c) a public body that has been given the function of passing information between HMRC and registered providers by regulations under subsection (3), or
  - (d) a body with which the Secretary of State has made arrangements for the passing of information between HMRC and registered providers.
- (3) The Secretary of State may by regulations—
  - (a) give a public body the function mentioned in subsection (2)(c), and
  - (b) make provision about the carrying out of that function.
- (4) The Secretary of State must obtain HMRC's consent before making—
  - (a) arrangements under subsection (2)(d), or
  - (b) regulations under subsection (3).
- (5) Information disclosed under this section to the Secretary of State or to a body mentioned in subsection (2)(c) or (d) may be passed on to a registered provider for which it is intended.
- (6) Information disclosed under this section may not otherwise be further disclosed without authorisation from HMRC.
- (7) Where a person contravenes subsection (6) by disclosing any revenue and customs information relating to a person whose identity—
  - (a) is specified in the disclosure, or
  - (b) can be deduced from it,section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.
- (8) In this section—
  - “HMRC” means the Commissioners for Her Majesty's Revenue and Customs;
  - “relevant”, in relation to a private registered provider's policy about levels of rent for high income social tenants in England, means a policy that—
    - (a) has been published as required by section 89, and
    - (b) complies with any requirements imposed under subsection (2) of that section;
  - “revenue and customs information relating to a person” has the meaning given by section 19(2) of the Commissioners for Revenue and Customs Act 2005;
  - “tenant” includes prospective tenant.

#### Commencement Information

**I16** S. 90 in force at 1.10.2016 by S.I. 2016/956, reg. 2(a)

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## *Interpretation*

### **91 Interpretation of Chapter**

In this Chapter—

- “high income” has the meaning given by regulations under section 81;
- “local housing authority” has the meaning given by section 1 of the Housing Act 1985;
- “rent” includes payments under a licence to occupy;
- “rent regulations” has the meaning given by section 80;
- “social housing” has the same meaning as in Part 2 of the Housing and Regeneration Act 2008 (see sections 68 and 72 of that Act);
- “tenancy” includes a licence to occupy;
- “tenant” includes a person who has a licence to occupy.

#### **Commencement Information**

**I17** [S. 91](#) in force at 1.10.2016 by [S.I. 2016/956](#), [reg. 2\(a\)](#)

## **CHAPTER 4**

### REDUCING REGULATION OF SOCIAL HOUSING ETC

### **92 Reducing social housing regulation**

Schedule 4 contains amendments to reduce the regulation of social housing.

#### **Commencement Information**

**I18** [S. 92](#) in force at 6.4.2017 by [S.I. 2017/75](#), [reg. 4](#) (with [reg. 6](#))

### **93 Reducing local authority influence over private registered providers**

- (1) The Secretary of State may by regulations make provision for the purpose of limiting or removing the ability of local authorities to exert influence over private registered providers through—
  - (a) appointing or removing officers of private registered providers;
  - (b) exercising or controlling voting rights.
- (2) The regulations may in particular—
  - (a) limit the number of officers that a local authority may appoint;
  - (b) prohibit a local authority from appointing officers;
  - (c) confer power on a private registered provider to remove officers appointed by a local authority;
  - (d) prohibit a local authority from doing things that would result in it obtaining voting rights in a private registered provider;
  - (e) require a local authority to take steps to reduce or get rid of any voting rights that it has in a private registered provider.

*Status: This version of this part contains provisions that are prospective.*

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- (3) Regulations under this section may override or modify any contractual or other rights (whenever created) or anything in a private registered provider's constitution.
- (4) Regulations under this section may—
  - (a) confer a power to amend the constitution of a private registered provider in consequence of provision made by the regulations;
  - (b) make provision about the procedure for exercising that power.
- (5) In this section—
  - “appointing”, in relation to an officer, includes nominating or otherwise influencing the selection of the officer;
  - “constitution” includes rules;
  - “local authority” has the meaning given by section 106 of the Housing Associations Act 1985;
  - “officer”, in relation to a private registered provider, has the meaning given by section 270 of the Housing and Regeneration Act 2008;
  - “private registered provider” means a private registered provider of social housing.

#### Commencement Information

**I19** S. 93 in force at 3.2.2017 by S.I. 2017/75, reg. 3(a)

## 94 Recovery of social housing assistance: successors in title

- (1) Section 33 of the Housing and Regeneration Act 2008 (recovery of social housing assistance: interest and successors in title) is amended as follows.
- (2) In subsection (6)(b), after “another person” insert “ (“the successor”) ”.
- (3) After subsection (6) insert—
  - “(6A) But subsection (7) does not apply if—
    - (a) the successor is a person other than a registered provider of social housing, and
    - (b) at any time since the social housing assistance was given—
      - (i) a person has enforced a security over the social housing, or
      - (ii) the social housing has been disposed of by a body while it is being wound up or is in administration (which, for this purpose, includes housing administration under Chapter 5 of Part 4 of the Housing and Planning Act 2016).”
- (4) In subsection (7) for “that other person” substitute “ the successor ”.

#### Commencement Information

**I20** S. 94 in force at 3.2.2017 by S.I. 2017/75, reg. 3(b)



*Status: This version of this part contains provisions that are prospective.*

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## 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.

#### **Commencement Information**

**I21** [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**

**I22** [S. 96](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)



*Status: This version of this part contains provisions that are prospective.*

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## 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.

### Commencement Information

**I23** [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

**I24** [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,

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- (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

**I25** 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—
- (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

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- (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.
- (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.

#### Commencement Information

**I26** 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—

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- (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.

#### Commencement Information

**I27** 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.
- (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.

#### Commencement Information

**I28** S. 102(1) in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

**I29** S. 102(2)-(6) in force at 3.2.2017 by S.I. 2017/75, reg. 3(c)

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### 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.

#### Commencement Information

**I30** S. 103 in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

### *Restrictions on other insolvency procedures*

### 104 Winding-up orders

- (1) This section applies if a person other than the Secretary of State petitions for the winding-up of a registered provider that is—
  - (a) a company,
  - (b) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014, or
  - (c) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011.
- (2) The court may not exercise its powers on a winding-up petition unless—
  - (a) notice of the petition has been given to the Regulator of Social Housing and a period of at least 28 days has elapsed since that notice was given, or
  - (b) the Regulator of Social Housing has waived the notice requirement in paragraph (a).
- (3) If an application for a housing administration order in relation to the registered provider is made to the court in accordance with section 99 before a winding-up order is made on the petition, the court may exercise its powers under section 100 (instead of exercising its powers on the petition).
- (4) The Regulator of Social Housing must give the Secretary of State a copy of any notice given under subsection (2)(a).
- (5) The Regulator of Social Housing may waive the notice requirement under subsection (2)(a) only with the consent of the Secretary of State.
- (6) References in this section to the court's powers on a winding-up petition are to—
  - (a) its powers under section 125 of the Insolvency Act 1986 (other than its power of adjournment), and

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- (b) its powers under section 135 of the Insolvency Act 1986.

#### Commencement Information

**I31** S. 104 in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

### 105 Voluntary winding up

- (1) This section applies to a private registered provider that is—
  - (a) a company,
  - (b) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014, or
  - (c) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011.
- (2) The registered provider has no power to pass a resolution for voluntary winding up without the permission of the court.
- (3) Permission may be granted by the court only on an application made by the registered provider.
- (4) The court may not grant permission unless—
  - (a) notice of the application has been given to the Regulator of Social Housing and a period of at least 28 days has elapsed since that notice was given, or
  - (b) the Regulator of Social Housing has waived the notice requirement in paragraph (a).
- (5) If an application for a housing administration order in relation to the registered provider is made to the court in accordance with section 99 after an application for permission under this section has been made and before it is granted, the court may exercise its powers under section 100.
- (6) The Regulator of Social Housing must give the Secretary of State a copy of any notice given under subsection (4)(a).
- (7) The Regulator of Social Housing may waive the notice requirement under subsection (4)(a) only with the consent of the Secretary of State.
- (8) In this section “a resolution for voluntary winding up” has the same meaning as in the Insolvency Act 1986.

#### Commencement Information

**I32** S. 105 in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

### 106 Making of ordinary administration orders

- (1) This section applies if a person other than the Secretary of State makes an ordinary administration application in relation to a private registered provider that is—
  - (a) a company, or
  - (b) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011.

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- (2) The court must dismiss the application if—
  - (a) a housing administration order is in force in relation to the registered provider, or
  - (b) a housing administration order has been made in relation to the registered provider but is not yet in force.
- (3) If subsection (2) does not apply, the court, on hearing the application, must not exercise its powers under paragraph 13 of Schedule B1 to the Insolvency Act 1986 (other than its power of adjournment) unless—
  - (a) either—
    - (i) notice of the application has been given to the Regulator of Social Housing and a period of at least 28 days has elapsed since that notice was given, or
    - (ii) the Regulator of Social Housing has waived the notice requirement in sub-paragraph (i), and
  - (b) there is no application for a housing administration order which is outstanding.
- (4) The Regulator of Social Housing must give the Secretary of State a copy of any notice given under subsection (3)(a).
- (5) Paragraph 44 of Schedule B1 to the Insolvency Act 1986 (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for a housing administration order.
- (6) On the making of a housing administration order in relation to a registered provider, the court must dismiss any ordinary administration application made in relation to the registered provider which is outstanding.
- (7) The Regulator of Social Housing may waive the notice requirement under subsection (3)(a)(i) only with the consent of the Secretary of State.
- (8) In this section “ordinary administration application” means an application in accordance with paragraph 12 of Schedule B1 to the Insolvency Act 1986.

#### Commencement Information

**I33** S. 106 in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

## 107 Administrator appointments by creditors

- (1) Subsections (2) to (4) make provision about appointments under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (powers to appoint administrators) in relation to a private registered provider that is—
  - (a) a company, or
  - (b) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011.
- (2) If in any case—
  - (a) a housing administration order is in force in relation to the registered provider,
  - (b) a housing administration order has been made in relation to the registered provider but is not yet in force, or



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- (c) an application for a housing administration order in relation to the registered provider is outstanding,  
 a person may not take any step to make an appointment.
- (3) In any other case, an appointment takes effect only if each of the following conditions are met.
- (4) The conditions are—
  - (a) either—
    - (i) that notice of the appointment has been given to the Regulator of Social Housing, accompanied by a copy of every document in relation to the appointment that is filed or lodged with the court in accordance with paragraph 18 or 29 of Schedule B1 to the Insolvency Act 1986 and that a period of 28 days has elapsed since that notice was given, or
    - (ii) that the Regulator of Social Housing has waived the notice requirement in sub-paragraph (i),
  - (b) that there is no outstanding application to the court for a housing administration order in relation to the registered provider, and
  - (c) that the making of an application for a housing administration order in relation to the registered provider has not resulted in the making of a housing administration order which is in force or is still to come into force.
- (5) The Regulator of Social Housing must give the Secretary of State a copy of any notice given under subsection (4)(a) (and a copy of the accompanying documents).
- (6) The Regulator of Social Housing may waive the notice requirement under subsection (4)(a)(i) only with the consent of the Secretary of State.
- (7) Paragraph 44 of Schedule B1 to the Insolvency Act 1986 (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for a housing administration order at any time before the appointment takes effect.

#### Commencement Information

**I34** S. 107 in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

## 108 Enforcement of security

- (1) This section applies in relation to a private registered provider that is—
  - (a) a company,
  - (b) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014, or
  - (c) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011
- (2) A person may not take any step to enforce a security over property of the registered provider unless—
  - (a) notice of the intention to do so has been given to the Regulator of Social Housing and a period of at least 28 days has elapsed since the notice was given, or
  - (b) the Regulator of Social Housing has waived the notice requirement in paragraph (a).



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- (3) In the case of a company which is a foreign company, the reference to the property of the company is to its property in the United Kingdom.
- (4) The Regulator of Social Housing must give the Secretary of State a copy of any notice given under subsection (2)(a).
- (5) The Regulator of Social Housing may waive the notice requirement under subsection (2)(a) only with the consent of the Secretary of State.

#### Commencement Information

**I35** [S. 108](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

### *Financial support for registered providers in housing administration*

#### **109 Grants and loans where housing administration order is made**

- (1) If a housing administration order has been made in relation to a registered provider, the Secretary of State may make grants or loans to the registered provider of such amounts as appear to the Secretary of State appropriate for achieving the objectives of the housing administration.
- (2) A grant under this section may be made on any terms and conditions the Secretary of State considers appropriate (including provision for repayment, with or without interest).

#### Commencement Information

**I36** [S. 109](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

#### **110 Indemnities where housing administration order is made**

- (1) If a housing administration order has been made in relation to a registered provider, the Secretary of State may agree to indemnify persons in respect of one or both of the following—
  - (a) liabilities incurred in connection with the carrying out of functions by the housing administrator, and
  - (b) loss or damage sustained in that connection.
- (2) The agreement may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate.
- (3) As soon as practicable after agreeing to indemnify persons under this section, the Secretary of State must lay a statement of the agreement before Parliament.
- (4) For repayment of sums paid by the Secretary of State in consequence of an indemnity agreed to under this section, see section 111.
- (5) The power of the Secretary of State to agree to indemnify persons—
  - (a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons, but

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- (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.
- (6) The following are relevant persons for the purposes of this section—
  - (a) the housing administrator,
  - (b) an employee of the housing administrator,
  - (c) a partner or employee of a firm of which the housing administrator is a partner,
  - (d) a partner or employee of a firm of which the housing administrator is an employee,
  - (e) a partner of a firm of which the housing administrator was an employee or partner at a time when the order was in force,
  - (f) a body corporate which is the employer of the housing administrator,
  - (g) an officer, employee or member of such a body corporate, and
  - (h) a Scottish firm which is the employer of the housing administrator or of which the housing administrator is a partner.
- (7) For the purposes of subsection (6)—
  - (a) references to the housing administrator are to be read, where two or more persons are appointed as the housing administrator, as references to any one or more of them, and
  - (b) references to a firm of which a person was a partner or employee at a particular time include a firm which holds itself out to be the successor of a firm of which the person was a partner or employee at that time.

#### Commencement Information

**I37** S. 110 in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

## 111 Indemnities: repayment by registered provider etc

- (1) This section applies where a sum is paid out by the Secretary of State in consequence of an indemnity agreed to under section 110 in relation to the housing administrator of a registered provider.
- (2) The registered provider must pay the Secretary of State—
  - (a) such amounts in or towards the repayment to the Secretary of State of that sum as the Secretary of State may direct, and
  - (b) interest on amounts outstanding under this subsection at such rates as the Secretary of State may direct.
- (3) The payments must be made by the registered provider at such times and in such manner as the Secretary of State may determine.
- (4) Subsection (2) does not apply in the case of a sum paid by the Secretary of State for indemnifying a person in respect of a liability to the registered provider.
- (5) The Secretary of State must lay before Parliament a statement, relating to the sum paid out in consequence of the indemnity—
  - (a) as soon as practicable after the end of the financial year in which the sum is paid out, and

*Status: This version of this part contains provisions that are prospective.*

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- (b) if subsection (2) applies to the sum, as soon as practicable after the end of each subsequent financial year in relation to which the repayment condition has not been met.
- (6) The repayment condition is met in relation to a financial year if—
  - (a) the whole of the sum has been repaid to the Secretary of State before the beginning of the year, and
  - (b) the registered provider was not at any time during the year liable to pay interest on amounts that became due in respect of the sum.

#### Commencement Information

**I38** [S. 111](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

### 112 Guarantees where housing administration order is made

- (1) If a housing administration order has been made in relation to a registered provider the Secretary of State may guarantee—
  - (a) the repayment of any sum borrowed by the registered provider while that order is in force,
  - (b) the payment of interest on any sum borrowed by the registered provider while that order is in force, and
  - (c) the discharge of any other financial obligation of the registered provider in connection with the borrowing of any sum while that order is in force.
- (2) The Secretary of State may give the guarantees in whatever manner, and on whatever terms, the Secretary of State considers appropriate.
- (3) As soon as practicable after giving a guarantee under this section, the Secretary of State must lay a statement of the guarantee before Parliament.
- (4) For repayment of sums paid by the Secretary of State under a guarantee given under this section, see section 113.

#### Commencement Information

**I39** [S. 112](#) in force at 5.7.2018 by [S.I. 2018/805](#), [reg. 3\(a\)](#)

### 113 Guarantees: repayment by registered provider etc

- (1) This section applies where a sum is paid out by the Secretary of State under a guarantee given by the Secretary of State under section 112 in relation to a registered provider.
- (2) The registered provider must pay the Secretary of State—
  - (a) such amounts in or towards the repayment to the Secretary of State of that sum as the Secretary of State may direct, and
  - (b) interest on amounts outstanding under this subsection at such rates as the Secretary of State may direct.
- (3) The payments must be made by the registered provider at such times, and in such manner, as the Secretary of State may from time to time direct.

*Status: This version of this part contains provisions that are prospective.*

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- (4) The Secretary of State must lay before Parliament a statement, relating to the sum paid out under the guarantee—
- (a) as soon as practicable after the end of the financial year in which the sum is paid out, and
  - (b) as soon as practicable after the end of each subsequent financial year in relation to which the repayment condition has not been met.
- (5) The repayment condition is met in relation to a financial year if—
- (a) the whole of the sum has been repaid to the Secretary of State before the beginning of the year, and
  - (b) the registered provider was not at any time during the year liable to pay interest on amounts that became due in respect of the sum.

#### Commencement Information

**I40** S. 113 in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

### *Supplementary provisions*

#### **114 Modification of this Chapter under the Enterprise Act 2002**

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power to make such consequential modifications of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.
- (2) Those sections are—
- (a) sections 248 and 277 of the Enterprise Act 2002 (amendments consequential on that Act), and
  - (b) section 254 of the Enterprise Act 2002 (power to apply insolvency law to foreign companies).

#### Commencement Information

**I41** S. 114 in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

#### **115 Amendments to housing moratorium and consequential amendments**

Schedule 6 contains amendments to do with this Chapter.

#### Commencement Information

**I42** S. 115 in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

#### **116 Interpretation of Chapter**

- (1) In this Chapter—

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“business”, “member”, “property” and “security” have the same meaning as in the Insolvency Act 1986;

“charitable incorporated organisation” means a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011;

“company” means—

- (a) a company registered under the Companies Act 2006, or
- (b) an unregistered company;

“the court”, in relation to a company or registered society, means the court having jurisdiction to wind up the company or registered society;

“foreign company” means a company incorporated outside the United Kingdom;

“housing administration order” has the meaning given by section 95;

“housing administration rules” means rules made under section 411 of the Insolvency Act 1986 as a result of section 102 above;

“housing administrator” has the meaning given by section 95 and is to be read in accordance with subsection (2) below;

“financial year” means a period of 12 months ending with 31 March;

“legislation” includes provision made by or under—

- (a) an Act,
- (b) an Act of the Scottish Parliament,
- (c) Northern Ireland legislation, or
- (d) a Measure or Act of the National Assembly for Wales;

“objectives of the housing administration” is to be read in accordance with section 96(4);

“private registered provider” means a private registered provider of social housing (see section 80 of the Housing and Regeneration Act 2008);

“registered provider” means a registered provider of social housing (see section 80 of the Housing and Regeneration Act 2008);

“registered society” has the same meaning as in the Co-operative and Community Benefit Societies Act 2014;

“Regulator of Social Housing” has the meaning given by section 92A of the Housing and Regeneration Act 2008;

“Scottish firm” means a firm constituted under the law of Scotland;

“UK affairs, business and property”, in relation to a company, means—

- (a) its affairs and business so far as carried on in the United Kingdom, and
- (b) its property in the United Kingdom;

“unregistered company” means a company that is not registered under the Companies Act 2006.

(2) In this Chapter references to the housing administrator of a registered provider—

- (a) include a person appointed under paragraph 91 or 103 of Schedule B1 to the Insolvency Act 1986, as applied by Part 1 of Schedule 5 to this Act or regulations under section 102, to be the housing administrator of the registered provider, and
- (b) if two or more persons are appointed as the housing administrator of the registered provider, are to be read in accordance with the provision made under section 101.

*Status: This version of this part contains provisions that are prospective.*

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- (3) References in this Chapter to a person qualified to act as an insolvency practitioner in relation to a registered provider are to be read in accordance with Part 13 of the Insolvency Act 1986, but as if references in that Part to a company included a company registered under the Companies Act 2006 in Northern Ireland.
- (4) For the purposes of this Chapter an application made to the court is outstanding if it—
  - (a) has not yet been granted or dismissed, and
  - (b) has not been withdrawn.
- (5) An application is not to be taken as having been dismissed if an appeal against the dismissal of the application, or a subsequent appeal, is pending.
- (6) An appeal is to be treated as pending for this purpose if—
  - (a) an appeal has been brought and has not been determined or withdrawn,
  - (b) an application for permission to appeal has been made but has not been determined or withdrawn, or
  - (c) no appeal has been brought and the period for bringing one is still running.
- (7) References in this Chapter to a provision of the Insolvency Act 1986 (except the references in subsection (2) above)—
  - (a) in relation to a company, are to that provision without the modifications made by Part 1 of Schedule 5 to this Act,
  - (b) in relation to a registered society, are to that provision as it applies to registered societies otherwise than by virtue of regulations under section 102 (if at all), and
  - (c) in relation to a charitable incorporated organisation, are to that provision as it applies to charitable incorporated organisations otherwise than by virtue of regulations under section 102 (if at all).

#### Commencement Information

**I43** S. 116 in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

## 117 Application of Part to Northern Ireland

- (1) This section makes provision about the application of this Chapter to Northern Ireland.
- (2) Any reference to any provision of the Insolvency Act 1986 is to have effect as a reference to the corresponding provision of the Insolvency (Northern Ireland) Order 1989.
- (3) Section 116(3) is to have effect as if the reference to Northern Ireland were to England and Wales or Scotland.

#### Commencement Information

**I44** S. 117 in force at 5.7.2018 by S.I. 2018/805, reg. 3(a)

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Housing and Planning Act 2016, PART 4 is up to date with all changes known to be in force on or before 08 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*

PROSPECTIVE

## CHAPTER 6

### SECURE TENANCIES ETC.

#### 118 Secure tenancies etc: phasing out of tenancies for life

Schedule 7 changes the law about secure tenancies, introductory tenancies and demoted tenancies to phase out tenancies for life.

#### 119 Termination of fixed-term secure tenancies without need to forfeit

(1) The Housing Act 1985 is amended as follows.

(2) In section 82 (security of tenure)—

(a) before subsection (1) insert—

“(A1) A fixed-term secure tenancy of a dwelling-house in England that is granted on or after the day on which paragraph 4 of Schedule 7 to the Housing and Planning Act 2016 comes fully into force cannot be brought to an end by the landlord except by—

(a) obtaining—

(i) an order of the court for the possession of the dwelling-house, and

(ii) the execution of the order, or

(b) obtaining a demotion order under section 82A.

(A2) A secure tenancy can be brought to an end by the landlord as mentioned in subsection (A1)(a) whether or not the tenancy contains terms for it to be brought to an end.”

(b) in subsection (1)(b), for “but” substitute “ , other than one to which subsection (A1) applies, that is ”;

(c) in subsection (2), after “subsection” insert “ (A1)(a) or ”.

(3) In section 83 (proceedings for possession), in subsection (A1), for “82(1A)” substitute “ 82(A1) or (1A) ”.

#### 120 Succession to secure tenancies and related tenancies

Schedule 8 changes the law about succession to secure tenancies, introductory tenancies and demoted tenancies.

#### 121 Secure and assured tenancies: transfer of tenancy

(1) The Localism Act 2011 is amended as follows.

(2) In section 158 of the Localism Act 2011 (secure and assured tenancies: transfer of tenancy)—

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*Status: This version of this part contains provisions that are prospective.*

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- (a) in subsection (3)(a), for “not a flexible tenancy” substitute “ an old-style secure tenancy ”;
- (b) in subsection (4)(a), for “is a flexible tenancy” substitute “ is not an old-style secure tenancy ”;
- (c) omit subsection (6);
- (d) in subsection (7), for “fifth” substitute “ fourth ”;
- (e) for subsections (8) and (9) substitute—

“(8) The new tenancy is to be granted on whatever terms the landlord determines.

(9) A landlord must, on request by a relevant tenant, inform the tenant of the terms on which a new tenancy will be granted to that tenant.

(9A) Subsection (9B) applies in a case where—

- (a) the request was made before section 121 of the Housing and Planning Act 2016 came into force, and
- (b) one or more of the landlords had not yet complied with the request when that section came into force.

(9B) In that case any new tenancy granted in pursuance of this section to a relevant tenant whose existing tenancy is an old-style secure tenancy, or an assured tenancy that is not an assured shorthold tenancy, must be—

- (a) an old-style secure tenancy, or
- (b) an assured tenancy that is not an assured shorthold tenancy, according to the landlord's capacity to grant a tenancy of either kind.”

(3) In section 159 (interpretation of section 158 etc), in subsection (6), omit paragraph (b).



**Status:**

This version of this part contains provisions that are prospective.

**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\(8\)\(a\)\(ii\)](#)