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STATUTORY INSTRUMENTS

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**1992 No. 1725**

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

**PART V**

**AMENDMENTS OF THE ORDERS OF 1981, 1983 AND 1986**

**CHAPTER I**

**AMENDMENTS OF THE ORDER OF 1981**

**Power of Executive to make housing management scheme**

**88.** After Article 8 of the Order of 1981 (delegation of functions by the Executive) there shall be inserted the following Article—

**“Housing management scheme**

**8A.—**(1) The Executive may submit to the Department a scheme making provision for the Executive to delegate to other persons such of the Executive’s management functions as may be specified in the scheme.

(2) A scheme submitted under paragraph (1) may contain such provision as the Executive considers appropriate.

(3) Without prejudice to the generality of paragraph (2), a scheme submitted under paragraph (1) shall, in particular—

(a) specify—

- (i) the category and range of management functions to be delegated by the Executive,
- (ii) the form of management agreements by means of which management functions are to be delegated, and
- (iii) the procedure for consulting tenants of houses to which a management agreement would apply; and

(b) provide—

- (i) that a management agreement is not to be implemented unless it is approved by a majority of the tenants consulted in relation to it in pursuance of subparagraph (a)(iii);
- (ii) that the Department’s approval (which may be given either unconditionally or subject to conditions) is required both for the terms of a management agreement and the identity of a manager.

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

(5) The Executive shall comply with a scheme approved by the Department under paragraph (4).

(6) The Executive may at any time, and if so directed by the Department shall, submit proposals for amending a scheme approved under paragraph (4) or a scheme replacing any such scheme; and paragraphs (2) to (4) shall have effect in relation to those proposals or a scheme replacing an existing scheme as they have effect in relation to a scheme.

(7) In this Article “management agreement” and “manager”, in relation to such an agreement, mean an agreement under this Article and the person with whom the agreement is made.

(8) References in this Article to the management functions of the Executive in relation to houses or land include—

- (a) functions conferred by any statutory provision, and
- (b) the powers and duties of the Executive as holder of an estate in the houses or land in question.”

### **Resettlement of undertakings**

**89.** After Article 31 of the Order of 1981 (development of housing) there shall be inserted the following Article—

#### **“Acquisition and development of land for resettlement of certain undertakings**

**31A.**—(1) The Executive’s power to acquire land under Article 87 shall be exercisable for the purpose of resettling a relevant undertaking.

(2) The Executive shall not acquire compulsorily for the purpose mentioned in paragraph (1) any land of an undertaking which is in use for the purposes of the undertaking, if the undertaking provides employment which is significant having regard to the extent of the land and the nature of the undertaking.

(3) The Executive may, for the purpose mentioned in paragraph (1)—

- (a) appropriate any land vested in it;
- (b) develop any land to which this sub-paragraph applies, whether by the erection or extension of buildings, the carrying out of works, the provision or facilitation of the provision of means of access, services or other facilities, or otherwise;
- (c) enter into an agreement with any person for the development in any manner described in sub-paragraph (b) of any land to which this sub-paragraph applies.

(4) Sub-paragraphs (b) and (c) of paragraph (3) apply to—

- (a) any land appropriated by the Executive under sub-paragraph (a) of that paragraph; and
- (b) any land acquired by the Executive for the purpose mentioned in paragraph (1).

(5) For the purpose of enabling a person carrying on a relevant undertaking to purchase or take on lease any land or to erect any buildings, the Executive may advance money by way of mortgage to that person.

(6) In this Article—

“relevant undertaking” means an undertaking which is being carried on on land which is being or has been acquired by the Executive under Article 87;

“undertaking” means any trade or business or other activity providing employment.”

### **Clearance areas, etc.**

**90.** For Chapter II of Part III of the Order of 1981 (clearance areas and clearance, demolition and closing orders) there shall be substituted the Chapter set out in Schedule 5.

### **Continuance of certain powers to deal with unoccupied premises**

**91.**—(1) The provisions of Chapter V of Part III of the Order of 1981 (unoccupied premises) which are in force immediately before the day of the coming into operation of this Article, shall continue in force for the time being.

(2) Article 64 of the Order of 1981 (which provides as to the duration of that Chapter) shall cease to have effect.

### **Further powers of the Executive in connection with acquisition and disposal of land**

**92.** After Article 88B of the Order of 1981 (disposal of Executive's interest as mortgagee of land) there shall be inserted the following Articles—

#### **“Disposal of houses let by the Executive to secure tenants**

**88C.**—(1) Subject to the following provisions of this Article, the Executive may, with the consent of the Department, dispose of its interest as landlord of any house occupied by a secure tenant.

(2) The Department's consent may be given—

- (a) either generally in relation to all houses or in relation to any particular house or description of house; and
- (b) subject to conditions.

(3) The Department shall not entertain an application for its consent under paragraph (2) unless it is satisfied that the Executive—

- (a) has, in accordance with the requirements of paragraphs (4) and (5), consulted—
  - (i) every tenant of a house to which the application relates, or
  - (ii) every such tenant other than one expected to have vacated the house in question before the disposal; and
- (b) has in relation to each house to which the application relates, obtained the appropriate agreement (within the meaning of paragraph (6)) to its disposal.

(4) For the purposes of paragraph (3) the requirements as to consultation are that the Executive shall serve notice in writing on the tenant informing him of—

- (a) such details of its proposal as the Executive considers appropriate, but including the identity of the person to whom the disposal is to be made,
- (b) the likely consequences of the disposal for the tenant, and
- (c) the effect of the provisions of this Article,

and informing him that he may, within such reasonable period as may be specified in the notice, make representations to the Executive.

(5) The Executive shall consider any representations made to it within that period and shall serve a further written notice on the tenant informing him—

- (a) of any significant changes in its proposal, and

(b) that he may within such period as is specified (which must be at least 28 days after the service of the notice) communicate to the Executive his objection to the proposal,  
and informing him of the effect of paragraph (3)(b).

(6) In paragraph (3) “the appropriate agreement” means—

(a) in the case of an application for the disposal to a registered housing association of—

(i) a building (including a house) which is divided into flats, or

(ii) a group of houses which is provided with special facilities to assist the tenants (for example, a common room in close proximity to the houses),

the agreement of the majority of the tenants of the flats within the building or of the houses within the group, as the case may be;

(b) in any other case, the agreement of the tenant of the house to which the application relates.

(7) For the purposes of this Article the grant of an option which if exercised would result in a secure tenant of the Executive becoming the tenant of another landlord shall be treated as a disposal of the interest which is the subject of the option.

(8) Where a disposal of land by the Executive is in part a disposal to which this Article applies, the provisions of this Article apply to that part as to a separate disposal.

(9) The Department’s consent to a disposal is not invalidated by a failure on its part or that of the Executive to comply with the requirements of this Article.

### **Extinguishment of public rights of way**

**88D.**—(1) Where the Executive considers it necessary or expedient to do so, the Executive may submit to the Department an order (an “extinguishment order”) to extinguish any public right of way existing over land which the Executive has acquired or proposes to acquire.

(2) An extinguishment order shall not have effect until approved by the Department; and Article 88E shall apply with respect to that approval.

(3) An extinguishment order may—

(a) provide for the retention or removal of any cables, wires, mains, pipes or other apparatus placed along, across, over or under the land over which the right of way exists; and

(b) provide for the extinction, modification or preservation of any rights as to the use or maintenance of such cables, wires, mains, pipes or apparatus;

and may contain such consequential, incidental and supplementary provisions as appear to the Executive to be necessary or expedient for the purposes of the order.

(4) Where the Department approves an extinguishment order, the Executive shall—

(a) meet the costs of any works which by any provision of the order any person is required to carry out; and

(b) pay compensation in respect of the extinction or modification by the order of any right of any person.

(5) Any question of disputed compensation arising under this Article shall be referred to and determined by the Lands Tribunal.

(6) An extinguishment order approved in advance of the acquisition of land by the Executive shall not have effect earlier than the date on which the land is acquired.

### **Procedures for approving extinguishment orders**

**88E.**—(1) On submitting an extinguishment order to the Department, the Executive shall publish in at least one newspaper circulating in the relevant area a notice—

- (a) stating the general effect of the order;
- (b) specifying a place in the relevant area where a copy of the order and of any relevant map or plan may be inspected by any person at all reasonable hours during a period of 28 days from the date of publication of the notice; and
- (c) stating that, within that period, any person may by notice to the Department object to the making of the order.

(2) Not later than the date on which that notice is so published, the Executive shall serve a copy of the notice, together with a copy of the extinguishment order and of any relevant map or plan, on—

- (a) every district council in whose area any land to which the order relates is situated;
- (b) any gas or electricity undertaker having any cables, mains, pipes, or wires laid along, across, under or over any land over which a right of way is to be extinguished, under the order; and
- (c) the operator of any telecommunications code system for the purposes of which any telecommunication apparatus is kept installed along, across, under or over any such land.

(3) The Department may cause a public local inquiry to be held to hear objections to the extinguishment order.

(4) After considering any objections to the extinguishment order which are not withdrawn and, where a public local inquiry is held, the report of the person who held the inquiry, the Department may approve the order either without modification or subject to such modifications as it thinks fit.

(5) Where the Department approves an extinguishment order the Executive shall publish, in the manner specified in paragraph (1), a notice stating that the order has been approved, and naming a place where a copy of the order may be seen at all reasonable hours; and paragraph (2) shall have effect in relation to any such notice as it has effect in relation to a notice under paragraph (1).

(6) In this Article—

- (a) “electricity undertaker” means a holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992<sup>(1)</sup>; and
- (b) “the relevant area”, in relation to an extinguishment order, means the area in which any land to which the order relates is situated.”

### **Compensation in respect of vesting orders, clearance orders, demolition orders and closing orders**

**93.**—(1) Subject to paragraph (2), in Chapter II of Part V of the Order of 1981 (land compensation matters), the following provisions shall cease to have effect—

- (a) in Article 89(2)—

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- (i) the words “and Schedule 7”;
  - (ii) in the definition of “demolition order” the words “or Schedule 7”;
  - (iii) the definition of “site value”;
  - (b) Articles 90 to 97, 99 and 100; and
  - (c) Schedule 7.
- (2) The provisions mentioned in paragraph (1) shall continue to apply to any of the following orders, namely—
- (a) a vesting order made under the Order of 1981 to vest in the Executive land comprising a house, for the purposes of any of the Executive’s functions under Chapter III or IV of Part III of that Order;
  - (b) a clearance order made under Article 33 of that Order;
  - (c) a demolition order made under Article 35 of that Order;
  - (d) a closing order made under Article 38 of that Order;
- if the order was made before 1st April 1990.
- (3) The following Articles shall be inserted in Chapter II of Part V of the Order of 1981 as Articles 90 to 92—

**“Land acquired compulsorily in re-development areas and housing action areas**

**90.**—(1) Where the Department makes or has made a vesting order to which this paragraph applies, compensation shall be assessed in accordance with the provisions of the Land Compensation (Northern Ireland) Order 1982.

(2) Paragraph (1) applies to any vesting order made on or after 1st April 1990 to vest in the Executive land comprising a house, for the purpose of any of the functions of the Executive under Chapter III or IV of Part III.

**Compensation payable in case of clearance orders, demolition orders and closing orders**

**91.**—(1) Subject to paragraph (4), where, after the coming into operation of Part V of the Housing (Northern Ireland) Order 1992, a clearance order, demolition order or closing order is made in respect of any premises, the Executive shall pay to every owner of the premises an amount determined in accordance with paragraph (2).

(2) The amount referred to in paragraph (1) is the diminution in the compulsory purchase value of the owner’s estate in the premises as a result of the making of the clearance order, demolition order or closing order, as the case may be; and that amount—

- (a) shall be determined as at the date of the making of the order in question; and
- (b) shall be determined (in default of agreement) as if it were compensation payable in respect of the acquisition compulsorily of the estate in question and shall be dealt with accordingly.

(3) Subject to paragraph (4), where, on or after 1st April 1990 and before the coming into operation of Part V of the Housing (Northern Ireland) Order 1992, a clearance order, demolition order or closing order has been made in respect of any premises, the Executive shall pay to every owner of the premises—

- (a) an amount determined in accordance with paragraph (2); or

- (b) an amount determined in accordance with Chapter II of Part V, as that Chapter had effect before the coming into operation of Part V of the Housing (Northern Ireland) Order 1992,

whichever amount is the greater.

(4) In any case where—

- (a) a closing order has been made in respect of any premises, and
- (b) by virtue of Article 38(7) (substitution of demolition order for closing order) the closing order is revoked and a demolition order is made in its place,

the amount payable to the owner under paragraph (1) or (3) in connection with the demolition order shall be reduced by the amount (if any) paid, in connection with the closing order, to the owner or a previous owner under that paragraph or, as the case may be, under Chapter II of Part V as that Chapter had effect before the coming into operation of Part V of the Housing (Northern Ireland) Order 1992.

(5) For the purposes of this Article “premises” means the house, building or part of a building in respect of which the clearance order, demolition order or closing order is made.

#### **Repayment on revocation of clearance order, demolition order or closing order**

**92.**—(1) Where a payment in respect of any premises has been made by the Executive under Article 91(1) in connection with a clearance order, demolition order or closing order and—

- (a) an exclusion order is made in respect of those premises under Article 34,
- (b) the demolition order is determined under Article 37, or
- (c) the closing order is determined under Article 39,

then, if at that time the person to whom the payment was made has the same estate in the premises as he had at the time the payment was made, he shall on demand repay to the Executive the amount of the payment.

(2) In any case where—

- (a) a payment in respect of any premises has been made by the Executive under Article 91(1) in connection with a closing order, and
- (b) by virtue of Article 39, the order is determined as respects part of the premises, and
- (c) the person to whom the payment was made (in this Article referred to as “the recipient”) had, at the time the payment was made, an owner’s estate in the part of the premises concerned (whether or not he had such an estate in the rest of the premises),

then, if at the time of the determination of the closing order the recipient has the same estate in the premises as he had at the time the payment was made, he shall on demand pay to the Executive an amount determined in accordance with paragraphs (3), (4) and (5).

(3) The amount referred to in paragraph (2) is whichever is the less of—

- (a) the amount by which the value of the estate of the recipient in the premises increases as a result of the determination of the closing order; and
- (b) the amount paid to the recipient under Article 91(1) in respect of his estate in the premises;

and the amount referred to in sub-paragraph (a) shall be determined as at the date of the determination of the closing order.

(4) For the purposes of assessing the amount referred to in paragraph (3)(a) the rules set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 shall, so far as

applicable and subject to the necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an estate in land.

(5) Any dispute as to the amount of compensation referred to in paragraph (3)(a) shall be referred to and determined by the Lands Tribunal.”

### **Winding up of home purchase assistance scheme**

**94.**—(1) The Department may by order make provision for the purpose of bringing to an end the scheme for assistance for first-time buyers which is contained in the assistance legislation.

(2) Without prejudice to the generality of the power conferred by paragraph (1), an order under that paragraph—

- (a) may specify a date or dates with effect from which account will no longer be taken under the assistance legislation of matters specified in the order;
- (b) may vary the terms of advances to lending institutions so as to commute what would otherwise be a number of payments or repayments to or by such an institution into a single payment or a smaller number or payments of such amount and payable at such time or times as may be determined in accordance with the order; and
- (c) may provide for the amendment or repeal, in whole or in part, of the assistance legislation with effect from such date or dates and subject to such transitional provisions as may be specified in the order.

(3) The following powers, namely—

- (a) the power conferred on the Department under Article 153(3) of the Order of 1981 to relax or modify the conditions in that paragraph; and
- (b) any power to make an order under any provision of the assistance legislation,

may be exercised so as to make provision for the purpose referred to in paragraph (1).

(4) In this Article “the assistance legislation” means Part IX of, and Schedule 10 to, the Order of 1981.

### **Miscellaneous amendments of the Order of 1981**

**95.** Schedule 6, which sets out other amendments of the Order of 1981, shall have effect.

## **CHAPTER II**

### **AMENDMENTS OF THE ORDER OF 1983**

### **House sales scheme**

**96.**—(1) In Part II of the Order of 1983 (secure tenancies), for Chapter I there shall be substituted the following Chapter—

## **“CHAPTER I**

### **SALE OF DWELLING-HOUSES BY THE EXECUTIVE**

### **House sales scheme**

**3.**—(1) The Executive shall prepare and submit to the Department a scheme to offer for sale or lease to its secure tenants, the dwelling-houses occupied by those tenants.

(2) A scheme submitted under paragraph (1) may contain such provision as the Executive considers appropriate and, without prejudice to the generality of the foregoing, shall include provision with respect to—



- (a) the classes of dwelling-houses to which the scheme applies;
- (b) the manner in which the purchase price of a dwelling-house is to be determined;
- (c) the circumstances in which a purchaser is entitled to a discount of part of the purchase price and the basis upon which that discount is to be calculated;
- (d) the circumstances in which discount may be repayable;
- (e) the condition and covenants to be included in the conveyance or lease of the dwelling-house;
- (f) the terms on which land used for the purposes of a dwelling-house is to be treated as included in the dwelling-house.

(3) A scheme submitted under paragraph (1) shall, if the Department so directs, include provision for the Executive to offer, in such circumstances as the Department may direct, to grant equity-sharing leases in relation to dwelling-houses to which the scheme applies.

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

(5) The Executive shall comply with a scheme approved by the Department under paragraph (4).

(6) The Executive may at any time, and if the Department so directs shall, submit to the Department proposals amending a scheme approved under paragraph (4) or a scheme replacing any such scheme; and paragraphs (3) to (5) shall have effect in relation to those proposals or a scheme replacing an existing scheme as they have effect in relation to a scheme.

#### **House sales scheme: supplemental provision**

4.—(1) In this Chapter—

“equity-sharing lease” has the meaning given in Article 31(6)(a) of the principal Order;

“purchase price” includes the consideration for the grant of a lease;

“sale” includes sale in consideration of a fee farm rent, rent charge or similar periodic payment; and

“secure tenant” has the meaning given in Article 24(1).”

(2) Chapter I of Part I of, and Schedules 1 and 1A to, the Order of 1983, as that Chapter and those Schedules had effect immediately before the day of the coming into operation of Article 96 of the Housing (Northern Ireland) Order 1992 shall, notwithstanding anything in this Article or Part I of Schedule 9 continue to apply where, before that day, a secure tenant has served on the Executive a written notice under Article 7 of the Order of 1983 claiming to exercise the right to buy.

(3) In Article 106(2) of the Order of 1983 (regulations and orders subject to negative resolution) for the words “Article 21, 28(2)(a) or 92(3)” there shall be substituted “Article 28(2)(a) or 92(3)”.

### CHAPTER III

#### AMENDMENTS OF THE ORDER OF 1986

##### **Amendments relating to defective housing**

97.—(1) Part II of the Order of 1986 shall be amended in accordance with the following provisions of this Article.

(2) In paragraph (2) of Article 6 of that Order (determination of form of assistance to which applicant is entitled), after the word “determine” there shall be inserted “as soon as reasonably practicable”.

(3) After paragraph (7) of that Article (meaning of “work required for reinstatement, etc.”) there shall be inserted the following paragraph—

“(7A) In any case where—

- (a) the most satisfactory way of dealing with the qualifying defect is substantially to demolish the building that consists of or includes the defective dwelling or a part of that building, and
- (b) it is practicable to rebuild the building or part concerned on, or substantially on, its existing foundations and reconstruct the dwelling to the same, or substantially the same, plan,

the work required to carry out those operations shall be regarded for the purposes of this Part as work required to reinstate the defective dwelling.”

(4) In Article 17 of the Order of 1986 (modification of Part II of that Order in relation to equity-sharing leases) for paragraphs (1) to (3) there shall be substituted the following paragraphs—

“(1) If it appears to the Executive that the interest of a person eligible for assistance in respect of a defective dwelling is—

- (a) an equity-sharing lease, or
- (b) the freehold acquired under the terms of an equity-sharing lease,

the Executive shall prepare and submit to the Department a scheme providing for the provisions of this Part to have effect, in their application to such a case, subject to such modifications as may be specified in the scheme.

(2) A scheme under paragraph (1) shall not have effect unless approved by the Department; and any such approval may be made conditional on compliance with requirements specified by the Department.”

(5) Any power of the Department to make regulations under paragraph (4) of Article 17 of the Order of 1986 shall cease to have effect; and in sub-paragraph (c) of that paragraph after the word “class” there shall be inserted “or description”.