

**EXPLANATORY MEMORANDUM TO
THE HOUSING AND REGENERATION ACT 2008 (MORATORIUM) (PRESCRIBED STEPS)
ORDER 2010**

2010 No. 660

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Part 2 of the Housing and Regeneration Act 2008 (“the 2008 Act”) makes provision for a new regulatory regime for providers of social housing. This instrument makes provision in relation to the moratorium process under Part 2.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is the first exercise of the powers in sections 144 and 145 of the 2008 Act.

4. Legislative Context

4.1 The Housing and Regeneration Act 2008 (Moratorium) (Prescribed Steps) Order 2010 is made under sections 144, 145 and 320 of the 2008 Act. The Order provides that any step to enforce security over land held by a registered provider of social housing is a prescribed step in relation to a moratorium.

4.2 The Order will come into force on 1st April 2010, which is the date when the remainder of Parts 1 and 2 of the 2008 Act will be brought into force by a separate Commencement Order.

5. Territorial Extent and Application

5.1 This Order extends to England and Wales but it applies to registered providers of social housing only, which are English bodies (as defined in section 79 of the 2008 Act).

6. European Convention on Human Rights

As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 In December 2006, the Government invited Professor Martin Cave to head an independent Review of Social Housing Regulation (“the Cave Review”). Professor Cave’s remit was to consider options for reform of the existing regulatory system including fundamental changes, and make recommendations to Government. His report, *Every Tenant Matters*, was published on 19 June 2007.

7.2 The Cave Review recommended the creation of a standalone, independent regulator with clear statutory objectives to put tenants at the heart of regulation and wider powers to set and enforce clear performance standards. The 2008 Act implemented the Cave Review’s recommendations, making provision for the establishment of the Regulator of Social Housing –

known as the Tenant Services Authority (“TSA”) – and its new powers. The TSA was established on 1 December 2008.

7.3 Prior to the establishment of the TSA, regulatory functions in relation to registered social landlords were exercised by the Housing Corporation. The 2008 Act provided for the move from the current regime operated by the Housing Corporation principally under the Housing Act 1996 to the new regime operated by the TSA principally under the 2008 Act. We intend to commence the new regulatory system provided by the 2008 Act on 1st April 2010.

7.4 The moratorium process offers an important protection for social housing tenants and public investment in the most serious of situations – when a registered provider is insolvent. Once the process is triggered, there is a moratorium on the disposal of a provider’s land for 28 working days. This provides an opportunity for the TSA to agree proposals with secured creditors, to put in place a rescue package.

7.5 Section 144 of the 2008 Act is designed to ensure that the TSA receives warning that a registered provider is about to become insolvent. It does this by providing that certain prescribed steps – which might trigger insolvency – are not effective unless the TSA has first been notified. Similarly, section 145 of the 2008 Act provides that a moratorium begins as soon as certain prescribed steps are taken.

7.6 This Order prescribes the steps for the purposes of those provisions as “any step to enforce a security over land held by a private registered provider of social housing.”

7.7 Given the importance of ensuring that both social housing tenants and public investment are protected, the Government does not wish to use the Order to reduce the scope of the steps defined in sections 144 and 145 of the 2008 Act.

Consultation

7.8 Ahead of the introduction of the Housing and Regeneration Bill, a consultation paper was issued in June 2007 which sought views on the roles and responsibilities of the proposed new social housing regulator. This consultation concluded in September 2007, and in January 2008 a summary of responses to this consultation exercise was published.

7.9 Additionally the Government has consulted the National Housing Federation informally on the policy that is reflected in this Order.

8. Consultation outcome

8.1 No concerns were raised on this instrument.

9. Guidance

9.1 We do not propose to issue any guidance for this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An impact assessment has not been prepared for this instrument. This Order is connected to the implementation of Part 2 of the 2008 Act. A final Impact Assessment for the 2008 Act was published in December 2008.

11. Regulating small business

11.1 These Regulations will not have an impact on small business.

12. Monitoring & review

12.1 DCLG will keep the moratorium process under review.

13. Contact

13.1 Alec Taylor at the Department for Communities and Local Government
Tel: 0303 444 3779 or e-mail: alec.taylor@communities.gov.uk can answer any queries regarding the instrument.