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## STATUTORY INSTRUMENTS

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# 1981 No. 156

## Housing (Northern Ireland) Order 1981

### PART III

#### DEVELOPMENT FUNCTIONS OF THE EXECUTIVE

##### [<sup>F1</sup>CHAPTER II

##### CLEARANCE AREAS AND CLEARANCE, DEMOLITION AND CLOSING ORDERS

**F1** 1992 NI 15

#### **Declaration of clearance areas**

**32.**—(1) Where the Executive is satisfied as respects any area—

- (a) that the houses in that area are unfit for human habitation, or are by reason of their bad arrangement, or the narrowness or bad arrangement of the streets, dangerous or injurious to the health of the inhabitants of the area, and that the other buildings (if any) in the area are for a like reason dangerous or injurious to the health of the said inhabitants; and
- (b) that, having regard to Article 46A, the most satisfactory course of action is the demolition of all the buildings in the area;

the Executive shall define that area on a map so as to exclude from the area any building which is not unfit for human habitation or dangerous or injurious to health, and shall declare the area so defined to be a clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of this Chapter.

(2) The Executive shall send notification of any declaration under this Article to—

- (a) the Department; and
- (b) the district council for the local government district in which the clearance area lies;

together with a statement of the number of persons who, on a day to be specified in the statement, occupied the buildings comprised in the clearance area.

(3) So soon as may be after the Executive declares an area to be a clearance area, it shall proceed to secure the clearance thereof by ordering the demolition of the buildings in the area.

(4) Where the Executive is of the opinion that an area should cease to be a clearance area, it may, with the consent of the Department, make a declaration to that effect and the area shall cease to be a clearance area from the date of that declaration.

#### **Clearance orders**

**33.**—(1) Where, as respects any clearance area, the Executive determines to order any buildings to be demolished, it shall make and submit to the Department, for confirmation by it, a clearance order ordering the demolition of each of those buildings.

*Status: Point in time view as at 01/01/2006.*

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(2) Part I of Schedule 4 shall have effect with respect to clearance orders.

### **Exclusion orders**

**34.**—(1) Where the Executive is satisfied that a house comprised in a clearance order, which has been confirmed by the Department—

- (a) has been made fit for human habitation, or
- (b) will be made fit for human habitation if excluded from the clearance area,

the Executive may make and submit for confirmation by the Department an exclusion order excluding the house from the clearance area and modifying or revoking the clearance order accordingly.

(2) If it appears to the Executive that any house or other building, which has not been included in a clearance order, would not have been included in the clearance area but for the inclusion in the clearance area of the house to be excluded under paragraph (1), the exclusion order shall provide that that building shall also be excluded from the clearance area.

(3) An exclusion order may be made notwithstanding that the effect of the order in excluding any building from the clearance area is to sever that area into 2 or more separate and distinct areas, and in any such case Part I of Schedule 4 shall apply as if those areas formed one clearance area.

(4) For the purposes of this Article the Executive may accept an undertaking from an owner of the building, or any other person who has or will have an estate in the building and in particular undertakings concerning—

- (a) the works to be carried out to make the building fit for human habitation, and the time within which the works are to be carried out, and
- (b) the repayment of any sums paid by the Executive under—
  - (i) Chapter II of Part V,
  - (ii) section 36 or 37 of the Housing Act (Northern Ireland) 1971, or
  - (iii) section 2 of the Housing Act (Northern Ireland) 1961

(5) Part II of Schedule 4 shall have effect in relation to exclusion orders.

### **Demolition orders**

**35.**—(1) Where the Executive is satisfied that a house, which is not a flat, is unfit for human habitation and that, in accordance with Article 46A, taking action under this paragraph is the most satisfactory course of action, the Executive shall make a demolition order with respect to the house concerned.

(2) Where the Executive is satisfied that, in a building containing one or more flats, some or all of the flats are unfit for human habitation and that in accordance with Article 46A, taking action under this paragraph is the most satisfactory course of action, the Executive shall make a demolition order with respect to the building.

(3) Where the Executive has made a demolition order, it shall serve a copy of the order on—

- (a) any owner of the premises, and
- (b) so far as it is reasonably practicable to ascertain such persons, every mortgagee of the premises.

(4) Where the premises in respect of which a demolition order is made are a building containing flats, any reference in sub-paragraph (a) or (b) of paragraph (3) to “the premises” includes a reference to the flats in the building concerned.

(5) Subject to Article 43, where the Executive makes a demolition order the order shall require—

- (a) that the premises be vacated within a period, not being less than 28 days from the date on which the order becomes operative, and
- (b) that the premises be taken down and removed—
  - (i) within 6 weeks after the expiration of the period specified in sub-paragraph (a), or
  - (ii) if the premises are not vacated within that period, within 6 weeks after the date on which it is vacated, or
  - (iii) within such longer period as the Executive may specify in the circumstances.

(6) Where, in accordance with Article 44, a demolition order becomes operative, the owner of the premises to which it applies shall take down and remove the premises within the time specified in the order; and, if the premises are not taken down and removed within that time, the Executive shall enter and take down and remove the premises and sell the materials thereof.

(7) Paragraphs 10 and 11 of Schedule 4 shall apply to any expenses incurred by the Executive under paragraph (6) and to any surplus remaining in the hands of the Executive.

### **Recovery of possession of buildings subject to clearance or demolition order**

**36.**—(1) Where, in accordance with paragraph 7 of Schedule 4 or, as the case may be, Article 44, a clearance order or demolition order becomes operative, the Executive shall serve upon the occupier of any building to which the order relates a notice—

- (a) stating the effect of the order,
- (b) specifying the date by which the building is to be vacated, and
- (c) requiring him to quit the building before the said date or before the expiration of 28 days from the service of the notice, whichever may be the later.

(2) If, at any time after the date on which a notice under paragraph (1) requires a building to be vacated, any person is in occupation of the building, the Executive or any owner of the building may bring proceedings in the same manner as ejection proceedings under Part VI of the Magistrates' Courts (Northern Ireland) Order 1981 and the court shall, on proof of the service of the notice and of such occupation, order vacant possession of the building to be given to the Executive or owner, but, in doing so, shall stay the issue of the decree for possession for a period of not less than 2 weeks or more than 4 weeks from the date of the order.

(3) Any person who, knowing that a clearance or demolition order is in operation in relation to any building, enters into occupation of that building or of any part thereof after the date by which the order requires that building to be vacated or after the date on which the building is in fact vacated, whichever is the earlier, or permits any other person to enter into such occupation after that date, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale and to a further fine not exceeding £10 for every day or part of a day on which the occupation continues after conviction.

### **Determination of demolition orders**

**37.**—(1) Where—

- (a) the Executive has made a demolition order in respect of premises and the premises have not yet been taken down and removed;
- (b) the owner of the premises, or any other person who in the opinion of the Executive is, or will be, in a position to put his proposals into effect, submits proposals to the Executive for the reconstruction, enlargement or improvement of the premises; and
- (c) the Executive is satisfied that the result of the work will be the provision of one or more houses fit for human habitation,

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the Executive may, in order that the proposed works may be carried out, by notice served on the owner or occupier extend for such period as it may specify the time within which the premises are required by the demolition order to be taken down and removed and such time may be further extended by the Executive as occasion may require.

(2) Where the Executive is satisfied that premises in respect of which a demolition order has been made have been rendered fit for human habitation or have been replaced, the Executive may make an order determining the demolition order.

(3) Where the Executive—

- (a) extends or further extends the time mentioned in paragraph (1), or
- (b) makes an order under paragraph (2),

it shall serve a copy of the notice or order upon every person upon whom it was required to serve a copy of the demolition order.

(4) Where the Executive makes an order under paragraph (2), any payments made under Chapter II of Part V or under Part I of the Housing Act (Northern Ireland) 1961 by the Executive shall, unless the Department otherwise directs, be repayable to the Executive and shall be recoverable as a civil debt due to it.

### **Demolition orders: substitution of closing orders to permit use otherwise than for human occupation**

**37A.**—(1) If an owner of any premises in respect of which a demolition order has become operative or any other person who has an interest in the premises, submits proposals to the Executive for the use of the premises for a purpose other than human habitation, the Executive may if it thinks fit to do so determine the demolition order and make a closing order in respect of the premises.

(2) The Executive shall serve notice that the demolition order has been determined, and a copy of the closing order, on every person upon whom it would be required by paragraph (3) of Article 35 to serve notice of a demolition order.

### **Closing orders**

**38.**—(1) Where the Executive is satisfied that a house is unfit for human habitation and that, in accordance with Article 46A, taking action under this paragraph is the most satisfactory course of action, the Executive shall make a closing order with respect to the house.

(2) Where the Executive is satisfied that, in a building containing one or more flats, some or all of the flats are unfit for human habitation and that, in accordance with Article 46A, taking action under this paragraph is the most satisfactory course of action, the Executive shall make a closing order with respect to the whole or part of the building.

(3) In deciding for the purposes of paragraph (2)—

- (a) whether to make a closing order with respect to the whole or part of the building; or
- (b) in respect of which part of the building to make a closing order;

the Executive shall have regard to such guidance as may from time to time be given by the Department under Article 46A.

(4) Where the Executive would but for this Article make a demolition order in respect of a house or building—

- (a) it may, if it considers it inexpedient to do so having regard to the effect of the demolition of that house or building upon any other building, and
- (b) it shall, if the house or building in respect of which it proposes to make the demolition order is a listed building or a building within a conservation area;

in lieu of making such an order, make a closing order prohibiting the use of the house or building for any purpose other than one approved by the Executive.

(5) In paragraph (4) “building”, “listed building” and “conservation area” have the meaning assigned to them in the Planning (Northern Ireland) Order 1991.

(6) The Executive shall serve a copy of the closing order upon every person upon whom it would have to serve such a copy if the order were a demolition order.

(7) Where a closing order has been made in respect of a house or the whole or part of a building, the Executive may—

- (a) in a case where paragraph (4)(b) applies, after consultation with the Department, or
- (b) in any other case, at any time,

revoke that order and make a demolition order in respect of that house or as the case may be, the whole of that building.

### **Determination of closing orders**

**39.**—(1) Where the Executive is satisfied that a house or the whole or part of a building in respect of which a closing order has been made, has been rendered fit for human habitation or replaced, the Executive may make an order determining the closing order.

(2) Where an order is made under paragraph (1), the Executive shall serve a copy of that order upon every person upon whom it was required to serve a copy of the closing order.

(3) Article 37(4) shall have effect in relation to the determination of a closing order in the same manner as it applies where a demolition order is determined.

### **Use of premises in contravention of closing order**

**40.** Any person who, knowing that a closing order has become operative and applies to any premises, uses those premises in contravention of that order or permits them to be so used, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale and to a further fine not exceeding £10 for every day on which he so uses them, or permits them to be so used, after conviction.

### **Repair notices**

**41.**—(1) Subject to paragraph (2), where the Executive is satisfied that, having regard to Article 46A, any house or part of a house is unfit for human habitation and that serving a notice under this paragraph is the most satisfactory course of action, it shall serve upon the owner of the house a notice requiring him, within such reasonable time, not being less than 21 days, as may be specified in the notice, to execute the works specified in the notice and stating that, in the opinion of the Executive, those works will render the house or, as the case may be, that part thereof, fit for human habitation.

(2) Where the Executive is satisfied that, having regard to Article 46A, a house which is a flat is unfit for human habitation by reason of the defective condition of a part of the building outside the flat, it shall serve a repair notice upon the owner of the building, if it is satisfied that serving such a notice is the most satisfactory course of action.

(3) In addition to serving a notice on the owner of the house, the Executive may also serve a copy of the notice upon any other person having an estate in the house.

(4) In this Article “house” includes a house in multiple occupation, and in the case of such a house a repair notice may be served upon the person managing the house instead of upon the owner.

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### **Effect on Article 41 of proposal to include premises in group repair scheme**

**41A.**—(1) The Executive shall not be under a duty to serve a repair notice under paragraph (1) or, as the case may be, paragraph (2) of Article 41, if, at the same time as it satisfies itself as mentioned in the paragraph in question, it determines—

- (a) that the premises concerned form part of a building which would be a qualifying building in relation to a group repair scheme; and
- (b) that, within the period of 12 months beginning at that time, it expects to prepare a group repair scheme in respect of the qualifying building (in this Article referred to as a “relevant scheme”);

but where, having so determined, the Executive does serve such a notice, it may do so with respect only to those works which, in its opinion, will not be carried out to the premises concerned in pursuance of the relevant scheme.

(2) Subject to paragraph (3), paragraph (1) shall apply in relation to the premises concerned from the time referred to in paragraph (1) until the date on which the works specified in a relevant scheme are completed to the Executive's satisfaction (as certified under<sup>[F2]</sup> Article 96(1) of the Housing (Northern Ireland) Order 2003].

(3) Paragraph (1) shall cease to have effect in relation to the premises concerned on the day when the first of the following events occurs, that is to say,—

- (a) the Executive determines not to submit a relevant scheme to the Department for approval; or
- (b) the expiry of the period referred to in paragraph (1)(b) without either the approval of a relevant scheme within that period or the submission of a relevant scheme to the Department within that period; or
- (c) the Department notifies the Executive that it does not approve a relevant scheme; or
- (d) the Executive ascertains that a relevant scheme, as submitted or approved, will not, for whatever reason, involve the carrying out of any works to the premises concerned.

(4) In any case where, in accordance with paragraph (1), the Executive serves a repair notice under paragraph (1) or, as the case may be, paragraph (2) of Article 41 with respect only to certain of the works which would otherwise be specified in the notice, paragraph (1) of that Article shall have effect with respect to the notice as if after the word “notice” there were inserted the words “when taken together with works proposed to be carried out under a group repair scheme”.

(5) In this Article “group repair scheme” and “qualifying building” have the same meaning as in<sup>[F2]</sup> Chapter III of Part III of the Housing (Northern Ireland) Order 2003].

**F2** 2003 NI 2

### **Offence of failing to comply with a repair notice**

**41B.**—(1) Where the person upon whom a repair notice in respect of a house has been served intentionally fails to comply with the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) The obligation to execute the works specified in the notice continues notwithstanding that the period for completion of the works has expired.

(3) Article 42(1) shall have effect to determine whether a person has failed to comply with a notice and what is the period for completion of the works.

(4) The provisions of this Article are without prejudice to the exercise by the Executive of the powers conferred by Article 42.

## **Enforcement of repair notices**

**42.**—(1) If a notice under Article 41 is not complied with, then, after the expiration of the time specified in the notice, or, if an appeal has been made against the notice and upon that appeal the notice has been confirmed with or without variation, after the expiration of 21 days from the final determination of the appeal, or of such longer period as the court in determining the appeal may fix, the Executive may itself do the work required to be done by the notice or, as the case may be, by the notice as varied by the court.

(2) Where the Executive is about to enter a house under paragraph (1) for the purpose of doing any work it shall give to the owner and to the occupier of the house notice in writing of its intention to do so.

(3) Subject to paragraph (4), any expenses incurred by the Executive under this Article, together with interest at the prescribed rate from the date when a demand for the expenses is served until payment, may be recovered by the Executive summarily as a civil debt from the owner of the house.

(4) Where the Executive claims to recover any expenses from a person as being the owner of the house and that person proves that he—

- (a) is receiving the rent merely as agent or trustee for some other person; and
- (b) has not, and since the date of the service on him of the demand has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the Executive;

his liability shall be limited to the total amount of the money which he has, or has had, in his hands.

(5) Any expenses and interest due to the Executive under this Article shall, until recovered, be deemed to be charged on and payable out of the estate in the land, in relation to which they have been incurred, of the owner of the land and of any person deriving title from him.

(6) The charge created by paragraph (5) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Executive by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the Executive may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgages by deed accordingly.

## **Appeals against demolition orders, closing orders, etc.**

**43.**—(1) Any person aggrieved by—

- (a) a demolition order or refusal to determine such an order;
- (b) a notice or refusal to issue a notice under Article 37(1) extending or further extending the time within which premises are to be taken down or removed;
- (c) a closing order or refusal to determine such an order; or
- (d) a repair notice;

may, within 21 days from the date of the service of the notice or copy of the order or, as the case may be, from the service of notification of the refusal, appeal to the county court; and no steps shall be taken by the Executive to enforce any notice or order against which an appeal is brought before the appeal has been finally determined.

(2) An appeal shall not lie under paragraph (1)(a) or (c) at the instance of a person who is in occupation of the premises to which the order relates under a lease or agreement of which the unexpired term does not exceed one year.

(3) Without prejudice to the generality of paragraph (1), it shall be a ground of appeal—

- (a) in the case of a demolition order, that making a closing order or serving a repair notice is the most satisfactory course of action;

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- (b) in the case of a closing order, that making a demolition order or serving a repair notice is the most satisfactory course of action;
- (c) in the case of a repair notice, that making a demolition order or closing order is the most satisfactory course of action;

and, where the grounds on which an appeal is brought are or include that specified in sub-paragraph (a), (b) or (c), the court, on hearing the appeal, shall have regard to any guidance given to the Executive under Article 46A.

(4) On an appeal under this Article, the county court may confirm or quash or vary the notice, order or decision appealed against as the court considers fit.

(5) Where an appeal is allowed against a demolition order, a closing order or repair notice and the reason or one of the reasons for allowing the appeal is that specified in sub-paragraph (a), (b) or as the case may be, (c) of paragraph (3), the judge shall, if requested to do so by the appellant or the Executive, include in his judgment a finding to that effect.

### **Operative date of demolition orders, closing orders and repair notices**

**44.**—(1) Any notice or order against which an appeal may be brought under Article 43 shall, if no such appeal is brought, become operative on the expiration of the period of 21 days mentioned in Article 43(1) and shall be final and conclusive as to any matters which could have been raised on such an appeal, and any such notice or order against which such an appeal is brought shall, if and so far as it is confirmed by the county court or the Court of Appeal, become operative as from the date of the final determination of the appeal.

(2) For the purposes of Article 43 and this Article, the abandonment of an appeal shall be deemed to be a final determination thereof, having the like effect as a decision confirming the notice, order or decision appealed against, and an appeal shall be deemed to be finally determined on the date on which the decision of the Court of Appeal is given, or, in a case where an appeal from the county court is not brought to the Court of Appeal, upon the expiration of the period within which such an appeal might have been brought.

### **Effect of Rent (Northern Ireland) Order 1978**

**45.** Nothing in the Rent (Northern Ireland) Order 1978 shall be deemed to affect the provisions of this Chapter relating to obtaining possession of a house with respect to which a clearance or demolition order has been made, or to prevent possession being obtained of any house which is required for the purpose of enabling the Executive to exercise its powers under this Chapter.

### **Standard of fitness for human habitation**

**46.**—(1) Subject to paragraph (2), a house is fit for human habitation for the purposes of this Order unless, in the opinion of the Executive, it fails to meet one or more of the requirements in sub-paragraphs (a) to (i) and, by reason of that failure, is not reasonably suitable for occupation—

- (a) it is structurally stable;
- (b) it is free from serious disrepair;
- (c) it is free from dampness prejudicial to the health of the occupants (if any);
- (d) it has adequate provision for lighting, heating and ventilation;
- (e) it has an adequate piped supply of wholesome water;
- (f) there are satisfactory facilities in the house for the preparation and cooking of food, including a sink with a satisfactory supply of hot and cold water;
- (g) it has a suitably located water-closet for the exclusive use of the occupants (if any);



- (h) it has, for the exclusive use of the occupants (if any), a suitably located fixed bath or shower and wash-hand basin each of which is provided with a satisfactory supply of hot and cold water; and
  - (i) it has an effective system for the draining of foul, waste and surface water;
- and any reference to a house being unfit for human habitation shall be construed accordingly.

(2) Whether or not a house which is a flat satisfies the requirements in paragraph (1), it is unfit for human habitation for the purposes of this Order if, in the opinion of the Executive, the building or a part of the building outside the flat fails to meet one or more of the requirements in sub-paragraphs (a) to (e) and, by reason of that failure, the flat is not reasonably suitable for occupation—

- (a) the building or part is structurally stable;
- (b) it is free from serious disrepair;
- (c) it is free from dampness;
- (d) it has adequate provision for ventilation; and
- (e) it has an effective system for the draining of foul, waste and surface water.

(3) The Department may by order amend the provisions of paragraph (1) or paragraph (2) in such manner and to such extent as it considers appropriate; and any such order—

- (a) may contain such transitional and supplementary provisions as the Department considers expedient; and
- (b) shall be made subject to negative resolution.

**Modifications etc. (not altering text)**

**C1** Art. 46 applied (1.4.2007) by Private Tenancies (Northern Ireland) Order 2006 (S.I. 2006/1459 (N.I. 10)), arts. 1(3), 17; S.R. 2006/428, art. 3

**Executive to consider guidance given by Department in deciding whether to take action under Article 32, 35, 38, 41 or 47**

**46A.**—(1) In deciding for the purposes of Articles 32, 35, 38, 41 or 47 whether the most satisfactory course of action, in respect of any house or building, is, if applicable—

- (a) serving notice under paragraph (1) of Article 41; or
- (b) serving notice under paragraph (2) of that Article; or
- (c) making a closing order under paragraph (1) of Article 38; or
- (d) making a closing order under paragraph (2) of that Article with respect to the whole or a part of the building concerned; or
- (e) making a demolition order under paragraph (1) of Article 35; or
- (f) making a demolition order under paragraph (2) of that Article; or
- (g) declaring the area in which the house or building is situated to be a clearance area in accordance with Article 32; or
- (h) declaring the area in which the house or building is situated to be a re-development area in accordance with Article 47;

the Executive shall have regard to such guidance as may be given by the Department.

(2) Without prejudice to the matters in respect of which the Department may give guidance generally, it may, in particular, give guidance in respect of financial and social considerations to be taken into account by the Executive.

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(3) Where the Department proposes to give guidance under paragraph (1), or to revise guidance already given, it shall lay a draft of the proposed guidance or alterations before the Northern Ireland Assembly and—

- (a) the Department shall not give the guidance or revise the guidance until after the expiration of the statutory period; and
- (b) if within that period the Assembly resolves that the guidance or alterations be withdrawn the Department shall not proceed with the proposed alterations (but without prejudice to the laying of a further draft).]

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