

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Tenth Delegated Legislation Committee

## DRAFT INSOLVENCY OF REGISTERED PROVIDERS OF SOCIAL HOUSING REGULATIONS 2018

*Wednesday 21 March 2018*

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**Sunday 25 March 2018**

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**The Committee consisted of the following Members:**

*Chair:* MR NIGEL EVANS

- |   |   |
|---|---|
| † Blackman, Bob ( <i>Harrow East</i> ) (Con)                  | † Lloyd, Tony ( <i>Rochdale</i> ) (Lab)                   |
| † Cruddas, Jon ( <i>Dagenham and Rainham</i> ) (Lab)          | † Masterton, Paul ( <i>East Renfrewshire</i> ) (Con)      |
| † Cunningham, Mr Jim ( <i>Coventry South</i> ) (Lab)          | Morden, Jessica ( <i>Newport East</i> ) (Lab)             |
| † Fitzpatrick, Jim ( <i>Poplar and Limehouse</i> ) (Lab)      | † Morgan, Stephen ( <i>Portsmouth South</i> ) (Lab)       |
| † Garnier, Mark ( <i>Wyre Forest</i> ) (Con)                  | † Raab, Dominic ( <i>Minister for Housing</i> )           |
| † Goodwill, Mr Robert ( <i>Scarborough and Whitby</i> ) (Con) | Smith, Angela ( <i>Penistone and Stocksbridge</i> ) (Lab) |
| † Grant, Mrs Helen ( <i>Maidstone and The Weald</i> ) (Con)   | † Tolhurst, Kelly ( <i>Rochester and Strood</i> ) (Con)   |
| † Jenkyns, Andrea ( <i>Morley and Outwood</i> ) (Con)         | † Williams, Dr Paul ( <i>Stockton South</i> ) (Lab)       |
| † Letwin, Sir Oliver ( <i>West Dorset</i> ) (Con)             |   |
- Claire Cozens, *Committee Clerk*
- † **attended the Committee**

# Tenth Delegated Legislation Committee

Wednesday 21 March 2018

[MR NIGEL EVANS *in the Chair*]

## Draft Insolvency of Registered Providers of Social Housing Regulations 2018

2.30 pm

**The Minister for Housing (Dominic Raab):** I beg to move,

That the Committee has considered the draft Insolvency of Registered Providers of Social Housing Regulations 2018.

It is an enormous pleasure and an honour to serve under your chairmanship, Mr Evans.

The regulations were laid before the House on 7 February 2018. Increasing the supply of homes is a top priority for the Government, and that includes increasing the number of homes for social and affordable rent to help people access decent housing in which to build and improve their lives. Since 2010, we have delivered more than 357,000 new affordable homes, including 257,000 affordable homes for rent. The Prime Minister recently announced an extra £2 billion of funding for affordable housing, which will increase the overall affordable homes programme budget to more than £9 billion. The new funding will support councils and housing associations to build more affordable homes where they are needed most—where families are struggling with rental costs and some are at risk of homelessness. Only last week, the Chancellor announced a further £1.67 billion to provide an extra 26,000 homes to further boost affordable housing in London.

Housing associations are a key part of the delivery of those new homes. Three things enable housing associations to borrow cheaply: a stable operating environment, a robust regulatory framework and the fact that there has been no default in the sector that has resulted in loss to lenders or investors. Insolvencies in the sector are rare. To date, there has only been one insolvency since the moratorium arrangements were introduced back in 1996. Both lenders and providers value very highly the no loss on default record of the sector, meaning that no lender has lost money in the event of a housing association insolvency. It is vital that we maintain that robust financial regime so that housing associations continue to deliver the homes we need.

We also want to protect tenants so that their homes are not put at risk should any landlord get into difficulty. That is why, in the Housing and Planning Act 2016, we introduced a special administration regime for the social housing sector. The regime will give the Secretary of State the power to apply to the court to appoint a housing administrator in the event of a private registered provider being at risk of insolvency proceedings. In introducing those changes, we were responding to concerns that the existing moratorium provisions were not suitable for modern, large, developing and complex housing associations that might conceivably get into financial difficulty. Although financial failure is extremely rare,

the housing association sector has changed significantly in recent years. The level of private finance has grown from £48 billion in 2012 to £70 billion last year.

Having introduced the main provisions in the 2016 Act, the regulations extend the housing administration framework in that Act to registered societies and charitable incorporated organisations. For those who are unfamiliar with those terms, a registered society is defined in the 2016 Act as having the same meaning as in the Co-operative and Community Benefit Societies Act 2014. It is a particular type of legal entity. Registered societies include co-operative societies, community benefit societies and pre-commencement societies registered before August 2014. They need to be registered with the Financial Conduct Authority. A charitable incorporated organisation is defined within the 2016 Act as a charitable incorporated organisation within the meaning of part 11 of the Charities Act 2011. Again, it is a particular type of legal entity. There are four main types of charitable structure: the incorporated organisation, the charitable company, which is limited by guarantee, the unincorporated association and the trust.

Due to drafting complexities, the provisions in the 2016 Act apply only to those housing associations that are companies. That is the key reason we are here today. There are 1,483 non-local authority private registered providers of social housing in England, providing 2.6 million homes; 885 charitable incorporated organisations with more than 2 million properties; 336 companies with 380,000 properties; and 262 registered societies with more than 95,000 properties.

A further piece of legislation will be needed before the special regime can be enacted: a statutory instrument setting out the rules that apply to administrators' conduct of a housing administration. That will follow the negative procedure.

Under the law at the moment, where a housing association gets into financial difficulty and steps are taken towards entering a formal insolvency procedure, a 28-day moratorium begins that restricts creditors' ability to enforce their security during that period. If the regulator cannot reach a solution with creditors during that 28-day period, or during an extension, creditors are able to call in loans and seek to recover their debts through the sale of assets, which can include social housing stock.

At least in theory, that could lead to a fire sale of social housing, meaning the stock would no longer be regulated and tenants would lose the protections of the social sector, including rent regulation. Therefore, the 2016 Act gives the Secretary of State, or the regulator of social housing with the Secretary of State's consent, the power to apply to the court to appoint a housing administrator. The administrator would manage the affairs, the business and the property of the registered provider of social housing for the duration of the housing administration.

**Jim Fitzpatrick (Poplar and Limehouse) (Lab):** I apologise for interrupting the Minister in mid-flow. I am not sure if it is the same in the rest of the country, but in London we are seeing a wave of amalgamations and takeovers of the smaller housing associations, apparently driven by Government policy, whether deliberate or unintentional. Is that part of the overall scheme?

Does that fit into the protection that the Government are trying to introduce in terms of insolvency, or is that totally separate?

**Dominic Raab:** The hon. Gentleman makes an important point. One reason we are introducing these regulations is precisely because the housing association sector has changed. That does include some of the mergers and acquisitions—the consolidations—that we have seen with housing associations. It is ultimately a balance, but there is a real benefit to housing associations realising economies of scale in the way he has described, because that has a stimulus factor on the supply of new homes, which must be a plus.

Equally, as a responsible Government, we want to be mindful of any risks involved. The regulations can certainly be seen as ensuring that we have a strong regulatory regime in place so that we glean the benefits of the behaviour that the hon. Gentleman described, but also ensure that we mitigate the risk as best we can.

As with any administration regime, the main objective would be to rescue the organisation or return money to creditors. The crucial difference is that a housing administrator would also have a second important objective, which is to retain as much of the social housing as possible within the regulated sector. I think that goes to the point the hon. Gentleman alluded to. In addition, a housing administrator would not be constrained by a 28-day timeframe and would have the time to investigate the business and find the best solution possible in order to meet the objectives. We are ensuring that the process is flexible enough and specific to the housing association sector.

**Bob Blackman (Harrow East) (Con):** I thank the Minister for giving way and apologise for interrupting his speech. The hon. Member for Poplar and Limehouse raised the issue of amalgamations taking place. Something else being encouraged by the Government is for housing associations to borrow more money and, therefore, stretch their capability to pay down their bills and debts. I seek the Minister's reassurance that, in the extremely rare event that a housing association were to go bankrupt or become insolvent, the tenants would be absolutely protected from losing their homes and from savage rent rises if the homes were sold in the private sector.

**Dominic Raab:** I thank my hon. Friend and, I think, vice-chairman of the Housing, Communities and Local Government Committee for his intervention. He makes an important point. As with the point made by the hon. Member for Poplar and Limehouse, my hon. Friend is right to raise this perfectly legitimate issue. The very reason for bringing in the regulations, which build on the primary legislation, is to ensure that we protect those social tenants in the way he described. The details of the regulations are technical and complex, but they hopefully serve precisely the objectives that the two hon. Members, who are from across the political divide, rightly raised. As with any administration regime, the main objective will be to rescue the organisation or to return money to its creditors. However, as I have said, it is crucial to protect the social tenants as well.

Turning to the specifics of the regulations, they extend the housing administration framework in the 2016 Act to registered societies and charitable incorporated organisations. They are complex but, simply put, they

give effect to two schedules that apply certain provisions of the Insolvency Act 1986—with necessary modifications, of course—to registered societies and charitable incorporated organisations. To illustrate the nature of those modifications, they involve things such as modifying the Insolvency Act where it uses “administrator” so that it would read “housing administrator”, for where the court has appointed a housing administrator. They are quite technical changes and adaptations, but none the less significant ones, for this sector.

We carried out an informal consultation with representatives from insolvency practitioners, valuers, UK Finance and private registered providers and lenders prior to the introduction of the 2016 Act and again before laying the regulations. That group represented the organisations that have the main interest in housing administration, and they are keen to have this regime in place. It is important to say that the housing associations and the lenders and creditors—both sides—think this is an important piece of legislation to have in place. A fuller public consultation was not carried out due to the technical nature of the regulations and because the process of housing administration will only be required in the event of a housing association facing insolvency, which, as I have said, is an extremely rare contingency, but none the less one that we want to cater for.

The regulations apply to the whole of the UK. We want the regime to cover social housing stock in England, including any stock held by housing associations registered with the social housing regulator for England but that, as legal entities, are registered in devolved Administrations. To be clear, the provisions in the 2016 Act and in the draft regulations will only apply if there are English properties at risk from a housing association becoming insolvent. However, if, for example, a Scottish housing association had properties in England at risk from an insolvency, this housing regime would apply to that particular housing association.

These are important regulations in continuing to safeguard investment in social housing and, critically, protection for tenants. I commend them to the Committee.

2.42 pm

**Tony Lloyd (Rochdale) (Lab):** May I, too, say what a joy it is to serve under your chairmanship, Mr Evans?

I reflected, as the Minister was speaking, that it is always good to be a lucky politician. The Minister will probably count himself as lucky. All his predecessors in the housing brief did not have the advantage of serving in a Government that have at last stumbled on the political importance of housing. In that sense, we all enjoyed the romantic introduction to what could otherwise have been a technical but important speech.

This is an important issue, and I reassure hon. Members—as much those on my own side as the Government's—that we will certainly not seek to divide the Committee on this occasion. Nevertheless, I will probe some of the issues that the Minister raised. While the draft regulations are technical and sensible, we need to know that they will actually do the job that we and the Minister want them to do.

In that context, the Minister rightly raised something that the Department tells us in the impact assessment: that a failure to protect the social housing assets of an insolvent provider would mean that tenants were at risk

[Tony Lloyd]

of losing their homes or having their rents increased to market levels; that much-needed affordable housing would be lost; and that the taxpayers' investment, through affordable housing grant, could be lost. We agree with the ambition to avoid that situation. In fairness, as was raised by my hon. Friend the Member for Poplar and Limehouse and the hon. Member for Harrow East, the protection of tenants is fundamental in this.

In that context, will the Minister clarify the operation of objective 1 on financial stewardship and objective 2 on the protection of tenants' rights? It is right and proper that we have those two objectives, but my concern is that if objective 1 takes precedence over objective 2, and if realising market value, possibly for taxpayers but certainly for creditors, becomes the dominant issue under it, how will we operationalise objective 2—the protection of tenants' rights and the transfer of any assets to another social housing provider? That will be the nub of the statutory instrument when it comes into operation. That is a technical point, but it would be helpful if the Minister talked us through exactly what that means.

Under any sensible structure, one of the duties placed on lenders is that they operate due diligence. Those lending to one of the companies caught under the statutory instrument have an obligation to protect their shareholders and owners—that is a legal duty—and to ensure that the housing company operates in a prudent fashion. Of course, the more we insure lenders against risk, the less due diligence is part of their motivating force, so it is important that creditors know they are responsible for ensuring that their lending to housing companies is prudent. I hope the Minister will comment on that.

My third point is perhaps the most important. When Cosmopolitan Housing Group almost failed in 2012, the regulator acted promptly and in a way that secured advantage both to the public weal and to the tenants of Cosmopolitan, who were transferred to the Sanctuary Housing Trust. That is the way the system ought to operate, and I congratulate those who were involved with it at the time. The best thing in such a situation is to ensure that we do not repeat Cosmopolitan's journey to self-destruction.

In 2014, Altair published a report, which was commissioned by the Minister's Department, looking at the lessons to be learned from Cosmopolitan, and it asked how we prevent housing associations from operating in an imprudent way that puts their organisation, and more importantly their tenants and public assets, at risk. That would potentially lead to the use of powers in this statutory instrument. Of course, we do not actually want the statutory instrument ever to be brought into operation. We want prevention, rather than remedy.

Altair's report came to a number of conclusions about how the regulator and the boards of housing companies should operate, and about what duties should be imposed on those companies. My question to the Minister—he may not have chapter and verse on this—is, how far can we be assured that the governance regime that let people down in the Cosmopolitan situation is not being replicated by housing associations up and down the country? That touches on the point that my hon. Friend the Member for Poplar and Limehouse

made. One of the drivers of this problem, to the cost of my erstwhile constituents, is housing associations that see their corporate objective to be growth, rather than growth that is consistent with their original purpose, which is to provide social and affordable housing for their tenants. We need to guard against such wrong ambitions, and we need to ensure that corporate structure and governance of housing associations is secure enough to guarantee that we protect tenants' rights and public assets.

**Sir Oliver Letwin** (West Dorset) (Con): I am following the hon. Gentleman entirely. Does he agree that the biggest exposure is one that the report does not dwell on—I am not quite sure why not—which is that housing associations that match liabilities to rent are doing so on the basis of an unusually low interest environment? They have quite large roll-overs of their debt, which occur at various times. One could imagine not just one, but a swathe of housing associations, if they have not managed their financing portfolios correctly, hitting a moment when interest rates, for some reason or other, rise unexpectedly. I am quite worried—I do not know whether the hon. Gentleman is—that that is not one of the things on which the regulator for social housing appears to be focusing at the moment.

**Tony Lloyd:** The right hon. Gentleman raises a very important point, because that is where risk comes in. Frankly, not every housing association has the same depth of experience as the right hon. Gentleman on these issues. There has to be the capacity to ensure that the regulator is in a position to secure the public interest against precisely that.

There is another risk. Although the right hon. Gentleman is right that borrowing against rental income is one form of exposure, a lot of housing associations have been asked to put themselves in this position. They accept that, in order to advance the interests of the housing association, they will build for sale and invest part of those proceeds in social housing. That is a legitimate and necessary operation for housing associations, but, of course, it is a different kind of risk from those that housing associations have been asked to consider in the past. Some will absorb the new culture well, but some may not. The question of financial risk is very real and that emphasises the point I was trying to make to the Minister. Given that prevention is better than remedy, we need guarantees that the regulator has absorbed the lessons of Cosmopolitan a few years back. In fairness, the regulator performed well at the time. However, having absorbed those lessons, we now know that across the whole piece of the housing association family we are measuring risk and are in a position to blow that early whistle, where appropriate.

There are three issues, essentially, for the Minister to address. First, how does objective 2—the transfer to another social housing landlord—operate with respect to the duties under objective 1? Secondly, how can we guarantee that tenants maintain tenancy rights, in terms both of the rent they pay and of the longevity of tenancies and so on? How do we guarantee that financial risk is being properly measured to prevent the need to use these regulations? Thirdly, the issue of due diligence is important. I look forward with interest to hearing the Minister's comments.

2.53 pm

**Jim Fitzpatrick:** It is a pleasure to serve under your chairmanship, Mr Evans. I want to reinforce the points made by my hon. Friend the Member for Rochdale and end up by addressing the question asked by the hon. Member for Harrow East about the security of residents—tenants—were things to go awry. In my part of the world, in Tower Hamlets, a proliferation and explosion of housing associations have arrived on the scene over the past 20 years. They are registered as social landlords, partly because of the restrictions on councils being able to borrow money to build homes.

In 1997, the Labour Government took the clear view that, with 2 million homes below the decency threshold, it was going to be a long, complicated task to change the rules of local government financing and house building, so we promoted housing associations, which did not have the same financial restrictions, to move into the vacuum and build, repair and refurbish. We spent billions—that is on the record—taking 1.5 million of those homes above the decency threshold, with new windows, new kitchens, new bathrooms, central heating, double glazing, security systems and the rest. Estates in Tower Hamlets in east London that had been neglected for decades are now model estates and mixed estates, with private sales subsidising new social homes and the refurbishing of all social homes. From my point of view, that was a huge success.

Subsequent policy since 2010, and most recently the Government's insistence that housing associations require a payment of 80% of local market rents, has meant that market rents around Canary Wharf in my constituency are way above what ordinary local people can afford. That has created great difficulty for housing associations. The Government's policy to reduce rents by 1% put a great strain on housing associations' budgets and future planning, so there has been a real tussle.

My question for the Minister is whether the regulations are totally separate from any concerns about collapses. Are they totally incidental to the mergers and acquisitions? He made the point about sharing back-office functions, which makes sense, given the pressures on public finances.

One of the downsides, however, is that local control has been sacrificed because of the mergers and acquisitions. Many of my housing associations were voted for by former council tenants, because they saw the improvements that they would get. Rather than having a mono-tenure, 95% council-housing monolith, tenants realised that they could have smaller local housing associations, where the line of communication between the tenants or leaseholders and the housing association's chief executive was two steps rather than seven, so the executives lost that total anonymity. Now, much bigger housing associations mean that the people who make the decisions are further removed from the tenants and leaseholders who pay the rents and service charges and who pay for the refurbishments.

As I have said, my final question goes back to that asked by the hon. Member for Harrow East. Will a threat or jeopardy be attached to the tenants and residents in the organisations if they suffer difficulties and have to take advantage of the new legislation? Is the legislation a totally separate initiative that was introduced by Government because they spotted a gap that needed to

be plugged, rather than a response to a fear that such regulations would have to be brought in anyway because of the current danger in the sector?

2.57 pm

**Dominic Raab:** We have had a good debate with some interesting technical interventions, and I am grateful to hear from hon. Members with a great deal longer experience of the sector than I have. The hon. Member for Rochdale made some kind remarks at the beginning and I appreciate his support of the regulations. He asked three specific questions, which I will endeavour to answer as best I can.

First, the hon. Gentleman asked how objective 1 and objective 2, as I described in the regulations, interact. Objective 1 is to rescue the business and service the creditors. Objective 2 is to look after housing, including social tenants. It is right that in one sense, the overriding objective 1 takes precedence over objective 2, because it is an insolvency proceeding. As a result, the housing administrator cannot do anything that results in a worse distribution to the creditors.

In all cases to date, the creditors have recognised that it was of the best value to them to save the properties in the sector. Having a social housing regulator and a specific regime for insolvency proceedings in the sector ensures that objective 2 shapes and influences the way in which objective 1 is delivered, which will provide materially greater protection for social tenants. If I understood correctly, that was key to what the hon. Gentleman was getting at.

The hon. Gentleman asked about lenders' responsibility and due diligence, which is an important point. It is crucial that lenders take the initiative and ensure that their due diligence is in place, not only in relation to commercial transactions but in the social housing sector.

There has been a swathe of new regulation since the financial crash. I do not think it is a zero-sum game—I know the hon. Gentleman was not suggesting it was—and we need to do both. The protections in relation to due diligence and the regulation of lenders are in place, and lenders support the extension of the 2016 Act through the regulations. We can do both of those things, and that will create an increased tier of protection for tenants.

The hon. Gentleman asked about the lessons learned from Cosmopolitan, and the previous report commissioned by my Department. The Cosmopolitan Housing Group was a large private registered provider of social housing. It owned or was managing more than 13,000 homes in the north-west. It had serious financial difficulties, as described by the hon. Gentleman, in part as a result of its involvement in non-social housing activity. None the less, the regulator at the time, the Homes and Communities Agency, carried out intensive regulatory engagement with Cosmopolitan to resolve the situation. That engagement concluded with Cosmopolitan being taken over by Sanctuary Housing, which was a large and more financially robust provider. The specific situation was dealt with, and afterwards, in terms of the lessons learned—the crux of what the hon. Gentleman was getting at—the Homes and Communities Agency carried out an independent review of its handling of the Cosmopolitan case. As best as possible in the aftermath of such a financial challenge, lessons have been learned.

*[Dominic Raab]*

I certainly agree with the hon. Gentleman that prevention is better than cure, and that is what the regulations will help achieve.

**Tony Lloyd:** Can we be clear, though? In the end, it is the regulator who acts as the public eyes and ears with respect to the housing associations, to make sure that their behaviour is consistent with common sense and prudence. Are we certain that the regulator has the capacity to do that? That is not a malicious question. These are new duties on the regulator, but the general duty to cover the extraordinary range of different types of housing associations is a real one. It is important that we know that the regulator has both the competence and the capacity. I am confident in the competence, but I do not know about the capacity.

**Dominic Raab:** That is a perfectly legitimate question. Of course, the regulations are partly about making sure that the regulator has the capacity and the legal powers to deal with the whole sector. I hope that was addressed in my opening remarks.

The hon. Member for Poplar and Limehouse spoke about the history of housing associations in his constituency with great knowledge and insight. He also spoke about the pressures on rent. I accept that, particularly in London and urban areas. In the past year, we have seen 217,000 new homes delivered, which is the highest number in all but one of the past 30 years. That is important not just if someone wants to own their own home, but because supply is a key factor in bringing down the

affordability of rent. There is other proposed legislation coming down the pipeline on the quality of rented accommodation as well.

The hon. Gentleman asked whether this is a protective measure. It is. It cannot be entirely dislocated from what is happening in the social sector and the evolution of that sector, so I suppose it is a response to both the regulatory gap and the evolving nature of the sector, making sure that as it grows and the structure of the sector changes, and we see the dividends in terms of supply and the economies of scale that build up, we also make sure that we have a careful safety net in place. Hopefully that is the right balance and the prudent course to take.

In conclusion, I say again that we imagine that the occasions when this legislation would be necessary, if ever, will be very rare. The introduction of the regime reflects the nature and the scale of the sector, which has changed and will continue to change. It is not a commentary on the state of the sector as it currently stands. Housing associations continue to be key partners in fixing the broken housing market that this Government are absolutely dedicated to addressing. It is right that we ensure the regulator has the tools and the capacity to do the job to maintain lender confidence and to protect tenants as far as possible should a potential insolvency occur.

*Question put and agreed to.*

*Resolved,*

That the Committee has considered the draft Insolvency of Registered Providers of Social Housing Regulations 2018.

3.4 pm

*Committee rose.*