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STATUTORY INSTRUMENTS

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**1992 No. 1725**

**The Housing (Northern Ireland) Order 1992**

**CHAPTER II** **N.I.**

**REGISTRATION OF HOUSING ASSOCIATIONS**

**The register of housing associations** **N.I.**

**14.** The Department shall maintain a register of housing associations which shall be open to inspection at such place and at such times as the Department considers appropriate.

**Eligibility for registration** **N.I.**

**15.—(1)** A housing association is eligible for registration if it—

- (a) is a society registered under the Act of 1969, and
- (b) fulfils the following conditions.

(2) The conditions are that the housing association does not trade for profit and is established for the purpose of, or has among its objects or powers, the provision, construction, improvement or management of—

- (a) houses to be kept available for letting, or
- (b) houses for occupation by members of the association where the rules of the association restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by the association, or
- (c) hostels,

and that any additional purposes or objects are among the following.

(3) The permissible additional purposes or objects are—

- (a) providing land, amenities or services, or providing, constructing, repairing or improving buildings, for the benefit of the association's residents, either exclusively or together with other persons;
- (b) acquiring, or repairing and improving, or creating by the conversion of houses or other property, houses to be disposed of on sale, or lease or by equity-sharing lease;
- (c) constructing houses to be disposed of by equity-sharing lease;
- (d) managing houses which are held on leases or other lettings (not being houses falling within paragraph (2)(a) or (b)), or blocks of flats;
- (e) providing services of any description for owners or occupiers of houses in arranging or carrying out works of maintenance, repair or improvement, or encouraging or facilitating the carrying out of such works;
- (f) encouraging and giving advice on the formation of other housing associations or providing services for, and giving advice on the running of, such associations and other voluntary organisations concerned with housing, or matters connected with housing.

*Status: Point in time view as at 29/08/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The Housing (Northern Ireland) Order 1992, CHAPTER II . (See end of Document for details)*

(4) A housing association shall not be ineligible for registration by reason only that its powers include power—

- (a) to acquire commercial premises or businesses as an incidental part of a project or series of projects undertaken for purposes or objects falling within paragraph (2) or (3);
- (b) to repair, improve or convert any commercial premises acquired as mentioned in sub-paragraph (a) or to carry on, for a limited period, any business so acquired.

(5) The Department may by order amend paragraphs (3) and (4), but not so as to restrict or limit the permissible purposes, objects or powers.

(6) An order under paragraph (5) may contain such incidental, supplemental or transitional provisions as the Department thinks fit.

(7) In this Article—

“block of flats” means a building—

- (a) containing 2 or more flats which are held on leases or other lettings; and
- (b) occupied or intended to be occupied wholly or mainly for residential purposes;

“letting” includes the grant of a licence to occupy;

“residents” in relation to a housing association, means the persons occupying the houses or hostels provided or managed by the association.

### **Registration** **N.I.**

**16.**—(1) Subject to paragraphs (2) and (3), the Department may register any housing association which is eligible for registration.

(2) The Department shall, after consultation with such bodies as appear to it to be representative of housing associations, establish criteria which should be satisfied by a housing association seeking registration, and may vary those criteria in such manner as it may determine.

(3) In deciding whether to register a housing association, the Department shall have regard to the question whether the association satisfies the criteria established in accordance with paragraph (2).

(4) For all purposes other than rectification of the register, a society shall be conclusively presumed to be or to have been a housing association eligible for registration at any time when it is or was on the register of housing associations.

### **Removal of societies from the register** **N.I.**

**17.**—(1) Where a society has been registered in the register of housing associations, that society shall not be removed from the register except by the Department in accordance with the provisions of this Article.

(2) If it appears to the Department that any society which is registered—

- (a) is no longer a housing association falling within Article 15(1), or
- (b) has ceased to exist or does not operate,

the Department shall, on giving not less than 14 days' notice to that society, remove it from the register; and in a case where sub-paragraph (b) applies, any such notice shall be deemed to be given to a society if it is served at the address last known to the Department to be the principal place of business of that society.

(3) Where a society which is registered—

- (a) has not at any time received—
  - (i) a loan under Article 6 or a grant under Article 33 or 34,

- (ii) a loan under Article 117 of the Order of 1981 or a grant under Article 137 or 139 of that Order,
- (iii) any such payment or loan as is specified in paragraph 2 or 3 of Schedule 2, or
- (iv) a loan under Article 6 of the Housing (Northern Ireland) Order 1976<sup>F1</sup>, or a grant under Article 27 or 29 of that Order; and

(b) requests the Department to remove it from the register;

the Department may, if it thinks fit, remove that society from the register.

(4) A society which is aggrieved by a decision of the Department to remove it from the register of housing associations may appeal against the decision to the High Court.

(5) If an appeal is brought under paragraph (4) and is not withdrawn the Department shall not remove the society concerned from the register of housing associations until the appeal has been finally determined.

(6) No sum shall be paid in respect of a grant under Article 33 or 34 to a society which has been removed under this Article from the register of housing associations.

(7) Where, at the time of its removal under paragraph (2) from the register of housing associations, a society owns land, Article 13 shall continue to apply to that land after the removal as if the society concerned continued to be a registered housing association.

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#### Notifications to and by the registrar **N.I.**

18.—(1) As soon as may be after registering a housing association or removing a society from the register the Department shall give notice of the registration or removal to the registrar.

(2) Where notice is given under paragraph (1), the registrar shall record the registration or removal from the register by the Department.

(3) As soon as may be after an appeal is brought under Article 17(4), the Department shall give notice of the appeal to the registrar.

(4) As soon as may be after cancelling or suspending the registration of a society which is a registered housing association, the registrar shall give notice of the cancellation or suspension to the Department.

(5) As soon as may be after an appeal is brought under section 17(1) of the Act of 1969, the registrar shall give notice of the appeal to the Department.

#### Accounts and audit **N.I.**

19.—(1) The Department may by order lay down accounting requirements for registered housing associations with a view to ensuring that the accounts of every registered housing association are prepared in the requisite form and give a true and fair view of the state of affairs of the association, so far as its housing activities are concerned, and of the disposition of funds and assets which are, or at any time have been, in its hands in connection with those activities.

(2) The accounts of every registered housing association must comply with those requirements; and the auditor's report shall state (in addition to any other matters which it is required to state) whether in the auditor's opinion they do so comply.

(3) Every registered housing association shall furnish to the Department a copy of its accounts and auditor's report within 6 months of the end of the period to which they relate.

Status: Point in time view as at 29/08/2020.

Changes to legislation: There are currently no known outstanding effects for the The Housing (Northern Ireland) Order 1992, CHAPTER II . (See end of Document for details)

(4) A registered housing association shall be subject to section 38(1) of the Act of 1969 (obligation to appoint auditors) without regard to the volume of its receipts and payments, the number of its members or the value of its assets; and such an association is in no case to be treated as an exempt society under that section.

**Enforcement of Article 19 N.I.**

20.—(1) All persons who are directly concerned with the conduct and management of the affairs of a registered housing association and are in that capacity responsible for the preparation and audit of accounts shall have the duty to ensure that Article 19 is complied with by the association.

(2) If—

- (a) the accounts of a registered housing association, as furnished to the Department under Article 19(3), do not comply with the accounting requirements laid down under paragraph (1) of that Article; <sup>F2</sup>or]
- (b) Article 19(3) is not complied with in respect of the accounts and auditor's report; <sup>F3</sup> . . .
- (c) <sup>F3</sup> . . . . .

the association as well as each of the persons on whom the above duty is imposed shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) It is a defence—

- (a) for a person charged under paragraph (2) to prove that he did everything that could reasonably have been expected of him by way of discharging the duty imposed by paragraph (1); and
- (b) for an association charged under paragraph (2) to prove that the persons mentioned in paragraph (1) did everything that could reasonably have been expected of them by way of discharging the duty imposed by paragraph (1) in relation to the association.

(4) No proceedings for an offence under this Article shall be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland or the Department.

<p><b>F2</b> Word in art. 20(2)(a) inserted (30.6.2011) by <a href="#">Housing (Amendment) Act (Northern Ireland) 2011 (c. 22), ss. 17(2)(a), 25(1); S.R. 2011/241, art. 2(1), Sch. 1</a></p> <p><b>F3</b> <a href="#">Art. 20(2)(c) and preceding word repealed (30.6.2011) by Housing (Amendment) Act (Northern Ireland) 2011 (c. 22), ss. 17(2)(b), 24, 25(1), Sch.; S.R. 2011/241, art. 2(1), Sch. 1</a></p>
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**[F4]General power to obtain information N.I.**

21.—(1) The Department may for any purpose connected with the discharge of any of its functions in relation to registered housing associations serve a notice on a person requiring him—

- (a) to give to the Department, at a time and place and in the form and manner specified in the notice, such information relating to the affairs of a registered housing association as may be specified or described in the notice, or
- (b) to produce to the Department or a person authorised by the Department, at a time and place specified in the notice, any documents relating to the affairs of the registered housing association which are specified or described in the notice and are in his custody or under his control.

(2) A notice under this Article may be served on—

- (a) a registered housing association,

- (b) any person who is, or has been, an officer, member, employee or agent of a registered housing association,
  - (c) a subsidiary or associate of a registered housing association,
  - (d) any person who is, or has been, an officer, member, employee or agent of a subsidiary or associate of a registered housing association, or
  - (e) any other person who the Department has reason to believe is or may be in possession of relevant information.
- (3) No notice shall be served on a person within sub-paragraphs (b) to (e) of paragraph (2) unless—
- (a) a notice has been served on the registered housing association and has not been complied with, or
  - (b) the Department believes that the information or documents in question are not in the possession of the housing association.
- (4) Nothing in this Article authorises the Department to require—
- (a) the disclosure of anything which a person would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court, or
  - (b) the disclosure by a banker of anything in breach of any duty of confidentiality owed by him to a person other than a registered housing association or a subsidiary or associate of a registered housing association.
- (5) A notice under this Article shall be given in writing.
- (6) References in this Article to a document are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.
- (7) Where by virtue of this Article documents are produced to any person, he may take copies of or make extracts from them.
- (8) In this Article—
- “agent” has the meaning given in Article 23(8); and
  - “associate” and “subsidiary” have the same meanings as in Article 23.]

**F4** Arts. 21-21C substituted (31.7.2010) for art. 21 by [Housing \(Amendment\) Act \(Northern Ireland\) 2010 \(c. 9\)](#), [ss. 6](#), 19(1); S.R. 2010/251, [art. 2](#)

#### <sup>F5</sup> Enforcement of notice to provide information, &c. **N.I.**

**21A.—**(1) A person who without reasonable excuse fails to do anything required of him by a notice under Article 21 commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person who intentionally alters, suppresses or destroys a document which he has been required by a notice under Article 21 to produce commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

(3) Proceedings for an offence under paragraph (1) or (2) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland or the Department.

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*Changes to legislation: There are currently no known outstanding effects for the The Housing (Northern Ireland) Order 1992, CHAPTER II . (See end of Document for details)*

(4) If a person makes default in complying with a notice under Article 21, the High Court may, on the application of the Department, make such order as the court thinks fit for requiring the default to be made good.

(5) Any such order may provide that all the costs or expenses of, and incidental to, the application shall be borne by the person in default or by any officers of a body who are responsible for its default.]

**F5** Arts. 21-21C substituted (31.7.2010) for art. 21 by [Housing \(Amendment\) Act \(Northern Ireland\) 2010](#) (c. 9), **ss. 6**, 19(1); S.R. 2010/251, **art. 2**

#### [<sup>F6</sup>Disclosure of information to the Department **N.I.**

**21B.**—(1) A body or person to whom this Article applies may, subject to the following provisions, disclose to the Department, for the purpose of enabling the Department to discharge any of its functions relating to registered housing associations, any information received by that body or person under or for the purposes of any statutory provision.

(2) This Article applies to the following bodies and persons—

- (a) any government department (including a department of the Government of the United Kingdom);
- (b) any district council;
- (c) any constable; and
- (d) any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).

(3) This Article has effect subject to any express restriction on disclosure imposed by or under any other statutory provision.

(4) Nothing in this Article shall be construed as affecting any power of disclosure exercisable apart from this Article.]

**F6** Arts. 21-21C substituted (31.7.2010) for art. 21 by [Housing \(Amendment\) Act \(Northern Ireland\) 2010](#) (c. 9), **ss. 6**, 19(1); S.R. 2010/251, **art. 2**

#### [<sup>F7</sup>Disclosure of information by the Department **N.I.**

**21C.**—(1) The Department may disclose to a body or person to whom this Article applies any information received by it relating to a registered housing association—

- (a) for any purpose connected with the discharge of the functions of the Department in relation to such housing association, or
- (b) for the purpose of enabling or assisting that body or person to discharge any of its or his functions.

(2) This Article applies to the following bodies and persons—

- (a) any government department (including a department of the Government of the United Kingdom);
- (b) any district council;
- (c) any constable; and
- (d) any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).

(3) Where any information disclosed to the Department under Article 21B is so disclosed subject to any express restriction on the further disclosure of the information, the Department's power of disclosure under this Article is exercisable subject to that restriction.

(4) A person who discloses information in contravention of any such restriction commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Any information disclosed by the Department under this Article may be subject by the Department to any express restriction on the further disclosure of the information.

(6) A person who discloses information in contravention of any such restriction commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Proceedings for an offence under paragraph (6) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland or the Department.

(8) Nothing in this Article shall be construed as affecting any power of disclosure exercisable apart from this Article.]

F7 Arts. 21-21C substituted (31.7.2010) for art. 21 by [Housing \(Amendment\) Act \(Northern Ireland\) 2010](#) (c. 9), ss. 6, 19(1); S.R. 2010/251, art. 2

## Tax relief grants **N.I.**

22.—(1) If a housing association makes a claim to the Department in respect of a period and satisfies the Department that throughout the period it was a housing association to which this Article applies and its functions either—

- (a) consisted exclusively of the function of providing or maintaining housing accommodation for letting or hostels and activities incidental to that function, or
- (b) included that function and activities incidental to that function,

the Department may make grants to the association for affording relief from tax chargeable on the association.

(2) This Article applies to a housing association at any time if, at that time—

- (a) it is registered;
- (b) it does not trade for profit; and
- (c) it is not approved for the purposes of [F8Chapter 7 of Part 13 of the Corporation Tax Act 2010] (tax treatment of co-operative housing associations).

(3) References in this Article to tax chargeable on an association are to income tax (other than income tax which the association is entitled to deduct on making any payment) and corporation tax.

(4) A grant under this Article may be made—

- (a) in a case falling within paragraph (1)(a), for affording relief from any tax chargeable on the association for the period in respect of which the claim is made; and
- (b) in a case falling within paragraph (1)(b), for affording relief from such part of any tax so chargeable as the Department considers appropriate having regard to the other functions of the association;

and in any case shall be of such amount, shall be made at such times and shall be subject to such conditions as the Department thinks fit.

(5) The conditions may include conditions for securing the repayment in whole or in part of a grant made to an association—

- (a) in the event of tax in respect of which it was made being found not to be chargeable; or

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(b) in such other events (including the association beginning to trade for profit) as the Department may determine.

(6) A claim under this Article shall be made in such manner and shall be supported by such evidence as the Department may direct.

(7) The Commissioners of Inland Revenue and their officers may disclose to the Department such particulars as it may reasonably require for determining whether a grant should be made on a claim or whether a grant should be repaid or the amount of such grant or repayment.

(8) In this Article “letting” includes the grant of an equity-sharing lease or a licence to occupy.

**F8** Words in [art. 22\(2\)\(c\)](#) substituted (1.4.2010 with effect as mentioned in [s. 1184\(1\)](#) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 1177, 1184\(1\)\(3\)\(4\)](#), [Sch. 1 para. 272](#) (with transitionals and savings in [Sch. 2](#))

### **Inquiries into affairs of registered housing associations** **N.I.**

**23.**—<sup>[F9]</sup>(1) This Article applies where the Department has reasonable grounds to suspect that a registered housing association has failed, or is failing, to comply with—

- (a) a duty imposed by this Order or by any other statutory provision,
- (b) a requirement imposed on the association by the Department under this Order or any other statutory provision, or
- (c) any guidance issued by the Department under this Order,

relating to its housing activities or its financial or other affairs.

(1A) The Department may appoint a person to conduct an inquiry into the affairs of the registered housing association.

(1B) If the appointed person considers it necessary for the purposes of an inquiry under paragraph (1A), the person may also inquire into the business of any other body which, at a time which the person considers material, is or was a subsidiary or associate of the association concerned.]

(2) No person who is, or at any time has been, an officer of the Department [<sup>F10</sup>or a member or employee of the Executive] shall be appointed to conduct an inquiry under [<sup>F11</sup>paragraph (1A)] .

(3) The appointed person may, by notice in writing served on—

- (a) the association concerned; or
- (b) any person who is, or has been, an officer, agent or member of the association; or
- (c) any person who is, or has been, an officer, agent or member of a subsidiary or associate of the association; or
- (d) any other person whom the appointed person has reason to believe is or may be in possession of information of relevance to the inquiry;

require the association or that person to produce to him such books, accounts and other documents relating to the business of the association or of any other such body as is referred to in [<sup>F12</sup>paragraph (1B)] and to furnish to him such other information relating to that business, as he considers necessary for the purpose of the inquiry.

(4) Any association or other person who without reasonable excuse fails to comply with the requirements of a notice under paragraph (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) Where, by virtue of paragraph (3), any books, accounts or other documents are produced to the appointed person he may take copies of or make extracts from them.

(6) The appointed person may, if he thinks fit during the course of the inquiry, make one or more interim reports to the Department on such matters as appear to him to be appropriate.

(7) On completion of the inquiry the appointed person shall make a report to the Department on such matters and in such form as the Department may specify.

(8) In paragraph (3) “agent” includes banker, solicitor and auditor; but nothing in this Article requires disclosure—

- (a) by a solicitor, of any privileged communication made to him in his capacity as solicitor; or
- (b) by a housing association's bankers, of any information as to the affairs of any of their other customers.

(9) In this Article, in relation to a housing association, “subsidiary” means a company with respect to which one of the following conditions is fulfilled,—

- (a) the association is a member of the company and controls the composition of the board of directors; or
- (b) the association holds more than half in nominal value of the company's equity share capital; or
- (c) the company is a subsidiary, within the meaning of [<sup>F13</sup>the Companies Acts (see section 1159 of the Companies Act 2006)] or the Act of 1969, of another company which, by virtue of paragraph (a) or paragraph (b), is itself a subsidiary of the housing association.

(10) For the purposes of paragraph (9)(a), the composition of a company's board of directors shall be deemed to be controlled by a housing association if, but only if, the association, by the exercise of some power exercisable by the association without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships.

(11) In this Article, in relation to a housing association, “associate” means—

- (a) any body of which the association is a subsidiary, and
- (b) any other subsidiary of such a body,

and in this paragraph “subsidiary” has the same meaning as in [<sup>F14</sup>the Companies Acts (see section 1159 of the Companies Act 2006)] or the Act of 1969 or, in the case of a body which is itself a housing association, has the meaning assigned by paragraph (9).

(12) In relation to a company which is [<sup>F15</sup>a society] —

- (a) any reference in paragraph (9)(a) or paragraph (10) to the board of directors is a reference to the committee of management of the society; and
- (b) the reference in paragraph (10) to the holders of all or a majority of the directorships is a reference to all or a majority of the members of the committee or, if the housing association is itself a member of the committee, such number as together with the association would constitute a majority.

**F9** Art. 23(1)-(1B) substituted for art. 23(1) (29.8.2020) by Housing (Amendment) Act (Northern Ireland) 2020 (c. 5), ss. 2(2), 10(2)

**F10** Words in art. 23(2) inserted (31.7.2010) by Housing (Amendment) Act (Northern Ireland) 2010 (c. 9), ss. 7, 19(1); S.R. 2010/251, art. 2

**F11** Words in art. 23(2) substituted (29.8.2020) by Housing (Amendment) Act (Northern Ireland) 2020 (c. 5), ss. 2(3), 10(2)

**F12** Words in art. 23(3) substituted (29.8.2020) by Housing (Amendment) Act (Northern Ireland) 2020 (c. 5), ss. 2(4), 10(2)

**F13** Words in art. 23(9)(c) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), Sch. 1 para. 138(3) (with art. 10)

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- F14** Words in art. 23(11) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 138(3)** (with art. 10)
- F15** Words in art. 23(12) substituted (6.4.2018) by [Credit Unions and Co-operative and Community Benefit Societies Act \(Northern Ireland\) 2016 \(c. 16\)](#), s. 17(2), **Sch. 1 para. 27**; S.R. 2017/217, art. 2(d)

### **Extraordinary audit for purposes of inquiry** **N.I.**

**24.**—(1) For the purposes of an inquiry under Article 23 into the affairs of a registered housing association, the Department may require the accounts and balance sheet of the association concerned, or such of them as the Department may specify, to be audited by an auditor appointed by the Department.

(2) An auditor appointed under paragraph (1) shall be a person who—

- (a) under section 41(1) of the Act of 1969, is a qualified auditor for the purposes of that Act, or
- (b) under section 41(2) of the Act of 1969, is a qualified auditor in relation to the particular association whose accounts are required to be audited under this paragraph.

(3) On completion of the audit the appointed auditor shall make a report to the Department on such matters and in such form as the Department may specify.

(4) The expenses of the audit, including the remuneration of the auditor, shall be paid by the Department.

(5) An audit under this Article shall be additional to, and shall not affect, any audit made or to be made under any other statutory provision.

### **Department's power to act for protection of registered housing associations** **N.I.**

**25.**—<sup>F16</sup>(1) The powers conferred on the Department by paragraphs (1B), (3),(3A), (4), (5) and (7) in respect of a registered housing association are exercisable only where (in addition to the particular conditions for those paragraphs being met) the Department considers that—

- (a) action is needed to protect the interests of tenants of the association or to protect the assets of the association, and
- (b) the committee of the association is unwilling to take appropriate action for that purpose.

(1A) Paragraph (1B) applies where the Department is satisfied as the result of an inquiry under Article 23 or an audit under Article 24 that a registered housing association has failed, or is failing, to comply with—

- (a) a duty imposed by this Order or by any other statutory provision, or
- (b) a requirement imposed on the association by the Department under this Order or any other statutory provision,

relating to its housing activities or its financial or other affairs.

(1B) Where this paragraph applies, the Department may do all or any of the following, namely—]

- (a) by order remove any member of the committee of the association, or any officer, agent or employee of the association, who has been responsible for or privy to <sup>F17</sup>the failure mentioned in paragraph (1A)] or has by his conduct contributed to it or facilitated it;
- (b) by order suspend such a person for up to 6 months, pending determination whether he should be removed;
- (c) order any bank or other person who holds money or securities on behalf of the association not to part with the money or securities without the approval of the Department;

- (d) by order restrict the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the association without the approval of the Department.
- (2) Where a person is suspended, the Department may give directions with respect to the performance of his functions and otherwise as to matters arising from the suspension.
- (3) If at any time the appointed person makes an interim report under Article 23(6) and, as a result of that interim report, the Department is satisfied that <sup>F18</sup>there is or has been a failure as mentioned in paragraph (1A) ,—
- (a) the Department may at that time exercise any of the powers conferred by sub-paragraphs (b) to (d) of <sup>F19</sup>paragraph (1B) ; and
  - (b) in relation to the exercise at that time of the power conferred by <sup>F20</sup>paragraph (1B)(b) , the reference therein to a period of 6 months shall be construed as a reference to a period beginning at that time and ending 6 months after the date of the report under Article 23(7).
- <sup>F21</sup>(3A) If, at any time after the commencement of an inquiry under Article 23 or an audit under Article 24, the Department has reasonable grounds to believe —
- (a) that <sup>F22</sup>there is or has been a failure as mentioned in paragraph (1A) in the administration of a registered housing association, and
  - (b) that immediate action is needed to protect the interests of the tenants of the registered housing association or to protect the assets of the association,
- the Department may at that time exercise any of the powers conferred by sub-paragraphs (b) to (d) <sup>F23</sup>of paragraph (1B) .]
- (4) The Department may also by order remove a member of the committee of a registered housing association where that member—
- (a) is a bankrupt <sup>F24</sup>or is the subject of a bankruptcy restrictions order<sup>F25</sup>, or is a person in relation to whom a moratorium period under a debt relief order applies or is the subject of a debt relief restrictions order,] or has made an arrangement with his creditors or is incapable of acting by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986<sup>F26</sup>;
  - (b) has not acted; or
  - (c) cannot be found or does not act and his absence or failure to act <sup>F27</sup>compromises the committee's ability to ensure that the association complies with the duties and requirements mentioned in paragraph (1A) ] .
- (5) The Department may by order appoint a person to be a member of the committee of a registered housing association (whether or not he is a member of the association and, if he is not, notwithstanding that the rules of the association restrict membership of the committee to members of the association)—
- (a) in place of a member of the committee removed by it under this Article or otherwise;
  - (b) where there are no members of the committee; or
  - (c) where the Department is of opinion that it is necessary <sup>F28</sup>for the association to have an additional member of its committee to ensure that the association complies with the duties and requirements mentioned in paragraph (1A);]

and the power conferred by sub-paragraph (c) may be exercised notwithstanding that it will cause the maximum number of the committee members permissible under the association's rules to be exceeded.

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(6) A person appointed under paragraph (5) as a member of the committee of a housing association shall be entitled—

- (a) to attend, speak and vote at any general meeting of the association and to receive all notices of and other communications relating to any general meeting which a member of the association is entitled to receive; and
- (b) to require a general meeting of the association to be convened within 21 days of a request to that effect made in writing to the committee of the association.

(7) A person appointed to be a member of the committee of a registered housing association under paragraph (5) shall hold office for such period and on such terms as the Department may specify and, on the expiry of any such period, the Department may renew the appointment for such period as it may specify; but nothing in this paragraph shall prevent any such person from retiring from the appointment in accordance with the rules of the association.

(8) Any member of the committee of a registered housing association or any officer, agent or employee of the association who is ordered by the Department to be removed under [F29 paragraph (1B)(a)] or (4) or suspended under [F30 paragraph (1B)(b)] may appeal against the order to the High Court.

(9) Before making an order under [F31 paragraph (1B)(a)] or (4) the Department shall give not less than 14 days' notice of its intention to do so—

- (a) to the person whom it intends to remove, and
- (b) to the registered housing association concerned.

(10) Any person who contravenes an order under [F32 paragraph (1B)(c)] shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5, or to imprisonment for a term not exceeding 3 months, or to both; but no proceedings for an offence punishable under this paragraph shall be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland or the Department.

(11) As soon as may be after making an order under this Article the Department shall send a copy of the order to the registrar.

**F16** [Art. 25\(1\)-\(1B\)](#) substituted (29.8.2020) for words preceding art. 25(1)(a) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(2\)](#), 10(2)

**F17** Words in [art. 25\(1B\)\(a\)](#) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(3\)](#), 10(2)

**F18** Words in [art. 25\(3\)](#) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(4\)\(a\)](#), 10(2)

**F19** Words in [art. 25\(3\)](#) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(4\)\(b\)](#), 10(2)

**F20** Words in [art. 25\(3\)](#) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(4\)\(c\)](#), 10(2)

**F21** [Art. 25\(3A\)](#) inserted (31.7.2010) by [Housing \(Amendment\) Act \(Northern Ireland\) 2010 \(c. 9\), ss. 8](#), 19(1); S.R. 2010/251, [art. 2](#)

**F22** Words in [art. 25\(3A\)](#) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(5\)\(a\)](#), 10(2)

**F23** Words in [art. 25\(3A\)](#) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(5\)\(b\)](#), 10(2)

**F24** Words in [art. 25\(4\)\(a\)](#) inserted (21.4.2015) by [The Insolvency \(Northern Ireland\) Order 2005 \(Consequential Amendments\) Order \(Northern Ireland\) 2015 \(S.R. 2015/159\)](#), art. 1, [Sch. para. 10](#)

**F25** Words in [art. 25\(4\)\(a\)](#) inserted (7.3.2016) by [The Debt Relief Act \(Northern Ireland\) 2010 \(Consequential Amendments\) Order \(Northern Ireland\) 2016 \(S.R. 2016/108\)](#), art. 1, [Sch. para. 13](#)

**F26** 1986 NI 4

- F27** Words in art. 25(4)(c) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(6\), 10\(2\)](#)
- F28** Words in art. 25(5)(c) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(7\), 10\(2\)](#)
- F29** Words in art. 25(8) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(8\)\(a\), 10\(2\)](#)
- F30** Words in art. 25(8) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(8\)\(b\), 10\(2\)](#)
- F31** Words in art. 25(9) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(9\), 10\(2\)](#)
- F32** Words in art. 25(10) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 3\(10\), 10\(2\)](#)

### Transfer of land of registered housing associations **N.I.**

26.—<sup>F33</sup>(1) This Article applies where the Department is satisfied, as the result of an inquiry under Article 23 or an audit under Article 24, that the three conditions set out in paragraphs (1A) to (1C) are met.

(1A) The first condition is that a registered housing association has failed, or is failing, to comply with—

- (a) a duty imposed by this Order or by any other statutory provision, or
- (b) a requirement imposed on the association by the Department under this Order or any other statutory provision,

relating to its housing activities or its financial or other affairs.

(1B) The second condition is that it is desirable for the purpose of—

- (a) protecting the interests of tenants of the association, or
- (b) protecting the assets of the association,

that the land belonging to the association, or any part of that land, should be transferred in accordance with this Article.

(1C) The third condition is that the association is unwilling to take that action.

(1D) The Department may make a direction that—

- (a) identifies the land, or such part of it as the Department may determine, and
- (b) requires the association to transfer the land so identified to another body in accordance with paragraph (2).]

(2) A direction under <sup>F34</sup>paragraph (1D)] may require the association concerned to transfer <sup>F35</sup>the land identified in the direction] ,—

- (a) in a case where that association is a charity, to another registered housing association which is a charity and the objects of which appear to the Department to be, as nearly as practicable, akin to those of the association directed to make the transfer; and
- (b) in any other case, to the Department or to another registered housing association.

(3) A transfer in pursuance of a direction under <sup>F36</sup>paragraph (1D)] shall be made on the terms that the Department or, as the case may be, the association to which <sup>F37</sup>the identified land] is transferred will pay or undertake to pay to the association making the transfer such sum, if any, as will be necessary to defray all its proper debts and liabilities (including any debts and liabilities secured on <sup>F37</sup>the identified land] to be transferred) after taking into account any money or other assets belonging to the association.

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(4) If it appears to the Department to be likely that, as a result of a transfer in pursuance of a direction under [<sup>F38</sup>paragraph (1D)] , the association making the transfer will be dissolved as mentioned in paragraph (a) or paragraph (b) of section 64 of the Act of 1969, the Department shall secure that the costs of such a dissolution are taken into account in determining the sum payable to the association under paragraph (3).

- F33** Art. 26(1)-(1D) substituted for art. 26(1) (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 4\(2\), 10\(2\)](#)
- F34** Words in art. 26(2) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 4\(3\)\(a\), 10\(2\)](#)
- F35** Words in art. 26(2) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 4\(3\)\(b\), 10\(2\)](#)
- F36** Words in art. 26(3) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 4\(4\)\(a\), 10\(2\)](#)
- F37** Words in art. 26(3) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 4\(4\)\(b\), 10\(2\)](#)
- F38** Words in art. 26(4) substituted (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 4\(5\), 10\(2\)](#)

### **Winding up of registered housing associations** **N.I.**

<sup>F39</sup>27. ....

- F39** Art. 27 repealed (29.8.2020) by [Housing \(Amendment\) Act \(Northern Ireland\) 2020 \(c. 5\), ss. 5, 10\(2\)](#)

### **Transfer of net assets on dissolution of registered housing associations** **N.I.**

**28.**—(1) If a registered housing association is dissolved as mentioned in [<sup>F40</sup>subsection (1)(a) or (b)] of section 64 of the Act of 1969 then, notwithstanding anything in that Act or in the rules of the association, there shall be transferred to the Department, or, if the Department so directs, to such registered housing association as may be specified in the direction, so much of the property of the association as remains after meeting the claims of its creditors and any other liabilities arising on or before the dissolution.

(2) If it appears to the Department to be appropriate to do so in order to avoid the necessity for the sale of any land belonging to a registered housing association which is being dissolved as mentioned in paragraph (1) and thereby secure the transfer of the land under that paragraph, the Department may make payments to discharge any such claims or liabilities as are referred to in that paragraph.

(3) The Department may not dispose of any property transferred to it by virtue of paragraph (1) otherwise than to a registered housing association, and in any case where the property so transferred to the Department includes land subject to an existing mortgage, the Department may dispose of the land subject to that mortgage.

(4) Notwithstanding anything in paragraph (3), where property is transferred to the Department by virtue of paragraph (1) on the dissolution of a registered housing association which is a charity, the Department may not dispose of that property except to another registered housing association which is a charity and the objects of which appear to the Department to be, as nearly as practicable, akin to those of the association which was dissolved.

**F40** Words in art. 28(1) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), Sch. 1 para. 138(5) (with art. 10)

### Restrictions on exercise of certain powers of registered housing associations **N.I.**

**29.**—(1) The provisions of this Article apply in relation to a registered housing association, the registration of which by the Department has been recorded by the registrar under Article 18(2), and references in the following provisions of this Article to a registered housing association shall be construed accordingly.

(2) The registrar shall not register a special resolution, as defined in section 59(2) of the Act of 1969, which is passed by a registered housing association for the purposes of section 59 or 60 of that Act (amalgamation of societies and transfer of engagements between societies) [<sup>F41</sup>unless—

- (a) a copy of the special resolution has been sent to the Department, and
- (b) a copy of a certificate from the Department confirming that sub-paragraph (a) has been complied with is sent to the registrar together with the copy of the special resolution required to be sent as mentioned in section 59(4) of that Act.]

(3) Section 61 of the Act of 1969 (power of registered society to convert itself into, or to transfer its engagements to, a company registered under [<sup>F42</sup>the Companies Act 2006]) shall not apply to a registered housing association.

[<sup>F43</sup>(4) If, in pursuance of section 64(1)(a) of the 1969 Act, a registered housing association resolves by special resolution that it be wound up voluntarily under the Insolvency (Northern Ireland) Order 1989, the resolution has no effect [<sup>F44</sup>unless—

- (a) before the resolution was passed the Department was notified of the intention to propose the resolution, and
- (b) a copy of a certificate from the Department confirming that sub-paragraph (a) has been complied with is sent to the registrar together with a copy of the resolution required to be sent as mentioned in section 64(3) of the 1969 Act.]]

(5) If, in pursuance of [<sup>F45</sup>section 64(1)(b)] of the Act of 1969, a registered housing association is to be dissolved by an instrument of dissolution, the registrar shall neither register that instrument, as required by section 67(5) of that Act, nor cause notice of the dissolution to be advertised as mentioned in section 67(6) [<sup>F46</sup>unless—

- (a) a copy of the instrument of dissolution has been sent to the Department, and
- (b) a copy of a certificate from the Department confirming that sub-paragraph (a) has been complied with is sent to the registrar together with the instrument of dissolution required to be sent as mentioned in section 67(4).]

[<sup>F47</sup>(6) Section 9 of the Act of 1969 has effect in relation to a registered housing association with the following modifications.

(7) For subsection (1) substitute—

“(1) Subject to subsection (2), any amendment of a society’s rules as for the time being registered under this Act shall not be valid until the amendment has been—

- (a) sent to the Department for Communities, and
- (b) registered under this Act.

(1A) For the purpose of registering the amendment as required by subsection (1)(b), there must be sent to the registrar—

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- (a) a copy of a certificate from the Department for Communities confirming that subsection (1)(a) has been complied with, and
- (b) two copies of the amendment signed—
  - (i) in the case of a society for the time being consisting solely of registered societies, by the secretary of the society and by the secretary of each (or, if more than two, of each of any two) of the constituent societies;
  - (ii) in any other case, by three members and the secretary of the society.”.
- (8) In subsection (2), before paragraph (a) insert—
  - “(za) notice of any such change shall be sent to the Department for Communities;”.]

- |            |   |
|------------|---|
| <b>F41</b> | Words in art. 29(2) substituted (29.8.2020) by <a href="#">Housing (Amendment) Act (Northern Ireland) 2020 (c. 5), ss. 6(2), 10(2)</a>  |
| <b>F42</b> | Words in art. 29(3) substituted (1.10.2009) by <a href="#">Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), Sch. 1 para. 138(6)(a)</a> (with art. 10) |
| <b>F43</b> | Art. 29(4) substituted (1.10.2009) by <a href="#">Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), Sch. 1 para. 138(6)(b)</a> (with art. 10)          |
| <b>F44</b> | Words in art. 29(4) substituted (29.8.2020) by <a href="#">Housing (Amendment) Act (Northern Ireland) 2020 (c. 5), ss. 6(3), 10(2)</a>  |
| <b>F45</b> | Words in art. 29(5) substituted (1.10.2009) by <a href="#">Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 1 para. 138(6)(c)</a> (with art. 10) |
| <b>F46</b> | Words in art. 29(5) substituted (29.8.2020) by <a href="#">Housing (Amendment) Act (Northern Ireland) 2020 (c. 5), ss. 6(4), 10(2)</a>  |
| <b>F47</b> | Art. 29(6)-(8) substituted for art. 29(6) (29.8.2020) by <a href="#">Housing (Amendment) Act (Northern Ireland) 2020 (c. 5), ss. 6(5), 10(2)</a>  |

### **Payments by registered housing associations to members, etc. N.I.**

- 30.**—(1) Subject to paragraph (2), a registered housing association shall not make a gift or pay any sum by way of dividend or bonus—
- (a) to any person who is or has been a member of the association;
  - (b) to any person who is a member of the family of any such person as is referred to in sub-paragraph (a); or
  - (c) to any company of which a person falling within sub-paragraph (a) or (b) is a director.
- (2) Paragraph (1) does not apply to—
- (a) any sum paid, in accordance with the rules of the association concerned, as interest on capital lent to the association or subscribed by way of shares in the association; or
  - (b) any sum which—
    - (i) is paid by an association whose rules restrict membership to persons who are tenants or prospective tenants of the association and preclude the granting or assignment of tenancies to persons other than members; and
    - (ii) is paid to a person who has ceased to be a member of the association; and
    - (iii) is due to that person under his tenancy agreement with the association or under the terms of the agreement under which he became a member of the association.
- (3) The Department may specify the maximum amounts which may be paid by a registered housing association—

- (a) by way of fees or other remuneration or by way of expenses to a member of the association who is not a member of its committee or an officer or employee of the association;
  - (b) by way of expenses to a member of its committee who is not an officer or employee of the association; or
  - (c) by way of expenses to an officer of the association who does not have a contract of employment with the association.
- (4) Different amounts may be specified under paragraph (3) for different purposes.
- (5) Where a registered housing association—
- (a) pays any sum or makes any gift in breach of paragraph (1); or
  - (b) pays to any person a sum which exceeds any maximum amount specified in relation to that person under paragraph (3);

the sum or, as the case may be, the value of the gift or, in a case falling within sub-paragraph (b), the amount by which the sum exceeds the maximum shall be recoverable by the association; and proceedings for its recovery shall be taken by the association if the Department gives the association a direction to that effect.

(6) For the purposes of paragraph (3)(b) and Article 31, a person co-opted by the committee of a registered housing association to serve on the committee (whether he is a member of the association or not) shall be treated as a member of the committee.

#### **Payments and grant of benefits by registered housing associations** **N.I.**

**31.**—(1) Subject to paragraph (5), a registered housing association shall not make any payment or grant any benefit to—

- (a) a person who is, or at any time within the relevant period has been, a committee member, officer or employee of the association;
- (b) a close relative of such a person; or
- (c) a business trading for profit in which a person falling within sub-paragraph (a) has a personal interest.

(2) In paragraph (1)(a), “the relevant period” means the period of 12 months immediately preceding the making of the payment or the grant of the benefit.

(3) For the purposes of paragraph (1)(c), a person has a personal interest in a business if he, or a close relative of his, either is one of the principal proprietors of the business or is directly concerned with its management.

(4) Any sum paid, or the value of any benefit granted, by a registered housing association in breach of paragraph (1) shall be recoverable by the association; and proceedings for its recovery shall be taken by the association if the Department gives it a direction to that effect.

(5) This Article does not apply to—

- (a) any payment made or benefit granted by a registered housing association to an officer or employee under his contract of employment with the association;
- (b) any payment of expenses made by such an association to a member of its committee;
- (c) any payment to which, by virtue of paragraph (2) of Article 30, paragraph (1) of that Article does not apply;
- (d) any payment of expenses to which Article 30(3)(c) applies;
- (e) the grant or renewal of a tenancy of a house; or
- (f) any payment made or benefit granted by a registered housing association in such class or classes of case as may be specified in a determination made by the Department.

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(6) The Department may make different determinations for the purposes of paragraph (5)(f) and, before making such a determination, the Department shall consult such bodies appearing to it to be representative of registered housing associations as it considers appropriate; and after making such a determination the Department shall publish the determination in such manner as it considers appropriate for bringing it to the notice of the associations concerned.

#### **Great Britain societies** **N.I.**

**32.** Section 102(3) of the Act of 1969 (which provides that references to a registered society in certain provisions of that Act are to include references to a registered Great Britain society where copies of its registered rules have been recorded by the registrar) shall not apply for the purposes of this Chapter.

**Status:**

Point in time view as at 29/08/2020.

**Changes to legislation:**

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