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STATUTORY INSTRUMENTS

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**1988 No. 1990 (N.I. 23)**

**NORTHERN IRELAND**

**The Housing (Northern Ireland) Order 1988**

*Made - - - - 14th November 1988*

*Coming into operation in accordance with Article 1*

At the Court at Buckingham Palace, the 14th day of November 1988

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974(1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**PART I**

**INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Housing (Northern Ireland) Order 1988.

(2) The following provisions shall come into operation on such day or days as the Head of the Department may by order appoint—

- (a) Part II;
- (b) Article 32, in so far as it relates to the provision mentioned in sub-paragraph (d);
- (c) Schedule 1; and
- (d) in Schedule 3, paragraph (b) of the repeal relating to Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972(2).

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(1) 1974 c. 28  
(2) 1972 NI 14

(3) The other provisions of this Order shall come into operation on the expiration of 2 months from the day on which it is made.

### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(3)</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of the Environment;

“the Executive” means the Northern Ireland Housing Executive;

“the Order of 1981” means the Housing (Northern Ireland) Order 1981<sup>(4)</sup>;

“the Order of 1983” means the Housing (Northern Ireland) Order 1983<sup>(5)</sup>;

“the Order of 1986” means the Housing (Northern Ireland) Order 1986<sup>(6)</sup>.

## **PART II**

### **HOUSING THE HOMELESS**

#### *Main definitions*

#### **Homelessness and threatened homelessness**

3.—(1) A person is homeless if he has no accommodation in Northern Ireland.

(2) A person shall be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which it is reasonable for that person to reside with him—

(a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or

(b) has an express or implied licence to occupy, or

(c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.

(3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

(4) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in Northern Ireland.

(5) A person is also homeless if he has accommodation but—

(a) he cannot secure entry to it, or

(b) it is probable that occupation of it will lead to violence from some other person residing in it or to threats of violence from some other person residing in it and likely to carry out the threats, or

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(3) 1954 c. 33 (N.I.)

(4) 1981 NI 3

(5) 1983 NI 15

(6) 1986 NI 13

(c) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted to place it and to reside in it.

(6) A person is threatened with homelessness if it is likely that he will become homeless within 28 days from the day on which he gives written notice to the Executive that he is threatened with homelessness.

#### **Meaning of accommodation available for occupation**

4. For the purposes of this Part accommodation shall be regarded as available for a person's occupation only if it is available for occupation both by him and by any other person who might reasonably be expected to reside with him; and references to securing accommodation for a person's occupation shall be construed accordingly.

#### **Priority need for accommodation**

5.—(1) The following have a priority need for accommodation—

- (a) a pregnant woman or a person with whom a pregnant woman resides or might reasonably be expected to reside;
- (b) a person with whom dependent children reside or might reasonably be expected to reside;
- (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
- (d) a person who is homeless or threatened with homelessness as a result of an emergency such as a flood, fire or other disaster;
- (e) a person without dependent children who satisfies the Executive that he has been subject to violence and is at risk of violent pursuit or, if he returns home, is at risk of further violence;
- (f) a young person who satisfies the Executive that he is at risk of sexual or financial exploitation.

(2) In paragraph (1)(f) “young person” means a person who is over compulsory school age (within the meaning of Article 46 of the Education and Libraries (Northern Ireland) Order 1986(7)) and has not attained the age of 21 years.

(3) The Department may by order made subject to affirmative resolution—

- (a) specify further descriptions of persons as having a priority need for accommodation, and
- (b) amend or revoke any part of paragraph (1) or (2).

#### **Becoming homeless intentionally**

6.—(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation, whether in Northern Ireland or elsewhere, which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2) A person becomes threatened with homelessness intentionally if he deliberately does or fails to do anything the likely result of which is that he will be forced to leave accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(3) For the purposes of paragraph (1) or (2) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

(4) Regard may be had, in determining whether it would have been reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in Northern Ireland.

*Duties of the Executive with respect to homelessness and threatened homelessness*

**Inquiry into cases of possible homelessness or threatened homelessness**

7.—(1) If—

- (a) a person (an “applicant”) applies to the Executive for accommodation, or for assistance in obtaining accommodation, and
- (b) the Executive has reason to believe that he may be homeless or threatened with homelessness,

it shall make such inquiries as are necessary to satisfy itself as to whether he is homeless or threatened with homelessness.

(2) If the Executive is so satisfied it shall make any further inquiries necessary to satisfy itself as to—

- (a) whether the applicant has a priority need, and
- (b) whether he became homeless or threatened with homelessness intentionally.

**Interim duty to accommodate in case of apparent priority need**

8. If the Executive has reason to believe that an applicant may be homeless and have a priority need, it shall secure that accommodation is made available for his occupation pending a decision as a result of its inquiries under Article 7.

**Notification of decision and reasons**

9.—(1) On completing its inquiries under Article 7, the Executive shall notify the applicant of its decision on the question whether he is homeless or threatened with homelessness.

(2) If the Executive notifies the applicant that its decision is that he is homeless or threatened with homelessness, it shall at the same time notify him of its decision on the question whether he has a priority need.

(3) If the Executive notifies the applicant that its decision is that he has a priority need, it shall at the same time notify him of its decision whether he became homeless or threatened with homelessness intentionally.

(4) If the Executive notifies the applicant—

- (a) that it is not satisfied that he is homeless or threatened with homelessness, or
- (b) that it is not satisfied that he has a priority need, or
- (c) that it is satisfied that he became homeless or threatened with homelessness intentionally,

it shall at the same time notify him of its reasons.

(5) The notice required to be given to a person under this Article shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available for a reasonable period at the office of the Executive to which he applied, for collection by him or on his behalf.

### **Duties to persons found to be homeless**

**10.**—(1) This Article has effect as regards the duties owed by the Executive to an applicant where it is satisfied that he is homeless.

(2) Where the Executive is satisfied that the applicant has a priority need and is not satisfied that he became homeless intentionally, it shall secure that accommodation becomes available for his occupation.

(3) Where the Executive is satisfied that the applicant has a priority need but is also satisfied that he became homeless intentionally, it shall—

- (a) secure that accommodation is made available for his occupation for such period as it considers will give him a reasonable opportunity of securing accommodation for his occupation, and
- (b) furnish him with advice and such assistance as it considers appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

(4) Where the Executive is not satisfied that the applicant has a priority need, it shall furnish him with advice and such assistance as it considers appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

### **Duties to persons found to be threatened with homelessness**

**11.**—(1) This Article has effect as regards the duties owed by the Executive to an applicant where it is satisfied that he is threatened with homelessness.

(2) Where the Executive is satisfied that the applicant has a priority need and is not satisfied that he became threatened with homelessness intentionally, it shall take reasonable steps to secure that accommodation does not cease to be available for his occupation.

(3) Where—

- (a) the Executive is not satisfied that the applicant has a priority need, or
- (b) it is satisfied that he has a priority need but is also satisfied that he became threatened with homelessness intentionally,

it shall furnish him with advice and such assistance as it considers appropriate in the circumstances in any attempts he may make to secure that accommodation does not cease to be available for his occupation.

(4) Paragraph (2) does not affect any right of the Executive, whether by virtue of a contract, enactment or rule of law, to secure vacant possession of accommodation.

### **Provisions supplementary to Articles 8 and 10**

**12.**—(1) The Executive may perform any duty under Article 8 or 10 (duties to persons found to be homeless) to secure that accommodation becomes available for the occupation of a person—

- (a) by making available suitable accommodation held by it, or
- (b) by securing that he obtains suitable accommodation from some other person, or
- (c) by giving him such advice and assistance as will secure that he obtains suitable accommodation from some other person,

and in determining whether accommodation is suitable the Executive shall have regard to Chapter II of Part III and Part VI of the Order of 1981.

(2) The Executive—

- (a) shall require a person to whom it is subject to a duty under Article 8 or 10 (interim duty to accommodate pending inquiries and duties to persons found to be homeless) to pay rent, in accordance with any rent scheme for the time being approved by the Department under Article 17 of the Order of 1981, in respect of any housing accommodation provided by the Executive itself; or
- (b) may require such a person—
  - (i) to pay such reasonable charges as the Executive may determine in respect of accommodation which it otherwise secures for that person's occupation; or
  - (ii) to pay such reasonable amount as it may determine in respect of sums payable by it for accommodation made available by another person.

### **Protection of property of homeless persons and persons threatened with homelessness**

**13.—**(1) This Article applies where the Executive has reason to believe that an applicant is homeless or threatened with homelessness (or, in the case of an applicant to whom it owes a duty under Article 8 (interim duty to accommodate pending inquiries), that he may be homeless) and that—

- (a) there is a danger of loss of, or damage to, any personal property of his by reason of his inability to protect it or deal with it, and
- (b) no other suitable arrangements have been or are being made.

(2) If the Executive has become subject to a duty towards the applicant under Article 8, 10(2) or 11(2) (duty to accommodate during inquiries and duties to persons found to be homeless or threatened with homelessness), then, whether or not it is still subject to such a duty, it shall take reasonable steps to prevent the loss of the property or prevent or mitigate damage to it; and if it has not become subject to such a duty, it may take any steps it considers reasonable for that purpose.

(3) The Executive may for the purposes of this Article—

- (a) enter, at all reasonable times, any premises which are the usual place of residence of the applicant or which were his last usual place of residence, and
- (b) deal with any personal property of his in any way which is reasonably necessary, in particular by storing it or arranging for its storage.

(4) The Executive may decline to take action under this Article except upon such conditions as it considers appropriate in the particular case, which may include conditions as to—

- (a) the making and recovery by the Executive of reasonable charges for the action taken, or
- (b) the disposal by the Executive, in such circumstances as may be specified, of property in relation to which it has taken action.

(5) When in the Executive's opinion there is no longer any reason to believe that there is a danger of loss of or damage to a person's personal property by reason of his inability to protect it or deal with it, the Executive ceases to have any duty or power to take action under this Article; but property stored by virtue of the Executive having taken such action may be kept in store and any conditions upon which it was taken into store continue to have effect, with any necessary modifications.

(6) Where the Executive—

- (a) ceases to be subject to a duty to take action under this Article in respect of an applicant's property, or
- (b) ceases to have power to take such action, having previously taken such action,

it shall notify the applicant of that fact and of the reason why it is of opinion that there is no longer any reason to believe that there is a danger of loss of or damage to his personal property by reason of his inability to protect it or deal with it.

(7) References in this Article to personal property of the applicant include personal property of any person who might reasonably be expected to reside with him.

#### **Certain bodies to co-operate with the Executive**

**14.** Where, the Executive—

- (a) requests a health and social services board to exercise any of its functions in relation to a case with which the Executive is dealing under Article 7, 8, 10 or 11 (which relate to homelessness and threatened homelessness as such), or to provide any information or advice in relation to such a case; or
- (b) requests the Probation Board for Northern Ireland to provide any information or advice in relation to such a case; or
- (c) requests a registered housing association, within the meaning of Part VII of the Order of 1981, to assist it in the discharge of its functions under those Articles;

that health and social services board, the Probation Board for Northern Ireland or that association, as the case may be, shall co-operate by exercising such of its functions, providing such information or advice or rendering such assistance as is reasonable in the circumstances.

#### *Assistance for voluntary organisations*

#### **Financial and other assistance for voluntary organisations concerned with homelessness**

**15.—**(1) Without prejudice to Article 28(1)(g) of the Order of 1981, the Executive may, upon such terms and subject to such conditions as it may determine, give to a voluntary organisation concerned with homelessness, or with matters relating to homelessness, assistance by way of grant or loan.

(2) The Executive may also assist such a voluntary organisation by—

- (a) permitting them to use premises belonging to the Executive upon such terms and subject to such conditions as may be agreed,
- (b) making available furniture or other goods, whether by way of gift, loan or otherwise, and
- (c) making available the services of staff employed by the Executive.

(3) No assistance shall be given under paragraph (1) or (2) unless the voluntary organisation first give an undertaking—

- (a) that they will use the money, furniture or other goods or premises made available to them for a specified purpose, and
- (b) that they will, if the Executive serves notice on them requiring them to do so, furnish, within the period of 21 days beginning with the date on which the notice is served, a certificate giving such information as may reasonably be required by the notice with respect to the manner in which the assistance given to them is being used.

(4) The conditions subject to which assistance is given under this Article shall in all cases include, in addition to any conditions determined or agreed under paragraph (1) or (2), conditions requiring the voluntary organisation to—

- (a) keep proper books of account and have them audited in such manner as may be specified,
- (b) keep records indicating how they have used the money, furniture or other goods or premises made available to them, and
- (c) submit the books of account and records for inspection by the Executive.

(5) If it appears to the Executive that the voluntary organisation have failed to carry out their undertaking as to the purpose for which the assistance was to be used, the Executive shall take all

reasonable steps to recover from the organisation an amount equal to the amount of the assistance; but no sum is so recoverable unless the Executive has first served on the voluntary organisation a notice specifying the amount which, in the opinion of the Executive, is recoverable and the basis on which that amount has been calculated.

(6) In this Article “voluntary organisation” means a body, not being a district council or other public body, within the meaning of section 146(2) of the Local Government Act (Northern Ireland) 1972<sup>(8)</sup>, whose activities are carried on otherwise than for profit.

### *Hostel accommodation for persons in need*

#### **Transfer of hostels**

**16.**—(1) In Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(9)</sup>, in the definition of “person in need” sub-paragraph (c) shall be omitted as from the appointed day.

(2) The provisions of Schedule 1 shall have effect to facilitate the transfer to the Executive of hostels provided by the Department of Health and Social Services and health and social services boards for persons in need.

(3) In this Article—

- (a) “appointed day” means the day appointed for the coming into operation of this Article; and
- (b) “persons in need” means persons who have been rendered homeless and are in need of temporary accommodation.

### *Supplemental*

#### **False statements, withholding information and failure to disclose change of circumstances**

**17.**—(1) If a person, with intent to induce the Executive to believe, in connection with the exercise of its functions under this Part, that he or another person—

- (a) is homeless or threatened with homelessness, or
- (b) has a priority need, or
- (c) did not become homeless or threatened with homelessness intentionally,

knowingly or recklessly makes a statement which is false in a material particular, or knowingly withholds information which the Executive has reasonably required him to give in connection with the exercise of those functions, he commits an offence.

(2) If before an applicant receives notification of the Executive’s decision on his application there is any change of facts material to his case, he shall notify the Executive as soon as possible; and the Executive shall explain to every applicant, in ordinary language, the duty imposed on him by this paragraph and the effect of paragraph (3).

(3) A person who fails to comply with paragraph (2) commits an offence unless he shows that he was not given the explanation required by that paragraph or that he had some other reasonable excuse for non-compliance.

(4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

<sup>(8)</sup> 1972 c. 9 (N.I.)

<sup>(9)</sup> 1972 NI 14



## PART III MISCELLANEOUS PROVISIONS

### *Amendments relating to the right to buy*

#### **Discount**

**18.**—(1) In Article 9 of the Order of 1983—

(a) for paragraph (1) there shall be substituted the following paragraph—

“(1) Subject to the following provisions of this Chapter, a person exercising the right to buy is entitled to a discount of a percentage calculated by reference to the period which is to be taken into account in accordance with Part I of Schedule 1A (qualifying period for right to buy and discount).”;

(b) for paragraph (2) there shall be substituted the following paragraphs—

“(2) The discount is, subject to any order under paragraph (2A)—

(a) in the case of a house, 32 per cent. plus one per cent. for each complete year by which the qualifying period exceeds two years, up to a maximum of 60 per cent.;

(b) in the case of a flat, 44 per cent. plus two per cent. for each complete year by which the qualifying period exceeds two years, up to a maximum of 70 per cent.

(2A) The Department may by order made with the consent of the Department of Finance and Personnel provide that, in such cases as may be specified in the order—

(a) the minimum percentage discount,

(b) the percentage increase for each complete year of the qualifying period after the first two, or

(c) the maximum percentage discount,

shall be such percentage, higher than that specified in paragraph (2), as may be specified in the order.

(2B) An order under paragraph (2A) may contain such incidental, supplementary or transitional provisions as appear to the Department to be necessary or expedient.”.

(2) In Article 106(3) of the Order of 1983, after the word “under” (where it occurs for the first time), there shall be inserted the words “Article 9(2A)”.

(3) The amendments made by paragraphs (1) and (2) do not apply where—

(a) the tenant’s notice claiming to exercise the right to buy or, as the case may be, to acquire an additional share under an equity-sharing lease was served before the commencement of those paragraphs, and

(b) the Executive has before commencement served its notice as to the terms of exercise of that right, that is, its notice under Article 11 of the Order of 1983 or paragraph 3(4) of Schedule 6 to the Order of 1986,

but without prejudice to the tenant’s right to withdraw the notice served before commencement and serve a new notice.

(4) In the following provisions (which in the case of disposals at a discount require a covenant for repayment of a proportion of the discount if the dwelling-house is disposed of within five years)—

Article 10(1) and (2) of the Order of 1983 (repayment of discount on early disposal), and paragraph 6(1) and (2) of Schedule 6 to the Order of 1986,

for “five years” there shall be substituted “three years” and for “20 per cent.” there shall be substituted “one-third”.

(5) A conveyance or lease containing the covenant required by any of the provisions mentioned in paragraph (4) which was executed before the amendments made by that paragraph came into operation shall, provided no amount was then or had previously been payable under the covenant, have effect with such modifications as may be necessary to bring it into conformity with the amendments.

### **Notice of structural defects**

19. In Article 11 of the Order of 1983, at the end there shall be added the following paragraph—

“(4) The notice shall contain a description of any structural defect known to the Executive affecting the dwelling-house or the building in which it is situated or any other building over which the tenant will have rights under the conveyance or lease.”.

### **Deferment of completion**

20.—(1) In Article 17(4)(c) of the Order of 1983 for the words “two years” there shall be substituted the words “three years”.

(2) In Article 17(5)(c), (6) and (8) of that Order and in Articles 29(2)(c) and 33(2) of the Order of 1986, for “£100” there shall be substituted “£150”.

(3) The above amendments apply where notice under Article 17(5) of that Order claiming to be entitled to defer completion is served after the day of the coming into operation of this Article.

(4) The above amendments to Article 17 of the Order of 1983 and Articles 29(2)(c) and 33(2) of the Order of 1986 also apply where notice under Article 17(5) of the Order of 1983 claiming to be entitled to defer completion was served before the day of the coming into operation of this Article if the tenant—

- (a) serves a further notice on the Executive claiming the benefit of the longer period, and
- (b) at the same time deposits with the Executive an additional £50;

and Article 17(8) of the Order of 1983 applies to the sum so deposited as if it had been deposited in pursuance of a notice under that Article.

(5) No such further notice may be served if the Executive has already served a notice under Article 17(3) of the Order of 1983 or Article 33(3) of the Order of 1986.

(6) Articles 21, 23, 23A and 46 of the Order of 1983 shall apply to the provisions of this Article relating to a further notice or deposit in the same manner as those Articles apply for the purposes of Part II of the Order of 1983.

(7) Article 34 of the Order of 1986 shall apply to the provisions of this Article in the same manner as that Article applies for the purposes of Part III of that Order.

### **Circumstances in which right to buy does not arise**

21. In Part I of Schedule 1 to the Order of 1983, in paragraph 3(1)(a), for the words “other features” there shall be substituted the words “other major features so far as those have not been provided by the prospective purchaser”.

### **Right to a loan in certain cases after exercise of right to buy**

22.—(1) The Department may by regulations provide that where—

- (a) a lease of a flat has been granted in pursuance of Chapter I of Part II of the Order of 1983 (the right to buy), and
- (b) the landlord is the Executive,

the tenant has, in such circumstances as may be prescribed, a right to a loan in respect of service charges to which this Article applies.

(2) This Article applies to service charges in respect of repairs (whether to the flat, the building in which it is situated or any other building or land) which are payable in the period beginning with the grant of the lease and ending with the tenth anniversary of the grant or, where the lease provides for service charges to be payable by reference to a specified annual period, with the end of the tenth such period beginning after the grant of the lease.

(3) The regulations may provide that the right—

- (a) arises only in respect of so much of a service charge as exceeds a minimum qualifying amount and does not exceed a maximum qualifying amount, and
- (b) does not arise unless the amount thus qualifying for a loan itself exceeds a minimum amount,

the amounts being either prescribed or ascertained in a prescribed manner.

(4) The regulations shall provide that the right—

- (a) is to leave the whole or part of the service charge outstanding; and
- (b) arises only if the tenant is unable to obtain from a lending institution, within the meaning of Article 3(4) of the Order of 1983, a loan sufficient to assist him to meet the service charges.

(5) The regulations may, as regards procedure for exercising the right, provide—

- (a) that a demand for service charges in respect of repairs shall inform the tenant whether, in the Executive's opinion, he is entitled to a loan and, if he is, what he must do to claim it;
- (b) that the right must be claimed within a prescribed period of the demand; and
- (c) that on the right being claimed the lender shall inform the tenant of the terms of the loan and of the prescribed period within which the tenant may accept the offer.

(6) In this Article "repairs" includes works for making good structural defects.

### **Power to make loans in other cases**

**23.—**(1) The Department may by regulations provide that where—

- (a) the Executive is the landlord of a flat under a long lease granted or assigned by the Executive, and
- (b) the tenant is liable under the terms of the lease to pay service charges in respect of repairs (whether to the flat, the building in which it is situated or any other building or land),

the Executive may, in such circumstances as may be prescribed, make a loan to the tenant in respect of the service charges.

(2) Paragraphs (4) and (6) of Article 22 shall apply in relation to a loan made under this Article in the same manner as they apply to a loan made under that Article.

(3) Where the tenant is entitled to a loan in pursuance of regulations made under Article 22, the power conferred by regulations under this Article may be exercised in respect of any part of the service charge which does not qualify for a loan under that Article.

(4) This Article does not affect any other power of the Executive to make loans.

**Supplementary provisions as to regulations under Articles 22 and 23**

**24.**—(1) This Article applies to regulations under Article 22 or 23 (regulations conferring right to loan, or power to make loan, in respect of service charges).

(2) The regulations shall provide that the loan—

- (a) in the case of a loan made in pursuance of regulations under Article 22 (the right to a loan), shall be on such terms as may be prescribed, and
- (b) in the case of a loan made by virtue of regulations under Article 23 (power to make loan), shall be on such terms as the Executive may determine subject to any provision made by the regulations;

and shall, in either case, be secured by a mortgage of the flat in question, but may be made whether or not the flat is adequate security for the loan.

(3) The regulations may—

- (a) as regards the rate of interest payable on the loan, either prescribe the rate or provide that the rate shall be such reasonable rate as may be determined by the Executive;
- (b) as regards the administrative expenses of the Executive in connection with a loan, provide that the Executive may charge such expenses to the borrower, to the extent that they do not exceed such amount as may be prescribed, and that the expenses so charged may, at the option of the borrower in the case of a loan under Article 22 and that the option of the lender in the case of a loan under Article 23, be added to the amount of the loan.

(4) The regulations may apply whenever the lease in question was granted or assigned or whenever the service charge in question became payable.

(5) The regulations—

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

*Amendments of the Order of 1981***Financing the Executive**

**25.**—(1) In Article 15 of the Order of 1981—

(a) for paragraphs (1) and (2) there shall be substituted the following paragraphs—

“(1) The Department of Finance and Personnel may make advances to the Executive of such amounts and on such terms as that Department thinks fit.

(2) Subject to paragraph (3), there shall be issued out of the Consolidated Fund such sums as are necessary to enable the Department of Finance and Personnel to make advances under paragraph (1), and for the purpose of providing such issues the Department of Finance and Personnel may borrow money.”;

(b) after paragraph (3) there shall be added the following paragraph—

“(4) In paragraph (3)—

- (a) the reference to sums issued under paragraph (2) includes sums issued under that paragraph as it had effect before the day of the coming into operation of Article 25 of the Housing (Northern Ireland) Order 1988, and
- (b) the reference to advances made under paragraph (1) includes advances made under that paragraph as it had effect before that day.”.

(2) In Article 16(1) of the Order of 1981, after the word “with” there shall be inserted the words “the consent of the Department and with”.

### **Re-development areas**

**26.** In Article 47 of the Order of 1981, after paragraph (1) there shall be inserted the following paragraph—

“(1A) In relation to paragraph (1)(a) land is used for housing purposes if there is on the land a building constructed or adapted for housing purposes, whether or not the building is for the time being used or capable of being used for those purposes.”.

### **Transfer of Executive’s mortgages**

**27.** After Article 88 of the Order of 1981 there shall be inserted the following Articles—

#### **“Transfer of mortgages by the Executive**

**88A.—**(1) The Executive shall not dispose of its interest as mortgagee of land without the prior written consent of the mortgagor (or, if there is more than one mortgagor, of all of them) specifying the name of the person to whom the interest is to be transferred.

(2) Consent given for the purposes of this Article—

- (a) may be withdrawn by notice in writing to the Executive at any time before the instrument effecting the disposal is made, and
- (b) ceases to have effect if the instrument effecting the disposal is not made within six months after it is given;

and if consent is withdrawn or ceases to have effect, the Executive shall return to the mortgagor any document in its possession by which he gave his consent.

(3) A disposal made without the consent required by this Article is void, subject to paragraph (4).

(4) If consent has been given and the Executive certifies in the instrument effecting the disposal that it has not been withdrawn or ceased to have effect, the disposal is valid notwithstanding that consent has been withdrawn or ceased to have effect.

(5) In such a case any person interested in the equity of redemption may, within six months of the disposal, by notice in writing served on the Executive, require the Executive, the transferee and any person claiming under the transferee to undo the disposal, on such terms as may be agreed between them or determined by the county court, and execute any documents and take any other steps necessary to vest back in the Executive the interest disposed of by it to the transferee.

(6) Without prejudice to Article 10, the Department may direct the Executive—

- (a) to give to a mortgagor whose consent is sought such information as the Department may direct;
- (b) as to the form of the document by which a mortgagor’s consent is to be obtained;
- (c) to secure that notice of the fact that the disposal has been made is given to the mortgagor, and
- (d) as to the form of that notice and the period (being a period of not less than 28 days from the date of the disposal) within which that notice must be given.

(7) Paragraph 2 of Part II of Schedule 5 to the Land Registration Act (Northern Ireland) 1970<sup>(10)</sup> (Registrar of Titles to note certain restrictive provisions) shall not apply in relation to this Article or Article 88B.

#### **Certain transfers to require Department's approval**

**88B.**—(1) The Executive shall not, in the following circumstances, dispose of its interest as mortgagee of land, without the approval of the Department.

(2) The circumstances are that, under the terms of the disposal or of any arrangement entered into in connection with the disposal—

- (a) any benefits or burdens of the mortgagee are retained by, or transferred to, the Executive, or
- (b) the transferee can call on the Executive to re-acquire any interest transferred or to redeem the mortgage, or
- (c) the consideration for the transfer is other than a cash sum determined at the date of the transfer, or
- (d) the transfer is carried out in consideration of some other transaction or the Executive may be required to enter into an agreement with a third party.

(3) The Department may by regulations amend paragraph (2) or provide for other circumstances in which the disposal by the Executive of its interest as mortgagee of land requires the approval of the Department.”

#### **Houses in multiple occupation: execution of works**

**28.** After Article 113 of the Order of 1981 there shall be inserted the following Article—

##### **“Penalty for failure to execute works**

**113A.**—(1) A person on whom a notice has been served under Article 106, 107 or 108 of, or paragraph 2 of Schedule 7A to, the Order of 1981 (notices requiring the execution of works) who wilfully fails to comply with the notice 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 compliance has expired; and a person who wilfully fails to comply with that obligation, after being convicted of an offence in relation to the notice under paragraph (1) or this paragraph, shall be guilty of a further offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) In this Article compliance with a notice means the completion of the works specified in the notice within the period of compliance, which is—

- (a) if no appeal is brought against the notice, the period specified in the notice with any extension duly allowed by the Executive;
- (b) if an appeal is brought against the notice, and the notice is confirmed in whole or in part on the appeal, the period of 28 days from the final determination of the appeal or such longer period as the court in determining the appeal may fix.

(4) No liability arises under paragraph (1) if the Executive, on being notified in accordance with Article 111(2) that the person on whom the notice was served is not able to do the work in question, serves notice that it proposes to do the work and relieves him from liability under paragraph (1).

<sup>(10)</sup> 1970 c. 18 (N.I.)

(5) The provisions of this Article are without prejudice to the exercise by the Executive of its power under Article 111 to carry out the works itself.”.

#### *Other provisions*

#### **Scheme for purchase of evacuated dwellings**

**29.**—(1) The Executive shall submit to the Department a scheme making provision for the Executive to acquire by agreement houses owned by persons who, in consequence of acts of violence, threats to commit such acts or other intimidation, are unable or unwilling to occupy those houses.

(2) A scheme submitted under paragraph (1) may include provision as to—

- (a) the circumstances in which the Executive may acquire a house under the scheme;
- (b) the manner in which the purchase price is to be determined;
- (c) the fittings which the Executive may purchase when acquiring a house under the scheme;
- (d) the disposal of such houses; and
- (e) such other matters as the Executive considers appropriate.

(3) A scheme submitted under paragraph (1) shall provide that, where any part of a house is used for purposes other than those of a dwelling, the Executive shall not acquire the house under the scheme, except with the consent of the Department.

(4) A scheme submitted under paragraph (1) may provide that where—

- (a) the Executive is to acquire a house under the scheme, and
- (b) there is land contiguous to that house which is not part of the curtilage of the house,

the Executive may, with the consent of the Department, acquire that land.

(5) Paragraph (2) shall apply in relation to provision made under paragraph (4) in respect of land in the same manner as it applies to provision made under paragraph (1) in respect of houses.

(6) The Department may approve a scheme submitted under paragraph (1) with or without modifications.

(7) The Executive shall comply with a scheme approved by the Department under paragraph (6).

(8) The Executive may at any time, and if the Department so directs shall, submit to the Department proposals for amending a scheme approved under paragraph (6) or a scheme replacing any such scheme and paragraphs (6) and (7) shall have effect in relation to those proposals or a scheme replacing an existing scheme as they have effect in relation to a scheme.

(9) In this Article “house” has the meaning given in Article 2(2) of the Order of 1981.

(10) The powers of the Executive shall be deemed always to have included power to make and operate a scheme making provision corresponding to that mentioned in paragraph (1).

#### **Scheme for emergency house repairs**

**30.**—(1) The Executive shall submit to the Department a scheme making provision for the Executive to carry out as a matter of urgency repairs to houses damaged—

- (a) in consequence of civil disturbance, or
- (b) in such other circumstances as the Department may specify in an order made subject to negative resolution.

(2) A scheme submitted under paragraph (1) may include provision as to—

- (a) the classes of houses to which the scheme applies;

- (b) the nature of the repairs to be carried out by the Executive under the scheme; and
- (c) the terms on which the repairs are to be carried out.

(3) Paragraphs (6) to (8) of Article 29 shall apply in relation to a scheme made under this Article in the same manner as those provisions apply in relation to a scheme made under that Article.

(4) The powers of the Executive shall be deemed always to have included power to make and operate a scheme making provision corresponding to that mentioned in paragraph (1)(a).

## PART IV

### SUPPLEMENTARY

#### **Minor and consequential amendments**

**31.** The minor and consequential amendments which are set out in Schedule 2 shall have effect.

#### **Repeals**

**32.** The statutory provisions set out in Schedule 3 are hereby repealed to the extent specified in the third column of that Schedule.

*G. I. de Deney*  
Clerk of the Privy Council



## SCHEDULES

### SCHEDULE 1

Article 16.

#### PROVISIONS TO FACILITATE TRANSFER OF HOSTELS

##### *Interpretation*

1. In this Schedule “appointed day” and “persons in need” have the meanings given in Article 16(3).

##### *Transfer of staff of certain hostels*

2.—(1) The Department may make a scheme providing for the transfer on the appointed day to the employment of the Executive of officers who immediately before that day are employed by a health and social services board wholly or mainly for the purposes of providing hostel accommodation for persons in need.

(2) A transferred officer shall, so long as he continues in the employment of the Executive in accordance with a scheme under sub-paragraph (1) and until he is served with a statement in writing by the Executive setting out his new terms and conditions of employment, enjoy terms and conditions of employment not less favourable than those he enjoyed immediately before the appointed day.

(3) The new terms and conditions referred to in sub-paragraph (2) shall be such that—

(a) as long as a transferred officer is engaged in duties reasonably comparable to those in which he was engaged immediately before the appointed day, the scale of his salary or remuneration; and

(b) the other terms and conditions of his employment;

are taken as a whole not less favourable than those he enjoyed immediately before that day.

(4) A written statement given in accordance with section 4 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965(11) shall not be regarded as a statement of new terms and conditions of employment for the purposes of sub-paragraph (2) unless the statement so indicates.

(5) A transferred officer shall not be taken to have been dismissed from his employment by a health and social services board by reason of redundancy and for the purposes of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 and the Industrial Relations (Northern Ireland) Orders 1976 to 1982, his period of employment by a health and social services board shall count as a period of employment by the Executive and the transfer shall not break the continuity of the period of employment.

(6) Any question arising in relation to a transferred officer as to—

(a) whether he is or was employed wholly or mainly for the purposes mentioned in sub-paragraph (1);

(b) whether he is engaged in duties reasonably comparable to those in which he was engaged immediately before the appointed day; or

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(11) 1965 c. 19 (N.I.)

*Status: This is the original version (as it was originally made).*

(c) whether his terms and conditions of employment taken as a whole are less favourable than those he enjoyed immediately before that day, shall, if not otherwise determined, be referred for determination by an industrial tribunal whose decision shall be final.

(7) The Department may make regulations providing for the payment by the Executive, on such terms and subject to such conditions as may be specified in the regulations, of compensation to, or in respect of, any transferred officer who suffers subsequent to his transfer loss of employment or loss or diminution of emoluments (including superannuation rights) which is attributable to the provisions of this paragraph or who on grounds which the Department considers reasonable is unable or unwilling to accept employment with the Executive.

(8) Regulations under sub-paragraph (7) may include provision—

- (a) as to the manner in which, the time within which and the person to whom any claim for compensation is to be made;
- (b) for the determination by an industrial tribunal of questions arising under the regulations.

(9) Regulations under sub-paragraph (7)—

- (a) shall be subject to negative resolution; and
- (b) may have effect from a date earlier than that on which the regulations are made but not so as to place any person in a worse position than he would have been in if the regulations had effect only from the date of the making thereof.

(10) In this paragraph—

“terms and conditions of employment” includes terms and conditions relating to superannuation benefit;

“transferred officer” means an officer transferred under a scheme made under sub-paragraph (1).

#### *Transfer of hostels*

3.—(1) The Department of Health and Social Services may, with the approval of the Department, enter into an agreement with the Executive for the transfer to the Executive of—

- (a) any real or personal property which immediately before the appointed day was held by the Department of Health and Social Services wholly or partly for the purposes of providing hostel accommodation for persons in need; and
- (b) any rights and liabilities to which the Department of Health and Social Services was entitled or subject immediately before that day in relation to, or in connection with, any such property.

(2) A health and social services board may enter into an agreement with the Executive for the transfer to the Executive of—

- (a) any personal property situated in the area of the board which immediately before the appointed day was held by the health and social services board wholly or partly for the purposes of providing hostel accommodation for persons in need; and
- (b) any rights and liabilities to which the health and social services board was entitled or subject immediately before that day in relation to, or in connection with, any such property.

(3) An agreement under sub-paragraph (1) or (2) may include provision for the transfer to the Executive of property held on trust by the Department of Health and Social Services or a health and social services board.

(4) Where any property held on trust is transferred to the Executive by an agreement under subparagraph (1) or (2), it shall be held by the Executive on trust for such purposes relating to services provided by the Executive as the Executive thinks fit; but in exercising its discretion under this subparagraph the Executive shall secure, as far as is reasonably practicable, that the objects of the trust are not prejudiced.

(5) Stamp duty shall not be chargeable on any instrument or other document executed for the purposes of transferring property to the Executive under this paragraph.

*Power to make other transitional provision*

4. The Department may by order subject to negative resolution make such other transitional provision as appears to the Department to be necessary or expedient in consequence of the coming into operation of Article 16 or this Schedule.

SCHEDULE 2

Article 31.

MINOR AND CONSEQUENTIAL AMENDMENTS

*Part VI of the Order of 1981*

1. In Article 102(12) omit the words from “within 21 days” to “notification”.
2. In Article 106—
  - (a) in paragraph (4) after the word “owner” insert the words “lessee or mortgagee”; and
  - (b) in paragraph (5) after the words “this Article” insert the words “or any other person who is an owner, lessee or mortgagee of the house to which the notice relates”.
3. In Article 108(3) omit the words from “of individuals” (where those words occur for the second time) to “of households”.
4. In Article 111(2) for the words “does not intend” substitute the words “is not able”.
5. In paragraph 7 of Schedule 1 for the words “46 to 48” substitute “46, 47, 47A, 48”.

*The Order of 1983*

6. In Part II of Schedule 1A, in paragraph 6(1), after “the Tenants' Rights, Etc. (Scotland) Act 1980” insert “or under Part III of the Housing (Scotland) Act 1987”.
7. In Part III of Schedule 1A—
  - (a) in paragraph 9(2)(k) for “section 1(10) of the Tenants' Rights, Etc. (Scotland) Act 1980” substitute “section 61(11) of the Housing (Scotland) Act 1987”; and
  - (b) in paragraph 10(1), in the definition of “long lease” omit “or a lease to which paragraph 1 of Schedule 1 to the Tenants' Rights Etc. (Scotland) Act 1980 applies”.
8. In Schedule 2, after paragraph 3 insert the following paragraph—

**“Accommodation for homeless persons**

- 3A. A tenancy granted in pursuance of—
  - (a) Article 8 of the Housing (Northern Ireland) Order 1988 (duty to house pending inquiries in case of apparent priority need), or

**Status:** This is the original version (as it was originally made).

(b) Article 10(3) of that Order (duty to house temporarily person found to have priority need but to have become homeless intentionally),

is not a secure tenancy before the expiry of the period of twelve months beginning with the date on which the tenant received the notification required by Article 9(1) (notification of decision on question of homelessness or threatened homelessness).”.

### SCHEDULE 3

Article 32.

#### REPEALS

| Number      | Title  | Extent of Repeal   |
|-------------|--|--|
| 1972 NI 14. | The Health and Personal Social Services (Northern Ireland) Order 1972.                   | In Article 2(2)— (a) the definition of “common lodging house”, and (b) in the definition of “person in need”, sub-paragraph (c).Article 40.              |
| 1981 NI 3.  | The Housing (Northern Ireland) Order 1981.   | In Article 102(12) the words from “within 21 days” to “notification”.In Article 108(3) the words from “of individuals” (second time) to “of households”. |
| 1983 NI 15. | The Housing (Northern Ireland) Order 1983.   | In Schedule 1A, in paragraph 10(1) the words “or a lease to which paragraph 1 of Schedule 1 to the Tenants' Rights, Etc. (Scotland) Act 1980 applies”.   |
| 1986 NI 24. | The Health and Personal Social Services and Public Health (Northern Ireland) Order 1986. | Article 5.   |

#### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes further amendments to the law relating to housing in Northern Ireland.

Part I is introductory. Part II imposes on the Northern Ireland Housing Executive duties in relation to persons who are found to be homeless or threatened with homelessness.

In Part III, Articles 18 to 24 make miscellaneous amendments to the right to buy, to which secure tenants of the Executive are entitled under the Housing (Northern Ireland) Order 1983. Articles I

25 to 28 amend certain provisions of the Housing (Northern Ireland) Order 1981. Articles 29 and 30 empower the Executive to make schemes for the purchase of houses evacuated in consequence of acts or threats of violence and for the carrying out of emergency repairs to houses. Part IV is supplementary.