
STATUTORY INSTRUMENTS

1986 No. 797

HOUSING, ENGLAND AND WALES

The Defective Dwellings (Mortgagees) Regulations 1986

<i>Made</i>	- - - -	<i>1st May 1986</i>
<i>Laid before Parliament</i>		<i>9th May 1986</i>
<i>Coming into Operation</i>		<i>1st June 1986</i>

The Secretary of State for the Environment as respects England and the Secretary of State for Wales as respects Wales in exercise of the powers conferred on them by section 568 of the Housing Act 1985 and of all other powers enabling them in that behalf, hereby make the following regulations:—

PART I

INTERPRETATION ETC

Citation, Commencement and Interpretation

1.—(1) These regulations may be cited as the Defective Dwellings (Mortgagees) Regulations 1986 and shall come into operation on 1st June 1986.

(2) In these regulations “the Act” means the Housing Act 1985 and references to sections and to Schedules (without more) are to the sections of and Schedules to the Act.

PART II

MORTGAGEES GENERALLY

Application

2.—(1) This Part of these regulations applies where—

- (a) a mortgagor of a defective dwelling is eligible for assistance under Part XVI of the Act in respect of the dwelling, and
- (b) a power of sale (whether conferred by section 101 of the Law of Property Act 1925 or otherwise) is exercisable by the mortgagee, and
- (c) the mortgagee becomes mortgagee in possession of the defective dwelling,

but does not apply where a local housing authority has the right under Part III of these regulations to vest the dwelling in themselves.

(2) Where a mortgagee is a mortgagee in possession on the date on which these regulations come into operation he shall for the purpose of the regulations be treated as if he became the mortgagee in possession on that date.

Modification of the Act

3. Where this Part of these regulations applies Part XVI of the Act shall have effect as respects the dwelling subject to the modifications specified in regulations 4 to 18 below being modifications to confer rights on the mortgagee in place of those conferred by Part XVI on the mortgagor.

4. In section 527 for “A person” substitute “A mortgagee”; and (in paragraphs (a) and (c)) for “he” substitute “the mortgagor”.

5. In section 531(3)(a) after “section 527” insert “(as in force at the time of the acquisition)”.

6. At the beginning of section 533(1) insert “A mortgagee of”.

7. In section 535(2) for “he” substitute “the mortgagee” and for “his” substitute “the”.

8. Omit section 536(3).

9. For section 537(2) substitute—

“(2) If the applicant is a mortgagee he is entitled to assistance by way of repurchase.”.

10. In section 548(1) after “the person” insert “whose mortgagee is”.

11.—(1) For section 549(1) substitute—

“(1) This section applies where a mortgagee is entitled to assistance by way of repurchase in respect of a defective dwelling and there is a covenant relating to the interest of the mortgagor (“the owner”) in the dwelling whereby—

- (a) before the owner disposes of his interest he must offer to dispose of it to a public sector authority, or
- (b) in the case of a leasehold interest, the owner may require a public sector authority who are his landlord to accept a surrender of the lease but is otherwise prohibited from disposing of it.”.

(2) In section 549(2) after “housing authority” insert “or the mortgagee is not bound by the covenant,”.

(3) In section 549(3) for paragraph (a) substitute—

“(a) the mortgagee disposes of the owner's interest to the public sector authority in pursuance of the power of sale, and”,

and for the words from “the owner is entitled” to the end substitute—

“the mortgagee is entitled to be paid by the local housing authority the amount (if any) by which 95 per cent. of the defect-free value exceeds the consideration for the disposal, and the amount so paid shall be treated as money received by the mortgagee arising from the sale.”.

12.—(1) In section 550(1) after “he” (in both places where that word appears) insert “or, if the owner is not the mortgagee, the mortgagee”, and after “his” (in paragraph (b)) insert “or the mortgagee's”.

(2) At the end of the section add—

“(7) Any amount paid by the local housing authority under this section to a mortgagee shall be treated as money received by the mortgagee arising from the sale.”.

13. In section 551 for “the owner” (wherever these words appear) substitute “the applicant”.

14. At the beginning of section 552(1) insert “The mortgagee of”.

15. In section 553(1)(b), section 554(1)(c) and section 555(1)(e) after “person” insert “whose mortgagee is”.

16. At the end of section 565 add—

“(3) Where a mortgagee becomes eligible for assistance in respect of a defective dwelling, this Part applies as if anything done (or treated by virtue of subsection (1) as done) by or in relation to the person who was previously so eligible had been done by or in relation to the mortgagee; but if a notice under section 540 (Notice of determination) had been served stating that the applicant was entitled to assistance by way of reinstatement grant then—

- (a) if the qualifying work had not been commenced before the mortgagee became eligible for assistance, that notice shall be regarded as not having been served (and the authority shall comply again with sections 537 and 540), and
- (b) if the qualifying work had been commenced before the mortgagee became eligible for assistance that notice shall continue in force (notwithstanding section 537(2)) but section 546 (Repayment of grant for breach of condition) shall apply to the mortgagee only in respect of instalments paid to him.”.

17. In section 568(6) for “section” substitute “Part”.

18. In paragraph 1 of Schedule 20 after “the person” insert “whose mortgagee is”.

PART III

VESTING BY A MORTGAGEE WHO IS THE PURCHASING AUTHORITY

Application

19.—(1) This Part of these regulations applies where—

- (a) a mortgagor of a defective dwelling is eligible for assistance under Part XVI of the Act in respect of the dwelling, and
- (b) a power of sale (whether conferred by section 101 of the Law of Property Act 1925 or otherwise) is exercisable by the mortgagee, and
- (c) the mortgagee becomes mortgagee in possession of the defective dwelling, and
- (d) the mortgagee is the purchasing authority,

but does not apply where section 452 (vesting of house in authority entitled to exercise power of sale) applies.

(2) Where a mortgagee is a mortgagee in possession on the date on which these regulations come into operation he shall for the purpose of the regulations be treated as if he became the mortgagee in possession on that date.

Modification of Schedule 17

20.—(1) Where this Part of these regulations applies the mortgagee shall have the right by deed to vest the dwelling in themselves and the provisions of Schedule 17 shall apply with respect to the vesting subject as provided below.

(2) In its application to a vesting in pursuance of the right given by these regulations Schedule 17 shall have effect as if—

- (a) the words “if the county court gives it leave to do so” in sub-paragraph (1) of paragraph 1, and sub-paragraphs (2) and (3) of that paragraph, were omitted;
- (b) references to “the house” were references to “the dwelling”.

(3) The vesting of a dwelling in pursuance of the right given by these regulations shall be treated as a relevant disposal for the purposes of—

- (a) the provisions of Parts II and V of the Act relating to the covenant required by section 35 or 155 (repayment of discount on early disposal), and
- (b) any provision of the conveyance or grant of the dwelling to the like effect as the covenant required by those sections.

PART IV GENERAL

Modification of power of sale

21. Where Part II or III of these regulations applies the power of sale in question and any enactment relating to the power of sale shall have effect subject to such modifications (if any) as are necessary to enable full effect to be given to these regulations and to the Act as modified by these regulations.

Payment in respect of vesting of a defective dwelling

22.—(1) Where a defective dwelling is vested in a mortgagee in pursuance of—

- (a) section 452 (Vesting of house in authority entitled to exercise power of sale), or
- (b) Part III of these regulations,

Schedule 17 (both as enacted and as applied by these regulations) shall have effect subject to the following provisions in this regulation.

(2) The value referred to in paragraph 3(2) of the Schedule shall be 95 per cent. of the price there mentioned, but the sale there referred to shall be on the additional assumption that none of the defective dwellings to which the designation in question relates is affected by the qualifying defect.

Exchequer contribution on vesting of defective dwelling

23. Section 569 shall be modified by the addition of the following subsection—

“(7) Where a defective dwelling is vested in an authority under either—

- (a) section 452 (Vesting of house in authority entitled to exercise power of sale), or
- (b) Part III of the Defective Dwellings (Mortgagees) Regulations 1986 (Vesting by a mortgagee who is the purchasing authority),

this section shall apply as if references to the local housing authority were references to the authority in which the dwelling is vested and as if subsection (4)(b) were replaced by the following—

“(‘(b) in the case of a vesting, the amount of the fund appropriated under paragraph 3 of Schedule 17 less the amount which would have been so appropriated had regulation 22 of the Defective Dwellings (Mortgagees) Regulations 1986 not been made.’”

29th April 1986

Kenneth Baker
Secretary of State for the Environment

Signed by authority of the Secretary of State

1st May 1986

Wyn Roberts
Parliamentary Under Secretary of State
Welsh Office

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EXPLANATORY NOTE

Under Part XVI of the Housing Act 1985 an owner of a defective dwelling (one in a class designated by the Secretary of State because the buildings are defective by reason of their design or construction) can, if the appropriate conditions are fulfilled, require the local housing authority to give him a grant to reinstate the dwelling or, sometimes, require the authority to repurchase it from him at 95 per cent. of a “defect-free” price.

These regulations apply where an owner of such a dwelling has defaulted on a mortgage on it and the mortgagee is both entitled to sell the dwelling and is in possession of it. Regulations 3 to 18 give the mortgagee the right to require the local housing authority to repurchase the dwelling at 95 per cent. of the “defect-free” price (if the appropriate conditions are fulfilled) instead of the mortgagee having to sell it on the open market.

Where the mortgagee is a public sector authority, Part III of the regulations enables the defective dwelling to be vested in the mortgagee instead of being sold. By regulation 22 the owner is to be credited with 95 per cent. of the “defect-free” value both in this case and where a defective dwelling is vested under section 452 of the Act (vesting of house in authority entitled to exercise power of sale).

The Secretary of State is empowered by section 569 of the Act to provide exchequer assistance to authorities which incur expense in giving reinstatement grants or in repurchasing defective dwellings. In the case of repurchase, exchequer assistance is based on the difference between the amount paid (95 per cent. of the defect-free value) and the value of the dwelling in its defective state. Regulation 23 modifies section 569 to enable an equivalent exchequer contribution to be paid in the case of the vesting of a defective dwelling under Part III of the regulations or section 452 of the Act.