

Draft Regulations laid before the Assembly under Article 61(2) of the Rates (Northern Ireland) Order 1977 for approval by resolution of the Assembly

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2010 No.

RATES

The Rates (Deferment) Regulations (Northern Ireland) 2010

Made - - - - 2010
Coming into operation 1st April 2010

The Department of Finance and Personnel makes the following Regulations in exercise of the powers conferred by Article 29A of the Rates (Northern Ireland) Order 1977⁽¹⁾.

Citation and commencement

1. These Regulations may be cited as the Rates (Deferment) Regulations (Northern Ireland) 2010 and shall come into operation on 1st April 2010.

Interpretation

2.—(1) In these Regulations—

“the 1977 Order” means the Rates (Northern Ireland) Order 1977;

“the 2003 Order” means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003⁽²⁾;

“agreement” means an agreement under regulation 3(1);

“agreement holder”, in relation to an agreement, means the person with whom the Department has entered into the agreement or, in the case of the death of an agreement holder, that person’s personal representatives;

“authorised person” means a person authorised by the Department in writing for the purposes of these Regulations;

“eligible person”, in relation to a qualifying hereditament, has the meaning assigned by regulation 3(2);

“hospital” has the same meaning as in Article 2 of the 2003 Order;

(1) [S.I. 1977/2157 \(N.I. 28\)](#); Article 29A was inserted by Article 10 of the Rates (Amendment) (Northern Ireland) Order 2006 ([S.I. 2006/2954 \(N.I. 18\)](#)) and substituted by section 5 of the [Rates \(Amendment\) Act \(Northern Ireland\) 2009 \(c. 8 \(N.I.\)\)](#)

(2) [S.I. 2003/431 \(N.I. 9\)](#)

“market value”, in relation to a hereditament, means the amount which that hereditament might reasonably expect to realise if it were sold with vacant possession on the open market by a willing seller free from any mortgage or charge;

“nursing home” has the same meaning as in Article 11 of the 2003 Order;

“qualifying hereditament” means, subject to paragraph (3), a hereditament which is a dwelling-house or, though not a dwelling-house, is used partly for the purposes of a private dwelling; and

“residential care home” has the same meaning as in Article 10 of the 2003 Order.

(2) For the purposes of Article 29A of the 1977 Order and these Regulations—

- (a) “occupier” has the meaning it has for the purposes of the 1977 Order;
- (b) “owner” means any person for the time being receiving or entitled to receive, on his own account, the rack rent of the hereditament in connection with which the word is used or who, if the hereditament were let at a rack rent, would so receive or be entitled to receive that rent;
- (c) a person is of pensionable age if he has attained the qualifying age for state pension credit as determined under section 1(2)(b) and (6) of the State Pension Credit Act (Northern Ireland) 2002(3).

(3) For the purposes of these Regulations a hereditament—

- (a) which is not in use; and
- (b) which the Department considers will, when next in use, be used wholly or partly for the purposes of a private dwelling,

shall be deemed to be a qualifying hereditament.

(4) In determining whether a person occupies a qualifying hereditament as his only or principal residence for the purposes of these Regulations, regard shall be had to any residence occupied by that person whether or not the residence is in Northern Ireland.

Deferment agreement

3.—(1) Subject to the conditions set out in Schedule 1 being satisfied, the Department may enter into an agreement with an eligible person for the payment of rates in respect of the capital value of a qualifying hereditament to be deferred.

(2) A person is an eligible person in relation to a qualifying hereditament if—

- (a) he is both the occupier and owner of that hereditament; and
- (b) a person to whom paragraph (3) applies.

(3) This paragraph applies to a person if the person is—

- (a) of pensionable age on 1st April in the year in which the agreement is entered into;
- (b) the partner of a person who is eligible to make an agreement under these Regulations in respect of the same hereditament by virtue of sub-paragraph (a); or
- (c) the surviving partner of a person who had made an agreement under these Regulations in respect of the same hereditament.

(4) In deciding whether to enter into an agreement with an eligible person, the Department shall consider whether the value of that person’s beneficial interest in the qualifying hereditament is, at any time, likely to be less than 30 per cent. of the market value of that hereditament.

(5) Paragraph (4)—

- (a) is without prejudice to the power of the Department to consider other matters before deciding whether to enter into an agreement with an eligible person;
- (b) shall not apply in the case of an eligible person who is the surviving partner of a person who had made an agreement under these Regulations in respect of the same hereditament, but such a person will not be entitled to defer the payment of rates for a particular year if condition 4(a) or (b) of Schedule 2 applies.

(6) Where an agreement (“the second agreement”) is made with an eligible person who is the surviving partner of a person who had made an agreement under these Regulations in respect of the same hereditament (“the first agreement”), the second agreement may provide for the transfer of the amount outstanding under the first agreement to the surviving partner.

(7) An agreement shall apply to the payment of the rates for the whole of the commencement year and where an amount in respect of such rates has already been paid by the agreement holder, the Department shall repay that amount.

(8) An agreement shall be in writing.

Conditions of an agreement

4.—(1) An agreement shall contain the conditions set out in Schedule 2 and may contain such other conditions as the Department thinks fit.

(2) In Schedule 2 “hereditament” means the hereditament which is the subject of the agreement.

Amount outstanding under an agreement to be a statutory charge

5.—(1) The amount outstanding under an agreement shall be a charge on and payable out of the estate of the agreement holder in the land constituting the hereditament.

(2) The charge created by paragraph (1) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Department by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the Department may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881(4) on mortgagees by deed accordingly.

(3) In this regulation “hereditament” means the hereditament which is the subject of the agreement.

Modifications of the 1977 Order

6.—(1) Articles 9(4) and (5) and 32 of the 1977 Order (apart from paragraph (7) of Article 32) shall not apply where the payment of a rate has been deferred by virtue of an agreement.

(2) Paragraph (1) is without prejudice to the jurisdiction of the High Court or the county court to enforce an agreement.

(3) Article 30 of the 1977 Order shall not apply to a payment made pursuant to an agreement.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Northern
Ireland Statutory Rule: The Rates (Deferment) Regulations (Northern Ireland) 2010 No. 63

Sealed with the Official Seal of the Department of Finance and Personnel on

A senior officer of the Department of Finance
and Personnel

SCHEDULE 1

Regulation 3(1)

Conditions to be satisfied before the Department can enter an agreement with an eligible person

1. The capital value of the qualifying hereditament shall not be less than £50,000.

2.—(1) Subject to sub-paragraph (2), the qualifying hereditament must be the only or principal residence of an eligible person, who is of pensionable age on 1st April in the year in which the agreement is entered into.

(2) The condition as to pensionable age in sub-paragraph (1) shall not apply in the case of an eligible person who is the surviving partner of a person who had made an agreement under these Regulations in respect of the qualifying hereditament.

3.—(1) An eligible person has made an application to the Department and has furnished the Department with such information as the Department may reasonably require.

(2) An eligible person shall have informed the Department of any change of circumstances affecting the application made or the information furnished under sub-paragraph (1).

4.—(1) Subject to sub-paragraph (2), there shall be no rates due and payable by an eligible person for a year earlier than that in which the agreement is entered into.

(2) Sub-paragraph (1) shall not apply in the case of rates due and payable in respect of the qualifying hereditament by an eligible person who is the surviving partner of a person who had made an agreement under these Regulations in respect of that hereditament.

5. Where an eligible person owns an estate in any of the land constituting the qualifying hereditament as a joint tenant or as a tenant in common, the other joint tenants or tenants in common must be eligible persons and enter into the agreement.

6.—(1) The value of the beneficial interest of an eligible person in the qualifying hereditament, as ascertained by the Department, shall not be less than 40 per cent. of an authorised person's estimate of the market value of the qualifying hereditament.

(2) Sub-paragraph (1) shall not apply in a case of an eligible person who is the surviving partner of a person who had made an agreement under these Regulations in respect of the qualifying hereditament, but such a person will not be entitled to defer the payment of rates for a particular year if condition 4(a) or (b) of Schedule 2 applies.

7. Any person, other than an eligible person, with an estate in any of the land constituting the qualifying hereditament shall have consented in writing to the agreement.

8. Any person who is in, or may go into, occupation of the qualifying hereditament (other than an eligible person) and who has attained the age of 17 years shall have—

- (a) consented in writing to the agreement; and
- (b) agreed in writing to postpone any rights or interest which he has, or may acquire in the future, in the qualifying hereditament to the rights and interest of the Department in that hereditament,

and an eligible person shall have warranted that all such persons have done so.

9. The eligible person shall have acknowledged in writing that—

- (a) he is aware that, on termination of the agreement, the qualifying hereditament may have to be sold in order to pay the amount outstanding under the agreement; and
- (b) he has been advised by the Department to seek independent legal and financial advice before entering into the agreement.

SCHEDULE 2

Regulations 3(5) and 4

Conditions of an agreement

1. The agreement holder shall keep the hereditament insured for the full cost of rebuilding or reinstatement and shall furnish to the Department, on demand, evidence of such insurance.

2. The agreement holder shall keep the hereditament in good and substantial repair and condition.

3.—(1) The agreement holder shall only be entitled to defer payment of the total amount of rates chargeable in respect of the hereditament for any year.

(2) Paragraph (1) shall not apply in respect of the year in which the agreement terminates.

4. The agreement holder shall not be entitled to defer the payment of rates for a particular year if—

- (a) the value of his beneficial interest in the hereditament, as ascertained by the Department, would, after the deferment, be less than 30 per cent. of an authorised person's estimate of the market value of the hereditament; or
- (b) the value, as ascertained by the Department, of his beneficial interest in the hereditament disregarding the amount outstanding under the agreement would, on 1st April of that year, be less than 40 per cent. of an authorised person's estimate of the market value of the hereditament on that date.

5.—(1) Compound interest shall accrue on a day to day basis on the amount outstanding under the agreement and the annual rate of interest used to calculate that accrual shall be—

- (a) if there is only one official dealing rate in force on a particular day, 1 per cent. below that rate;
- (b) if there is more than one official dealing rate in force on a particular day, 1 per cent. below the rate in force at the end of that day,

but in no case shall the annual rate of interest used to calculate the accrual be less than 1 per cent.

(2) In this condition “official dealing rate” means the rate announced from time to time by the Monetary Policy Committee of the Bank of England⁽⁵⁾ and for the time being in force as the official dealing rate, being the rate at which the Bank of England is willing to enter into transactions for providing short term liquidity in the money markets.

6.—(1) Subject to paragraphs (2) and (3), the agreement holder shall pay the Department the costs incurred, or to be incurred, by the Department in arranging for—

- (a) the registration of the charge created by regulation 5 of the Rates (Deferment) Regulations (Northern Ireland) 2010 in—
 - (i) the Land Registry or the Registry of Deeds; and
 - (ii) the Statutory Charges Register; and
- (b) the modification, vacation or cancellation of a registration mentioned in sub-paragraph (a).

(2) Where an agreement holder has paid a cost mentioned in paragraph (1), the Department may, if the agreement holder so requests, pay him an amount equal to that cost whereupon that amount shall be added, on the date that the Department pays it, to the amount outstanding under the agreement.

(5) The Monetary Policy Committee of the Bank of England was constituted on a statutory basis by section 13 of the Bank of England Act 1998 (c. 11)

(3) A cost mentioned in paragraph (1) may be added to the amount outstanding under the agreement if the cost is not paid to the Department within 28 days of the Department having made a demand in writing for payment of that cost by the agreement holder.

7. The Department may, if the agreement holder so requests, pay him an amount equal to—
- (a) any legal costs which he has paid in connection with the agreement; and
 - (b) any costs which he has paid in connection with obtaining information for the purposes of the agreement,

whereupon that amount shall be added, on the date the Department pays it, to the amount outstanding under the agreement.

8. The agreement holder shall not mortgage or charge the land constituting the hereditament or borrow further monies secured on that land without the consent in writing of the Department.

9.—(1) The agreement holder or, in the case of the death of an agreement holder, the agreement holder's personal representatives, shall inform the Department of any change of circumstances affecting the hereditament or the agreement within 28 days of the change of circumstances having occurred and, without prejudice to the generality of the foregoing, shall, in particular, inform the Department—

- (a) of any change of address of an agreement holder;
- (b) if an agreement holder becomes bankrupt, makes a composition or arrangement with his creditors or becomes subject to a bankruptcy restrictions order;
- (c) of the creation or assignment of any estate or interest in the land constituting the hereditament;
- (d) if an agreement holder ceases to occupy the hereditament as his only or principal residence;
- (e) if the hereditament is damaged to such an extent that its market value is affected;
- (f) of any alteration to the level of insurance held in respect of the hereditament;
- (g) of the death of an agreement holder.

(2) The agreement holder shall furnish the Department as soon as possible with any further information as the Department may reasonably require in relation to any change of circumstances referred to in paragraph (1).

10.—(1) The agreement holder may suspend deferment of the payment of rates for a particular year by notice in writing served on the Department before 31st December in the preceding year.

(2) A notice served under paragraph (1) shall, subject to paragraph (6), continue to have effect for subsequent years unless withdrawn by a further notice in writing served on the Department by the agreement holder before 31st December in the year preceding the first year for which the withdrawal of the suspension is to have effect.

(3) Where an agreement holder ceases to occupy the hereditament as his only or principal residence the Department may, without prejudice to condition 12(1)(h), suspend deferment of the payment of rates by notice in writing served on the agreement holder before the beginning of the first year for which the suspension is to have effect.

(4) A notice served under paragraph (3) shall continue to have effect until withdrawn by a further notice in writing served on the agreement holder by the Department.

(5) During a period of suspension of deferment of the payment of rates, interest shall continue to accrue on the amount outstanding under the agreement in accordance with condition 5.

(6) Where during a period of suspension of deferment of the payment of rates under paragraph (1), the agreement holder fails to pay any rates which are due and payable in respect of the hereditament,

the Department may, by notice in writing served on the agreement holder, determine that the suspension shall cease to have effect from the beginning of the year for which the rates are due and payable and accordingly, any rates which are paid in respect of the hereditament for that year shall be treated as a payment under the agreement.

(7) Paragraph (3) shall not apply in the case of an agreement holder whose only or principal residence is in a hospital, nursing home or residential care home.

11. The agreement holder may at any time, without penalty, repay all or part of the amount outstanding under the agreement.

12.—(1) Without prejudice to condition 13 and to the rights, privileges, obligations and liabilities acquired, accrued or incurred under the agreement, the Department shall be entitled to terminate an agreement with immediate effect by notice in writing served on the agreement holder where—

- (a) the whole of the amount outstanding under the agreement has been repaid;
- (b) an agreement holder dies and there is no other agreement holder whose only or principal residence is in—
 - (i) the hereditament; or
 - (ii) a hospital, nursing home or residential care home;
- (c) the hereditament or any interest in the hereditament is, in whole or part, sold or transferred by way of gift;
- (d) an agreement holder becomes bankrupt, makes a composition or arrangement with his creditors or becomes subject to a bankruptcy restrictions order;
- (e) an agreement holder or any other person has made a statement in connection with the agreement which is false or misleading in a material particular;
- (f) an agreement holder is in default of any obligation under the agreement and—
 - (i) has not rectified the default to the satisfaction of the Department within 28 days (or such other period as may be specified by the Department) of being served by the Department with a notice in writing specifying the default and requiring it to be remedied; or
 - (ii) the default is not capable of remedy;
- (g) the hereditament ceases to be a qualifying hereditament;
- (h) an agreement holder ceases to occupy the hereditament as his only or principal residence.

(2) A person is not an agreement holder for the purposes of paragraph (1)(b) by virtue of being a personal representative of an agreement holder.

(3) Paragraph (1)(h) shall not apply in the case of an agreement holder whose only or principal residence is in a hospital, nursing home or residential care home.

13.—(1) On termination of the agreement, the amount outstanding under the agreement shall, subject to paragraph (2), become immediately due and payable.

(2) The Department may arrange in exceptional circumstances for the amount outstanding under an agreement (including interest accruing after termination of the agreement) to be paid by instalments over such period as the Department shall determine where the Department is satisfied that, without such an arrangement, a person would suffer undue hardship.

(3) Where an arrangement is made under paragraph (2), the Department shall send the agreement holder a statement in writing specifying—

- (a) the period over which the instalments are to be paid;
- (b) the respective dates on which those instalments are to become due; and

(c) the respective amounts of those instalments,
together with a statement in writing that interest shall continue to accrue in accordance with condition 5 until the amount outstanding under the agreement has been paid in full.

(4) The Department may by a further statement in writing make such adjustments in the instalment amounts payable under paragraph (2) as may be necessary in consequence of any change in the rate of interest under condition 5.

(5) Where pursuant to an arrangement under paragraph (2), the amount outstanding under the agreement is payable by instalments, the amount outstanding shall, subject to paragraph (6), be recoverable only to the extent of each respectively of those instalments as and when it falls due.

(6) An arrangement under paragraph (2) shall terminate if any instalment is not paid on or before the date on which it becomes due and the Department serves notice in writing on the agreement holder that, by reason of the default, the arrangement is being treated as cancelled, and upon the service of any notice under this paragraph any amount outstanding under the agreement shall become immediately due and payable.

(7) Notwithstanding the termination of the agreement regulations 5 and 6 of the Rates (Deferment) Regulations (Northern Ireland) 2010 and conditions 1, 2, 5, 6, 8, 9 and 11 as well as this condition shall continue to apply until the amount outstanding under the agreement has been paid in full.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide that, subject to certain preconditions being satisfied, the Department of Finance and Personnel (“the Department”) may enter into an agreement with an eligible person for the deferment of the payment of domestic rates. An eligible person is a person who is both the occupier and owner of a hereditament in respect of which domestic rates are payable and—

- (a) who, on 1st April in the rating year in which the agreement is entered into, has attained the qualifying age for state pension credit; or
- (b) is the partner of a person mentioned in paragraph (a) or the surviving partner of a person who had made an earlier agreement with the Department under these Regulations in respect of the same hereditament.

Among the conditions to be satisfied before an agreement can be entered into are—

- (a) a condition that the capital value shown in the capital value list for the hereditament should not be less than £50,000;
- (b) a condition that, subject to exceptions, the hereditament should be the only or principal residence of an eligible person, who has attained the qualifying age for state pension credit on 1st April in the rating year in which the agreement is entered into;
- (c) a condition that the value of the beneficial interest of eligible persons in the hereditament, as ascertained by the Department, should not be less than 40 per cent. of the market value of the hereditament – this condition does not apply in the case of a surviving partner of a person who had made an earlier agreement in respect of the same hereditament.

The Regulations also provide—

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- (a) that an agreement shall contain the conditions set out in Schedule 2 to the Regulations and may contain such other conditions as the Department thinks fit;
- (b) that the amount outstanding under an agreement shall be a charge on the hereditament;
- (c) for the modification of various provisions of the Rates (Northern Ireland) Order 1977.