



# Housing Act 1996

## 1996 CHAPTER 52

### PART I

#### SOCIAL RENTED SECTOR

#### CHAPTER IV

#### GENERAL POWERS OF THE [F<sup>1</sup>RELEVANT AUTHORITY]

##### Textual Amendments

- F1** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

#### *Information*

### **30 General power to obtain information.**

- (1) The [F<sup>2</sup>Relevant Authority] may for any purpose connected with the discharge of any of its functions in relation to registered social landlords serve a notice on a person requiring him—
- (a) to give to the [F<sup>2</sup>Relevant Authority], at a time and place and in the form and manner specified in the notice, such information relating to the affairs of a registered social landlord as may be specified or described in the notice, or
  - (b) to produce to the [F<sup>2</sup>Relevant Authority] or a person authorised by the [F<sup>2</sup>Relevant Authority], at a time and place specified in the notice, any documents relating to the affairs of the registered social landlord which are specified or described in the notice and are in his custody or under his control.
- (2) A notice under this section may be served on—
- (a) a registered social landlord,

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- (b) any person who is, or has been, an officer, member, employee or agent of a registered social landlord,
- (c) a subsidiary or associate of a registered social landlord,
- (d) any person who is, or has been, an officer, member, employee or agent of a subsidiary or associate of a registered social landlord, or
- (e) any other person whom the [<sup>F2</sup>Relevant Authority] has reason to believe is or may be in possession of relevant information.

In this section “agent” includes banker, solicitor and auditor.

- (3) No notice shall be served on a person within paragraphs (b) to (e) of subsection (2) unless—
- (a) a notice has been served on the registered social landlord and has not been complied with, or
  - (b) the [<sup>F2</sup>Relevant Authority] believes that the information or documents in question are not in the possession of the landlord.
- (4) Nothing in this section authorises the [<sup>F2</sup>Relevant Authority] to require—
- (a) the disclosure of anything which a person would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court, or
  - (b) the disclosure by a banker of anything in breach of any duty of confidentiality owed by him to a person other than a registered social landlord or a subsidiary or associate of a registered social landlord.
- [<sup>F3</sup>(5) A notice under this section—
- (a) if given by the Housing Corporation, shall be given under its seal, and
  - (b) if given by the Secretary of State, shall be given in writing.]
- (6) References in this section to a document are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.
- (7) Where by virtue of this section documents are produced to any person, he may take copies of or make extracts from them.

#### Textual Amendments

- F2** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.
- F3** S. 30(5) substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para.86** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

#### Modifications etc. (not altering text)

- C1** S. 30 extended (16.9.1996) by S.I. 1996/2402, art. 3, **Sch. para. 1**

### 31 Enforcement of notice to provide information, &c.

- (1) A person who without reasonable excuse fails to do anything required of him by a notice under section 30 commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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- (2) A person who intentionally alters, suppresses or destroys a document which he has been required by a notice under section 30 to produce commits an offence and is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - <sup>F4</sup>(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.]
- (3) Proceedings for an offence under subsection (1) or (2) may be brought only by or with the consent of the <sup>F5</sup>Relevant Authority] or the Director of Public Prosecutions.
- (4) If a person makes default in complying with a notice under section 30, the High Court may, on the application of the <sup>F5</sup>Relevant Authority], make such order as the court thinks fit for requiring the default to be made good.

Any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a body who are responsible for its default.

#### Textual Amendments

- F4** S. 31(2)(b) substituted (18.1.2005) by [Housing Act 2004 \(c. 34\)](#), s. 270(3)(c), [Sch. 11 para. 12\(1\)](#) (with [Sch. 11 para. 12\(2\)](#))
- F5** Words in Pt. I substituted (1.11.1998) by [1998 c. 38](#), s. 140, [Sch. 16 para. 82\(1\)\(2\)](#) (with ss. 139(2), 141(1), 143(2)); [S.I. 1998/2244](#), [art.5](#).

#### Modifications etc. (not altering text)

- C2** S. 31 extended (16.9.1996) by [S.I. 1996/2402](#), [art. 3](#), [Sch. para. 1](#)

### 32 Disclosure of information to the <sup>F6</sup>Relevant Authority].

- (1) A body or person to whom this section applies may, subject to the following provisions, disclose to the <sup>F6</sup>Relevant Authority], for the purpose of enabling the <sup>F6</sup>Relevant Authority] to discharge any of its functions relating to registered social landlords, any information received by that body or person under or for the purposes of any enactment.
- (2) This section applies to the following bodies and persons—
  - (a) any government department (including a Northern Ireland department);
  - (b) any local authority;
  - (c) any constable; and
  - (d) any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).
- (3) This section has effect subject to any express restriction on disclosure imposed by or under any other enactment.
- (4) Nothing in this section shall be construed as affecting any power of disclosure exercisable apart from this section.

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#### Textual Amendments

**F6** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

#### Modifications etc. (not altering text)

**C3** S. 32 extended (16.9.1996) by S.I. 1996/2402, **art. 3, Sch. para. 1**

### 33 Disclosure of information by the <sup>F7</sup>Relevant Authority].

- (1) The <sup>F7</sup>Relevant Authority] may disclose to a body or person to whom this section applies any information received by it relating to a registered social landlord—
  - (a) for any purpose connected with the discharge of the functions of the <sup>F7</sup>Relevant Authority] in relation to such landlords, or
  - (b) for the purpose of enabling or assisting that body or person to discharge any of its or his functions.
- (2) This section applies to the following bodies and persons—
  - (a) any government department (including a Northern Ireland department);
  - (b) any local authority;
  - (c) any constable; and
  - (d) any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).

Paragraph (d) extends to any such body or person in a country or territory outside the United Kingdom.

- (3) Where any information disclosed to the <sup>F7</sup>Relevant Authority] under section 32 is so disclosed subject to any express restriction on the further disclosure of the information, the <sup>F7</sup>Relevant Authority's] power of disclosure under this section is exercisable subject to that restriction.

A person who discloses information in contravention of any such restriction commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (4) Any information disclosed by the <sup>F7</sup>Relevant Authority] under this section may be subject by the <sup>F7</sup>Relevant Authority] to any express restriction on the further disclosure of the information.
- (5) A person who discloses information in contravention of any such restriction commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Proceedings for such an offence may be brought only by or with the consent of the <sup>F7</sup>Relevant Authority] or the Director of Public Prosecutions.

- (6) Nothing in this section shall be construed as affecting any power of disclosure exercisable apart from this section.

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#### Textual Amendments

**F7** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

#### Modifications etc. (not altering text)

**C4** S. 33 extended (16.9.1996) by S.I. 1996/2402, **art. 3, Sch. para. 1**

### *Standards of performance*

#### **34 Standards of performance.**

The [<sup>F8</sup>Relevant Authority] may, after consultation with persons or bodies appearing to it to be representative of registered social landlords, from time to time—

- (a) determine such standards of performance in connection with the provision of housing as, in its opinion, ought to be achieved by such landlords, and
- (b) arrange for the publication, in such form and in such manner as it considers appropriate, of the standards so determined.

#### Textual Amendments

**F8** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

#### Modifications etc. (not altering text)

**C5** S. 34 extended (16.9.1996) by S.I. 1996/2402, **art. 3, Sch. para. 1**

#### **35 Information as to levels of performance.**

- (1) The [<sup>F9</sup>Relevant Authority] shall from time to time collect information as to the levels of performance achieved by registered social landlords in connection with the provision of housing.
- (2) On or before such date in each year as may be specified in a direction given by the [<sup>F9</sup>Relevant Authority], each registered social landlord shall provide the [<sup>F9</sup>Relevant Authority], as respects each standard determined under section 34, with such information as to the level of performance achieved by him as may be so specified.
- (3) A registered social landlord who without reasonable excuse fails to do anything required of him by a direction under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Proceedings for such an offence may be brought only by or with the consent of the [<sup>F9</sup>Relevant Authority] or the Director of Public Prosecutions.

- (4) The [<sup>F9</sup>Relevant Authority] shall at least once in every year arrange for the publication, in such form and in such manner as it considers appropriate, of such of the information collected by or provided to it under this section as appears to it expedient to give to tenants or potential tenants of registered social landlords.

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- (5) In arranging for the publication of any such information the [F<sup>9</sup>Relevant Authority] shall have regard to the need for excluding, so far as that is practicable—
- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the [F<sup>9</sup>Relevant Authority], seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the [F<sup>9</sup>Relevant Authority], seriously and prejudicially affect the interests of that body.

#### Textual Amendments

**F9** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

#### Commencement Information

**II** S. 35 wholly in force 1.4.1998; s. 35 not in force at Royal Assent see s. 232(1)-(3); s. 35(1)(2)(3)(5) in force at 1.4.1997 and s. 35(4) in force at 1.4.1998 by S.I. 1997/618, **arts. 2, 3**

### *Housing management*

#### **36 Issue of guidance by the [F<sup>10</sup>Relevant Authority].**

- (1) The [F<sup>10</sup>Relevant Authority] may issue guidance with respect to the management of housing accommodation by registered social landlords.
- (2) Guidance under [F<sup>11</sup> subsection (1) ] may, in particular, be issued with respect to—
  - (a) the housing demands for which provision should be made and the means of meeting those demands;
  - (b) the allocation of housing accommodation between individuals;
  - (c) the terms of tenancies and the principles upon which levels of rent should be determined;
  - (d) standards of maintenance and repair and the means of achieving those standards;
  - (e) the services to be provided to tenants;
  - (f) the procedures to be adopted to deal with complaints by tenants against a landlord;
  - (g) consultation and communication with tenants;
  - (h) the devolution to tenants of decisions concerning the management of housing accommodation.
- [F<sup>12</sup>(i) the policy and procedures a landlord is required under section 218A to prepare and from time to time revise in connection with anti-social behaviour.]

[F<sup>13</sup>(2A) The Relevant Authority may also issue guidance with respect to—

- (a) the governance of bodies that are registered social landlords;
- (b) the effective management of such bodies;
- (c) establishing and maintaining the financial viability of such bodies.]

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- [<sup>F14</sup>(3) Before issuing any guidance under this section the Relevant Authority shall consult such bodies appearing to the Relevant Authority to be representative of registered social landlords as the Relevant Authority considers appropriate; and where the Relevant Authority issues guidance under this section it shall be issued in such manner as the Relevant Authority considers appropriate for bringing it to the notice of the landlords concerned.
- (4) The Housing Corporation shall not issue guidance under this section unless—
- (a) it has been submitted in draft to the Secretary of State for his approval, and
  - (b) the Secretary of State has given his approval to the draft.]
- (5) Guidance issued under this section may be revised or withdrawn; and subsections (3) and (4) apply in relation to the revision of guidance as in relation to its issue.
- (6) Guidance under this section may make different provision in relation to different cases and, in particular, in relation to different areas, different descriptions of housing accommodation and different descriptions of registered social landlord.
- (7) In considering whether action needs to be taken to secure the proper management of the affairs of a registered social landlord or whether there has been [<sup>F15</sup>misconduct or ] mismanagement, the [<sup>F10</sup>Relevant Authority] may have regard (among other matters) to the extent to which any guidance under this section is being or has been followed.

#### Textual Amendments

- F10** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.
- F11** Words in s. 36(2) substituted (18.1.2005) by Housing Act 2004 (c. 34), s. 270(3)(c), **Sch. 11 para. 13(2)**
- F12** S. 36(2)(i) inserted (30.6.2004 for E.) by Anti-social Behaviour Act 2003 (c. 38), **ss. 12(2), 93**; S.I. 2004/1502, **art. 2(a)(i)**
- F13** S. 36(2A) inserted (18.1.2005) by Housing Act 2004 (c. 34), s. 270(3)(c), **Sch. 11 para. 13(3)**
- F14** S. 36(3)(4) substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para.87** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.
- F15** Words in s. 36(7) inserted (18.1.2005) by Housing Act 2004 (c. 34), s. 270(3)(c), **Sch. 11 para. 13(4)**

#### Commencement Information

- I2** S. 36 wholly in force 1.10.1996; s. 36 not in force at Royal Assent see s. 232(1)-(3); s. 36(1)-(6) in force at 1.8.1996 by S.I. 1996/2048, **art. 2** and s. 36(7) in force at 1.10.1996 by S.I. 1996/2402, **art. 3** (with transitional provisions and savings in the **Sch.**)

### 37 Powers of entry.

- (1) This section applies where it appears to the [<sup>F16</sup>Relevant Authority] that a registered social landlord may be failing to maintain or repair any premises in accordance with guidance issued under section 36.
- (2) A person authorised by the [<sup>F16</sup>Relevant Authority] may at any reasonable time, on giving not less than 28 days' notice of his intention to the landlord concerned, enter any such premises for the purpose of survey and examination.



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- (3) Where such notice is given to the landlord, the landlord shall give the occupier or occupiers of the premises not less than seven days' notice of the proposed survey and examination.

A landlord who fails to do so commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (4) Proceedings for an offence under subsection (3) may be brought only by or with the consent of the [<sup>F16</sup>Relevant Authority] or the Director of Public Prosecutions.
- (5) An authorisation for the purposes of this section shall be in writing stating the particular purpose or purposes for which the entry is authorised and shall, if so required, be produced for inspection by the occupier or anyone acting on his behalf.
- (6) The [<sup>F16</sup>Relevant Authority] shall give a copy of any survey carried out in exercise of the powers conferred by this section to the landlord concerned.
- (7) The [<sup>F16</sup>Relevant Authority] may require the landlord concerned to pay to it such amount as the [<sup>F16</sup>Relevant Authority] may determine towards the costs of carrying out any survey under this section.

#### Textual Amendments

**F16** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

#### Modifications etc. (not altering text)

**C6** S. 37 extended (16.9.1996) by S.I. 1996/2402, **art. 3, Sch. para. 1**

### 38 Penalty for obstruction of person exercising power of entry.

- (1) It is an offence for a registered social landlord or any of its officers or employees to obstruct a person authorised under section 37 (powers of entry) to enter premises in the performance of anything which he is authorised by that section to do.
- (2) A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) Proceedings for such an offence may be brought only by or with the consent of the [<sup>F17</sup>Relevant Authority] or the Director of Public Prosecutions.

#### Textual Amendments

**F17** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

#### Modifications etc. (not altering text)

**C7** S. 38 extended (16.9.1996) by S.I. 1996/2402, **art. 3, Sch. para. 1**



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### *Insolvency, &c. of registered social landlord*

## **39 Insolvency, &c. of registered social landlord: scheme of provisions.**

(1) The following sections make provision—

- (a) for notice to be given to the [<sup>F18</sup>Relevant Authority] of any proposal to take certain steps in relation to a registered social landlord (section 40), and for further notice to be given when any such step is taken (section 41),
- (b) for a moratorium on the disposal of land, and certain other assets, held by the registered social landlord (sections 42 and 43),
- (c) for proposals by the [<sup>F18</sup>Relevant Authority] as to the future ownership and management of the land held by the landlord (section 44), which are binding if agreed (section 45),
- (d) for the appointment of a manager to implement agreed proposals (section 46) and as to the powers of such a manager (sections 47 and 48),
- (e) for the giving of assistance by the [<sup>F18</sup>Relevant Authority] (section 49), and
- (f) for application to the court to secure compliance with the agreed proposals (section 50).

(2) In those sections—

“disposal” means sale, lease, mortgage, charge or any other disposition, and includes the grant of an option;

“secured creditor” means a creditor who holds a mortgage or charge (including a floating charge) over land held by the landlord or any existing or future interest of the landlord in rents or other receipts from land; and

“security” means any mortgage, charge or other security.

(3) The Secretary of State may make provision by order defining for the purposes of those sections what is meant by a step to enforce security over land.

Any such order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **Textual Amendments**

**F18** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

## **40 Initial notice to be given to the [<sup>F19</sup>Relevant Authority].**

(1) Notice must be given to the [<sup>F19</sup>Relevant Authority] before any of the steps mentioned below is taken in relation to a registered social landlord.

The person by whom the notice must be given is indicated in the second column.

(2) Where the registered social landlord is an industrial and provident society, the steps and the person by whom notice must be given are—

Any step to enforce any security over land held by the landlord.	The person proposing to take the step.
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Presenting a petition for the winding up of the landlord.      The petitioner.

Passing a resolution for the winding up of the landlord.      The landlord.

- (3) Where the registered social landlord is a company registered under the <sup>M1</sup>Companies Act 1985 (including a registered charity), the steps and the person by whom notice must be given are—

Any step to enforce any security over land held by the landlord.      The person proposing to take the step.

Applying for an administration order.      The applicant.

Presenting a petition for the winding up of the landlord.      The petitioner.

Passing a resolution for the winding up of the landlord.      The landlord.

- (4) Where the registered social landlord is a registered charity (other than a company registered under the Companies Act 1985), the steps and the person by whom notice must be given are—

Any step to enforce any security over land held by the landlord.      The person proposing to take the step.

- (5) Notice need not be given under this section in relation to a resolution for voluntary winding up where the consent of the [<sup>F19</sup>Relevant Authority] is required (see paragraphs 12(4) and 13(6) of Schedule 1).

- (6) Any step purportedly taken without the requisite notice being given under this section is ineffective.

- [<sup>F20</sup>(7) Subsections (8) and (9) apply in relation to the reference in subsection (3) to applying for an administration order.

- (8) In a case where an administrator is appointed under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (appointment by floating charge holder, company or directors)—

(a) the reference includes a reference to appointing an administrator under that paragraph, and

(b) in respect of an appointment under either of those paragraphs the reference to the applicant shall be taken as a reference to the person making the appointment.

- (9) In a case where a copy of a notice of intention to appoint an administrator under either of those paragraphs is filed with the court—

(a) the reference shall be taken to include a reference to the filing of the copy of the notice, and

(b) in respect of the filing of a copy of a notice of intention to appoint under either of those paragraphs the reference to the applicant shall be taken as a reference to the person giving the notice.]

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#### Textual Amendments

- F19** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.
- F20** S. 40(7)-(9) added (15.9.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 17 para. 51** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, **Sch. 1** (with **art. 3**)

#### Marginal Citations

- M1** 1985 c. 6.

### 41 Further notice to be given to the [<sup>F21</sup>Relevant Authority].

- (1) Notice must be given to the [<sup>F21</sup>Relevant Authority] as soon as may be after any of the steps mentioned below is taken in relation to a registered social landlord.

The person by whom the notice must be given is indicated in the second column.

- (2) Where the registered social landlord is an industrial and provident society, the steps and the person by whom notice must be given are—

The taking of a step to enforce any security over land held by the landlord.	The person taking the step.
The making of an order for the winding up of the landlord.	The petitioner.
The passing of a resolution for the winding up of the landlord.	The landlord.

- (3) Where the registered social landlord is a company registered under the <sup>M2</sup>Companies Act 1985 (including a registered charity), the steps and the person by whom notice must be given are—

The taking of a step to enforce any security over land held by the landlord.	The person taking the step.
The making of an administration order.	The person who applied for the order.
The making of an order for the winding up of the landlord.	The petitioner.
The passing of a resolution for the winding up of the landlord.	The landlord.

- (4) Where the registered social landlord is a registered charity (other than a company registered under the Companies Act 1985), the steps and the person by whom notice must be given are—

The taking of a step to enforce any security over land held by the landlord.	The person taking the step.
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- (5) Failure to give notice under this section does not affect the validity of any step taken; but the period of 28 days mentioned in section 43(1) (period after which moratorium

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on disposal of land, &c. ends) does not begin to run until any requisite notice has been given under this section.

[<sup>F22</sup>(6) In subsection (3)—

- (a) the reference to the making of an administration order includes a reference to appointing an administrator under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (administration), and
- (b) in respect of an appointment under either of those paragraphs the reference to the applicant shall be taken as a reference to the person making the appointment.]

#### Textual Amendments

- F21** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.
- F22** S. 41(6) added (15.9.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 17 para. 52** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1), Sch. 1** (with art. 3)

#### Marginal Citations

- M2** 1985 c. 6.

## 42 Moratorium on disposal of land, &c.

- (1) Where any of the steps mentioned in section 41 is taken in relation to a registered social landlord, there is a moratorium on the disposal of land held by the landlord.
- (2) During the moratorium the consent of the [<sup>F23</sup>Relevant Authority] under this section is required (except as mentioned below) for any disposal of land held by the landlord, whether by the landlord itself or any person having a power of disposal in relation to the land.  
  
Consent under this section may be given in advance and may be given subject to conditions.
- (3) Consent is not required under this section for any such disposal as is mentioned in section 10(1), (2) or (3) (lettings and other disposals not requiring consent under section 9).
- (4) A disposal made without the consent required by this section is void.
- (5) Nothing in this section prevents a liquidator from disclaiming any land held by the landlord as onerous property.
- (6) The provisions of this section apply in relation to any existing or future interest of the landlord in rent or other receipts arising from land as they apply to an interest in land.

#### Textual Amendments

- F23** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

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### **43 Period of moratorium.**

- (1) The moratorium in consequence of the taking of any step as mentioned in section 41—
- (a) begins when the step is taken, and
  - (b) ends at the end of the period of 28 days beginning with the day on which notice of its having been taken was given to the [F24Relevant Authority] under that section,

subject to the following provisions.

- (2) The taking of any further step as mentioned in section 41 at a time when a moratorium is already in force does not start a further moratorium or affect the duration of the existing one.
- (3) A moratorium may be extended from time to time with the consent of all the landlord's secured creditors.

Notice of any such extension shall be given by the [F24Relevant Authority] to—

- (a) the landlord, and
  - (b) any liquidator, administrative receiver, receiver or administrator appointed in respect of the landlord or any land held by it.
- (4) If during a moratorium the [F24Relevant Authority] considers that the proper management of the landlord's land can be secured without making proposals under section 44 (proposals as to ownership and management of landlord's land), the [F24Relevant Authority] may direct that the moratorium shall cease to have effect.

Before making any such direction the [F24Relevant Authority] shall consult the person who took the step which brought about the moratorium.

- (5) When a moratorium comes to an end, or ceases to have effect under subsection (4), the [F24Relevant Authority] shall give notice of that fact to the landlord and the landlord's secured creditors.
- (6) When a moratorium comes to an end (but not when it ceases to have effect under subsection (4)), the following provisions of this section apply.

The [F24Relevant Authority's] notice shall, in such a case, inform the landlord and the landlord's secured creditors of the effect of those provisions.

- (7) If any further step as mentioned in section 41 is taken within the period of three years after the end of the original period of the moratorium, the moratorium may be renewed with the consent of all the landlord's secured creditors (which may be given before or after the step is taken).

Notice of any such renewal shall be given by the [F24Relevant Authority] to the persons to whom notice of an extension is required to be given under subsection (3).

- (8) If a moratorium ends without any proposals being agreed, then, for a period of three years the taking of any further step as mentioned in section 41 does not start a further moratorium except with the consent of the landlord's secured creditors as mentioned in subsection (7) above.

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### Textual Amendments

**F24** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

## 44 Proposals as to ownership and management of landlord's land.

- (1) During the moratorium (see sections 42 and 43) the [<sup>F25</sup>Relevant Authority] may make proposals as to the future ownership and management of the land held by the registered social landlord, designed to secure the continued proper management of the landlord's land by a registered social landlord.
  - (2) In drawing up its proposals the [<sup>F25</sup>Relevant Authority]—
    - (a) shall consult the landlord and, so far as is practicable, its tenants, and
    - (b) shall have regard to the interests of all the landlord's creditors, both secured and unsecured.
  - (3) The [<sup>F25</sup>Relevant Authority] shall also consult—
    - (a) where the landlord is an industrial and provident society, the appropriate registrar, and
    - (b) where the landlord is a registered charity, the [<sup>F26</sup>Charity Commission] .
  - (4) No proposals shall be made under which—
    - (a) a preferential debt of the landlord is to be paid otherwise than in priority to debts which are not preferential debts, or
    - (b) a preferential creditor is to be paid a smaller proportion of his preferential debt than another preferential creditor, except with the concurrence of the creditor concerned.
- In this subsection references to preferential debts and preferential creditors have the same meaning as in the <sup>M3</sup>Insolvency Act 1986.
- (5) So far as practicable no proposals shall be made which have the effect that unsecured creditors of the landlord are in a worse position than they would otherwise be.
  - (6) Where the landlord is a charity the proposals shall not require the landlord to act outside the terms of its trusts, and any disposal of housing accommodation occupied under a tenancy or licence from the landlord must be to another charity whose objects appear to the [<sup>F25</sup>Relevant Authority] to be, as nearly as practicable, akin to those of the landlord.
  - (7) The [<sup>F25</sup>Relevant Authority] shall serve a copy of its proposals on—
    - (a) the landlord and its officers,
    - (b) the secured creditors of the landlord, and
    - (c) any liquidator, administrator, administrative receiver or receiver appointed in respect of the landlord or its land;

and it shall make such arrangements as it considers appropriate to see that the members, tenants and unsecured creditors of the landlord are informed of the proposals.

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#### Textual Amendments

- F25** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.
- F26** Words in s. 44(3) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 187**; S.I. 2007/309, art. 2, Sch.

#### Marginal Citations

- M3** 1986 c. 45.

## 45 Effect of agreed proposals.

- (1) The following provisions apply if proposals made by the [<sup>F27</sup>Relevant Authority] under section 44 are agreed, with or without modifications, by all the secured creditors of the registered social landlord.
- (2) Once agreed the proposals are binding on the [<sup>F27</sup>Relevant Authority], the landlord, all the landlord's creditors (whether secured or unsecured) and any liquidator, administrator, administrative receiver or receiver appointed in respect of the landlord or its land.
- (3) It is the duty of—
  - (a) the members of the committee where the landlord is an industrial and provident society,
  - (b) the directors where the landlord is a company registered under the <sup>M4</sup>Companies Act 1985 (including a company which is a registered charity), and
  - (c) the trustees where the landlord is a charitable trust,to co-operate in the implementation of the proposals.

This does not mean that they have to do anything contrary to any fiduciary or other duty owed by them.

- (4) The [<sup>F27</sup>Relevant Authority] shall serve a copy of the agreed proposals on—
  - (a) the landlord and its officers,
  - (b) the secured creditors of the landlord, and
  - (c) any liquidator, administrator, administrative receiver or receiver appointed in respect of the landlord or its land, and
  - (d) where the landlord is an industrial and provident society or registered charity, the [<sup>F28</sup>Financial Services Authority] or the [<sup>F29</sup>Charity Commission], as the case may be;

and it shall make such arrangements as it considers appropriate to see that the members, tenants and unsecured creditors of the landlord are informed of the proposals.

- (5) The proposals may subsequently be amended with the consent of the [<sup>F27</sup>Relevant Authority] and all the landlord's secured creditors.

Section 44(2) to (7) and subsections (2) to (4) above apply in relation to the amended proposals as in relation to the original proposals.



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#### Textual Amendments

- F27** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art. 5**.
- F28** Words in s. 45(4)(d) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 354**
- F29** Words in s. 45(4) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 188**; S.I. 2007/309, **art. 2, Sch.**

#### Marginal Citations

- M4** 1985 c. 6.

### 46 Appointment of manager to implement agreed proposals.

- (1) Where proposals agreed as mentioned in section 45 so provide, the [<sup>F30</sup>Relevant Authority] may by order <sup>F31</sup> . . . appoint a manager to implement the proposals or such of them as are specified in the order.
- (2) If the landlord is a registered charity, the [<sup>F30</sup>Relevant Authority] shall give notice to the [<sup>F32</sup>Charity Commission] of the appointment.
- (3) Where proposals make provision for the appointment of a manager, they shall also provide for the payment of his reasonable remuneration and expenses.
- (4) The [<sup>F30</sup>Relevant Authority] may give the manager directions in relation to the carrying out of his functions.
- (5) The manager may apply to the High Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.  
 A direction of the court supersedes any direction of the [<sup>F30</sup>Relevant Authority] in respect of the same matter.
- (6) If a vacancy occurs by death, resignation or otherwise in the office of manager, the [<sup>F30</sup>Relevant Authority] may by further order <sup>F31</sup> . . . fill the vacancy.
- [<sup>F33</sup>(7) An order under this section—
  - (a) if made by the Housing Corporation, shall be made under its seal, and
  - (b) if made by the Secretary of State, shall be made in writing.]

#### Textual Amendments

- F30** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.
- F31** Words in s. 46(1)(6) repealed (1.11.1998) by 1998 c. 38, ss. 140, 152, **Sch. 16 para. 88(2), Sch. 18 Pt.VI** (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.
- F32** Words in s. 46(2) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 189**; S.I. 2007/309, **art. 2, Sch.**
- F33** S. 46(7) inserted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 88(3)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

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#### **47 Powers of the manager.**

- (1) An order under section 46(1) shall confer on the manager power generally to do all such things as are necessary for carrying out his functions.
- (2) The order may include the following specific powers—
  - (1) Power to take possession of the land held by the landlord and for that purpose to take any legal proceedings which seem to him expedient.
  - (2) Power to sell or otherwise dispose of the land by public auction or private contract.
  - (3) Power to raise or borrow money and for that purpose to grant security over the land.
  - (4) Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
  - (5) Power to bring or defend legal proceedings relating to the land in the name and on behalf of the landlord.
  - (6) Power to refer to arbitration any question affecting the land.
  - (7) Power to effect and maintain insurance in respect of the land.
  - (8) Power where the landlord is a body corporate to use the seal of the body corporate for purposes relating to the land.
  - (9) Power to do all acts and to execute in the name and on behalf of the landlord any deed, receipt or other document relating to the land.
  - (10) Power to appoint an agent to do anything which he is unable to do for himself or which can more conveniently be done by an agent, and power to employ and dismiss any employees.
  - (11) Power to do all such things (including the carrying out of works) as may be necessary in connection with the management or transfer of the land.
  - (12) Power to make any payment which is necessary or incidental to the performance of his functions.
  - (13) Power to carry on the business of the landlord so far as relating to the management or transfer of the land.
  - (14) Power to grant or accept a surrender of a lease or tenancy of any of the land, and to take a lease or tenancy of any property required or convenient for the landlord's housing activities.
  - (15) Power to make any arrangement or compromise on behalf of the landlord in relation to the management or transfer of the land.
  - (16) Power to do all other things incidental to the exercise of any of the above powers.
    - (3) In carrying out his functions the manager acts as the landlord's agent and he is not personally liable on a contract which he enters into as manager.
    - (4) A person dealing with the manager in good faith and for value is not concerned to inquire whether the manager is acting within his powers.
    - (5) The manager shall, so far as practicable, consult the landlord's tenants about any exercise of his powers which is likely to affect them and inform them about any such exercise of his powers.

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#### 48 Powers of the manager: transfer of engagements.

- (1) An order under section 46(1) may, where the landlord is an industrial and provident society, give the manager power to make and execute on behalf of the society an instrument transferring the engagements of the society.
- (2) Any such instrument has the same effect as a transfer of engagements under section 51 or 52 of the <sup>M5</sup>Industrial and Provident Societies Act 1965 (transfer of engagements by special resolution to another society or a company).

In particular, its effect is subject to section 54 of that Act (saving for rights of creditors).

- (3) A copy of the instrument, signed by the manager, shall be sent to the [<sup>F34</sup>Financial Services Authority and registered by it]; and until that copy is so registered the instrument shall not take effect.
- (4) It is the duty of the manager to send a copy for registration within 14 days from the day on which the instrument is executed; but this does not invalidate registration after that time.

##### Textual Amendments

**F34** Words in s. 48(3) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 355](#)

##### Marginal Citations

**M5** [1965 c. 12.](#)

#### 49 Assistance by the [<sup>F35</sup>Relevant Authority].

- (1) The [<sup>F35</sup>Relevant Authority] may give such assistance as it thinks fit—
  - (a) to the landlord, for the purpose of preserving the position pending the making of and agreement to proposals;
  - (b) to the landlord or a manager appointed under section 46, for the purpose of carrying out any agreed proposals.
- (2) The [<sup>F35</sup>Relevant Authority] may, in particular—
  - (a) lend staff;
  - (b) pay or secure payment of the manager's reasonable remuneration and expenses;
  - (c) give such financial assistance as appears to the [<sup>F35</sup>Relevant Authority] to be appropriate.
- (3) The [<sup>F36</sup>giving by the Housing Corporation of the following forms of assistance requires] the consent of the Secretary of State—
  - (a) making grants or loans;
  - (b) agreeing to indemnify the manager in respect of liabilities incurred or loss or damage sustained by him in connection with his functions;
  - (c) paying or guaranteeing the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sum borrowed (before or after the making of the order) and secured on any land disposed of.

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#### Textual Amendments

- F35** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.
- F36** Words in s. 49(3) substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para.89** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

### 50 Application to court to secure compliance with agreed proposals.

- (1) The landlord or any creditor of the landlord may apply to the High Court on the ground that an action of the manager appointed under section 46 is not in accordance with the agreed proposals.

On such an application the court may confirm, reverse or modify any act or decision of the manager, give him directions or make such other order as it thinks fit.

- (2) The [<sup>F37</sup>Relevant Authority] or any other person bound by agreed proposals may apply to the High Court on the ground that any action, or proposed action, by another person bound by the proposals is not in accordance with those proposals.

On such an application the court may—

- (a) declare any such action to be ineffective, and
- (b) grant such relief by way of injunction, damages or otherwise as appears to the court appropriate.

#### Textual Amendments

- F37** Words in Pt. I substituted (1.11.1998) by 1998 c. 38, s. 140, **Sch. 16 para. 82(1)(2)** (with ss. 139(2), 141(1), 143(2)); S.I. 1998/2244, **art.5**.

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