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Changes to legislation: Housing and Regeneration Act 2008, Cross Heading: Compensation is up to date with all changes known to be in force on or before 16 July 2024. 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)



Housing and Regeneration Act 2008

2008 CHAPTER 17

PART 2

REGULATION OF SOCIAL HOUSING

CHAPTER 7

ENFORCEMENT POWERS

Compensation

VALID FROM 01/04/2010

236 Overview

This group of sections allows the regulator to award compensation to a victim of a failure on the part of a registered provider.

VALID FROM 01/04/2010

237 Grounds for award

- (1) The regulator may require a registered provider to pay compensation if the regulator is satisfied that—
 - (a) either of the following cases applies, and
 - (b) the award of compensation is appropriate (whether or not as part of a response including other action).
- (2) Case 1 is where the registered provider has failed to meet a standard under section 193 or 194.

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- (3) Case 2 is where the registered provider has given an undertaking under section 125 and failed to comply with it.

VALID FROM 01/04/2010

238 Nature

- (1) Compensation in respect of a failure may be awarded to one or more persons who have suffered as a result of the failure.
- (2) But an award may be made only to—
- (a) a specified tenant of social housing provided by the registered provider,
 - (b) each member of a specified class of tenants of social housing provided by the registered provider, or
 - (c) each member of the class of tenants of social housing provided by the registered provider.

VALID FROM 01/04/2010

239 Housing ombudsman compensation

- (1) The regulator may not award compensation to a person in respect of a matter if an ombudsman appointed by virtue of section 124 has awarded compensation to the person in respect of the matter.
- (2) But if compensation awarded by an ombudsman by virtue of section 124 has not been paid as required, the regulator may award compensation.

240 Award

- (1) Compensation is awarded by the regulator giving notice (a “compensation notice”) to—
- (a) the registered provider, and
 - (b) the person to be compensated.
- (2) The notice must specify—
- (a) the grounds on which the compensation is awarded,
 - (b) the amount of the compensation,
 - (c) the person to be compensated,
 - (d) any interest or additional compensation which, by virtue of section 244(2), is payable in the event of late payment, and
 - (e) a period within which it must be paid.
- (3) The notice may require the registered provider to publish information about the compensation award in a specified manner.
- (4) The notice must explain the effect of sections 244(1) and (3) and 245.

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- (5) The Secretary of State—
- (a) shall make regulations about the period under subsection (2)(e),
 - (b) may make other regulations about the form and content of a compensation notice, and
 - (c) may make regulations about the manner in which a compensation notice is given.

Commencement Information

- II S. 240(5) in force at 1.4.2009 for specified purposes by S.I. 2009/803, art. 7(c)

VALID FROM 01/04/2010

241 Impact

- (1) This section applies when the regulator is considering—
 - (a) whether to award compensation, or
 - (b) the amount of compensation to award.
- (2) The regulator must take account of any information available to it about the financial situation of the registered provider.
- (3) The regulator must consider the likely impact of the compensation on the registered provider's ability to provide services.
- (4) In particular, the regulator must aim to avoid—
 - (a) jeopardising the financial viability of the registered provider,
 - (b) preventing the registered provider from honouring financial commitments, or
 - (c) preventing the registered provider from taking action to remedy the matters on the grounds of which the compensation might be awarded.

VALID FROM 01/04/2010

242 Warning

- (1) Before giving a compensation notice to a registered provider the regulator must give the provider a notice (a “pre-compensation warning”)—
 - (a) specifying grounds on which the regulator thinks compensation could be awarded,
 - (b) warning the provider that the regulator is considering awarding compensation to a specified person,
 - (c) including any indication that the regulator is able to give of the likely amount of any compensation, and
 - (d) explaining the effect of sections 243, 244(1) and (3) and 245.

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- (2) Before giving a pre-compensation warning the regulator must consult the person appointed by virtue of section 124 as the ombudsman for the scheme of which the registered provider is a member.
- (3) If the regulator gives a pre-compensation warning it must send a copy to—
 - (a) the HCA, and
 - (b) any other persons it thinks appropriate.
- (4) For the purposes of subsection (3)(b) the regulator shall consider, in particular, any person who provided information as a result of which the pre-compensation warning is given.
- (5) A pre-compensation warning must—
 - (a) refer to section 125 (voluntary undertaking), and
 - (b) indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, awarding compensation.
- (6) A pre-compensation warning may be combined with notice under one or more of sections 230, 248, 250 and 252.

VALID FROM 01/04/2010

243 Representations

- (1) A pre-compensation warning must specify a period during which the registered provider may make representations to the regulator.
- (2) The period must—
 - (a) be a period of at least 28 days, and
 - (b) begin with the date on which the registered provider receives the pre-compensation warning.
- (3) Representations may address—
 - (a) whether compensation should be awarded;
 - (b) the amount of any compensation that may be awarded.
- (4) After the end of the period specified under subsection (1) the regulator shall—
 - (a) consider any representations made, and
 - (b) decide whether to award compensation.

244 Enforcement

- (1) Compensation shall be treated as a debt owed to the person to whom it is awarded.
- (2) The Treasury may make regulations authorising the regulator—
 - (a) to award interest on compensation not paid during the period specified under section 240(2)(e);
 - (b) to award additional compensation where compensation is not paid during that period.
- (3) Interest and additional compensation shall be treated as compensation.

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- (4) Regulations under subsection (2)(a) may provide for an interest rate to be—
- (a) set by a specified person, or
 - (b) determined in accordance with the regulations.

Commencement Information

I2 S. 244(2)(4) in force at 1.4.2009 for specified purposes by S.I. 2009/803, **art. 7(d)**

VALID FROM 01/04/2010

245 Appeal

A registered provider who is given a compensation notice may appeal to the High Court against—

- (a) the award of compensation,
- (b) its amount, or
- (c) both.

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