

Insolvency of registered providers of social housing

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Restructuring and Insolvency analysis: The Housing and Planning Act 2016 introduces a range of housing and planning related reforms, including a special administration regime for registered providers of social housing at risk of insolvency proceedings, which places their affairs under the management of a housing administrator appointed by the court. Kate Cook, senior knowledge lawyer in the Housing Finance Team at Addleshaw Goddard LLP, discusses the key features and objectives of housing administration.

What are the key features of housing administration?

Housing administration was introduced by Part 4, Chapter 5 of [Schedule 5](#) to the Housing and Planning Act 2016 ([HPA 2016](#)). It was the brainchild of the regulator of social housing (the regulator) which felt it needed wider reaching powers to deal with the insolvency of a large or complex private registered provider (RP) of social housing. This came about due to lessons learned from the near failure of Cosmopolitan Housing Group and RPs' increased diversification, debt levels and exposure to the housing market.

The key features of housing administration are:

- a housing administration order can only be made by a court in respect of an RP which is a company, registered society (including a community benefit society (CBS)) or charitable incorporated association (CIO)
- only the Secretary of State or, with the consent of the Secretary of State, the regulator may make an application to court for a housing administration order
- a housing administrator therefore cannot be appointed by creditors, whose enforcement powers remain broadly as under the existing [Housing and Regeneration Act 2008 \(HRA 2008\)](#) regime—but creditors cannot take enforcement action under [HRA 2008](#) during a housing administration. It is likely that this will prevent a run on floating charges from creditors which was a concern of the sector when the original draft Housing and Planning Bill would have enabled creditors to appoint an administrator over an RP out of court, thereby creating parallel ordinary and special administration regimes for the sector
- the housing administrator takes control of the whole of the business, assets and undertaking of the RP
- a housing administration is expected to be run broadly akin to an ordinary administration, subject to pursuance of the tailored objectives (explored further below)—the initial term will be 12 months (and may be extended) in line with ordinary administration
- the provisions of [HPA 2016, Pt 4](#), Ch 5 are expressed to apply to the whole of the UK—however, further clarification would be helpful before they were used in any jurisdiction given the different regulatory regimes in Wales, Scotland and Northern Ireland

What are the objectives of the housing administrator and which objective takes priority?

The housing administrator has two objectives. Objective 1 is to:

- rescue the RP as a going concern, or
- achieve a better result for the RP's creditors as a whole than would be likely if the RP were wound up (without first being in housing administration), or

- realise property in order to make a distribution to one or more secured or preferential creditors ([HPA 2016, s 97\(1\)](#))

Objective 2 is to ensure that the RP's social housing remains in the regulated housing sector (ie owned by an RP) ([HPA 2016, s 98](#)).

Objective 1 takes priority over Objective 2 but the housing administrator must work towards both objectives so far as possible ([HPA 2016, s 96\(2\)](#)).

The original drafting of the Housing and Planning Bill made retention of social housing stock in the sector the primary objective of a housing administration. This was amended in response to concerns raised by the sector that this would have prevented market value subject to tenancies being used as a valuation basis (as existing use would have had to be maintained)—this could have caused an adverse impact on asset cover tests, leading to a raft of defaults across the sector.

What powers are granted to the housing administrator to achieve their objectives?

The powers of the housing administrator are broadly similar to those an administrator has under an 'ordinary' administration of a company pursuant to the [Schedule B1](#) to the Insolvency Act 1986 ([IA 1986](#)).

[HPA 2016, Sch 5](#) applies a number of [IA 1986, Sch B1](#) provisions, tailored to RPs. However, [HPA 2016, Sch 5](#) applies only to RPs which are companies. Further regulations are required in order to formalise how a housing administration would be conducted in respect of an RP which is a CBS or CIO. [Draft](#) regulations have been laid before Parliament but not agreed (see further below).

How does the interim moratorium under HPA 2016 differ from the usual interim administration moratorium under IA 1986?

The two schemes are broadly similar, although the devil is in the detail so it cannot be assumed that they dovetail in all respects. Indeed, there will be differences between the approach for each of companies, CBSs and CIOs, which insolvency practitioners will need to be familiar with in the (hopefully unlikely) event that a housing administration order is required.

It is perhaps also worth considering the differences from a secured creditor's perspective between the housing administration regime and the [HRA 2008](#) moratorium.

Under [HRA 2008](#), secured creditors have a right of veto over any proposals made for the future of the RP. They do not have this in a housing administration, and a housing administration order also trumps the rights of secured creditors to take any step to enforce their security pending the end of the housing administration.

On the other hand, housing administration should offer a familiar regime with clear rules and objectives, established case law and expertise. In addition, there are arguments that a managed work-out will provide more stability and certainty for all concerned. Some may see this as preferable to a scramble to appoint Law of Property Act receivers (where there is no single security trustee) and the practical difficulties a Law of Property Act receiver could face in managing a large property portfolio without access to the whole business.

What powers does the Secretary of State have to help an RP which is in housing administration?

Aside from making the necessary secondary legislation under the [HPA 2016](#), the Secretary of State does not have any specific powers relating to the day-to-day management of a housing administration beyond making the application to court for a housing administration order (or

approving such an application by the regulator). Once a housing administration order is made, the process will for the most part be run by the housing administrator, an officer of the court and qualified insolvency practitioner, with the involvement of the court where necessary.

The Secretary of State does, however, have notable powers relating to the financing of housing administrations, including to:

- make grants or loans to the RP (in such value and on such terms as the Secretary of State considers appropriate)
- agree to indemnify persons (in whatever manner and on such terms as the Secretary of State considers appropriate) in respect of liabilities incurred in connection with the housing administrator carrying out its functions and any resulting loss or damage caused (subject to potential reimbursement by the RP)—this gives the housing administrator certainty of recovery of costs and expenses
- guarantee the repayment of any principal or interest by, or the discharge of any other financial obligation of, the RP in connection with the borrowing of any sum while in housing administration (subject to potential reimbursement by the RP)

Prior to an RP entering into housing administration, the Secretary of State also has the power to consent to the regulator waiving the 28-day notice period applicable to winding up petitions and other creditor action against the RP.

Is there an implementation date yet?

In short, no.

The [HPA 2016](#) put the broad framework for housing administration in place but it needs to be supplemented by regulations and rules.

The Regulations will apply housing administration to registered societies and CIOs ([HPA 2016, Sch 5](#) gave further details of the conduct of housing administration only in relation to companies). This is an important step given the majority of RPs are CBSs. A draft of the Insolvency of Registered Providers of Social Housing Regulations 2018 was laid in Parliament on 7 February 2018 but has not yet been agreed.

The rules are expected to provide the detail of how housing administration will work in practice but these are not yet in the public domain, having been delayed by factors, including the need to first implement the new Insolvency (England and Wales) Rules 2016, [SI 2016/1024](#).

Interviewed by Susan Ghaiwal

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