



Housing Act 1996

1996 CHAPTER 52

PART I

SOCIAL RENTED SECTOR

CHAPTER IV

GENERAL POWERS OF THE [F¹RELEVANT AUTHORITY]

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 [F¹Relevant 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 [F¹Relevant 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 [F¹Relevant 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;

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“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

- 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**.

40 Initial notice to be given to the [^{F2}Relevant Authority].

- (1) Notice must be given to the [^{F2}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.
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 ^{M1}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—

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Any step to enforce any security over land held by the landlord.	The person proposing to take the step.
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- (5) Notice need not be given under this section in relation to a resolution for voluntary winding up where the consent of the [^{F2}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.
- [^{F3}(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.]

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. 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 [^{F4}Relevant Authority].

- (1) Notice must be given to the [^{F4}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—

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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 ^{M2}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 on disposal of land, &c. ends) does not begin to run until any requisite notice has been given under this section.

[^{F5}(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

- F4** 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**.
- F5** 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.

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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 [F6Relevant 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

- 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**.

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 [F7Relevant 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 [F7Relevant 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 [F7Relevant 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 [F7Relevant Authority] may direct that the moratorium shall cease to have effect.

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Before making any such direction the [^{F7}Relevant 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 [^{F7}Relevant 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 [^{F7}Relevant 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 [^{F7}Relevant 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.

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**.

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

- (1) During the moratorium (see sections 42 and 43) the [^{F8}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 [^{F8}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 [^{F8}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 Charity Commissioners.
- (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

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- (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 ^{M3}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 [^{F8}Relevant Authority] to be, as nearly as practicable, akin to those of the landlord.
- (7) The [^{F8}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.

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**.

Marginal Citations

M3 1986 c. 45.

45 Effect of agreed proposals.

- (1) The following provisions apply if proposals made by the [^{F9}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 [^{F9}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 ^{M4}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.

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

- (4) The [F⁹Relevant 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 [F¹⁰Financial Services Authority] or the Charity Commissioners, 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 [F⁹Relevant 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.

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**.

F10 Words in s. 45(4)(d) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 354**

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 [F¹¹Relevant Authority] may by order ^{F12} . . . 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 [F¹¹Relevant Authority] shall give notice to the Charity Commissioners 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 [F¹¹Relevant 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 [F¹¹Relevant Authority] in respect of the same matter.

- (6) If a vacancy occurs by death, resignation or otherwise in the office of manager, the [F¹¹Relevant Authority] may by further order ^{F12} . . . fill the vacancy.

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[^{F13}(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

- F11** 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**.
- F12** 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**.
- F13** 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**.

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.

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- (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.

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 ^{M5}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 [^{F14}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

F14 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 [^{F15}Relevant Authority].

- (1) The [^{F15}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 [^{F15}Relevant Authority] may, in particular—

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- (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 [^{F15}Relevant Authority] to be appropriate.
- (3) The [^{F16}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.

Textual Amendments

- F15** 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**.
- F16** 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 [^{F17}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

- 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**.

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