

1986 No. 76

LOCAL GOVERNMENT

District Council (Mortgages) Regulations
(Northern Ireland) 1986

Made 24th March 1986

Coming into operation 1st May 1986

The Department of the Environment in exercise of the powers conferred by section 70 of the Local Government Act (Northern Ireland) 1972(a) and now vested in it(b) and of every other power enabling it in that behalf hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the District Council (Mortgages) Regulations (Northern Ireland) 1986 and shall come into operation on 1st May 1986.

(2) In these regulations—

“registrar” means the council or other person appointed by the council to act as registrar for the purpose of these regulations.

Form of mortgage deed

2.—(1) Any mortgage deed to be entered into for the purpose of any borrowing by a council shall be in the form set out in the Schedule and shall be made under the common seal of the council.

(2) The date for repayment of any sum borrowed by way of mortgage may be extended to such later date or dates as may be agreed between the council and the lender and the rate of interest may thereupon be altered to such other rate or rates as may be so agreed.

(3) The agreement under paragraph (2) shall be stated in an endorsement on the mortgage deed under the hands of an authorised officer of the council and the lender and the provisions of the mortgage deed shall thereupon be incorporated with the endorsement and take effect as if they had been originally inserted therein.

Register of mortgages

3.—(1) The registrar shall keep a register of mortgages created by the council.

(2) Within 14 days after the date of a mortgage the registrar shall cause an entry to be made in the register of the number and date thereof, of the names and addresses of the parties thereto, and of the amount borrowed, as stated in the deed.

(3) Any change of name or address on the part of a person entitled to a mortgage shall forthwith be notified to the registrar who, on being satisfied thereof, shall alter the register accordingly.

(4) The registrar may keep any register by recording the matters in question otherwise than in legible form so long as they are capable of being reproduced in that form.

(a) 1972 c. 9 (N.I.) as amended by S.I. 1985/1208 (N.I. 15), Article 27
(b) S.R. & O. (N.I.) 1973 No. 504 Article 7(1); S.I. 1976/424 (N.I. 6)

Transfer and transmission

4.—(1) On production to the registrar of the mortgage deed, and—

- (a) in the case of a transfer of a mortgage, of a duly executed instrument of transfer drawn in accordance with the Stock Transfer Act (Northern Ireland) 1963(a);
- (b) in the case of a transmission of a mortgage by the death of the person solely entitled thereto or of the survivor of persons jointly entitled thereto, of probate of the will or letters of administration of the estate of the deceased or any document which is by law sufficient evidence of either of those grants;
- (c) in the case of a transmission of a mortgage by any other means, of such evidence of the transmission as the registrar may require,

the registrar shall give effect to the transfer or transmission by entering in the register such particulars as are necessary to show the effect of the transfer or transmission.

(2) Notwithstanding the non-production of the mortgage deed the registrar shall give effect to a transfer or transmission under paragraph (1) upon receipt of such evidence and indemnity as he may require.

Trustees and persons holding office

5.—(1) The registrar may enter in the register such description of the person entitled to a mortgage as that person may specify and, in particular, that person may be described as trustee of a specified trust or as trustee without specifying a trust or in any other manner indicating the capacity in which he is entitled to the mortgage.

(2) Where the person entitled to a mortgage occupies an office or official position, his official description may be entered in the register instead of his name and thereupon any transfer shall be treated as properly executed if executed by the person for the time being occupying that office or official position and any payment of interest or redemption money to that person in accordance with regulation 7 shall be a sufficient discharge to the council and the registrar for that interest or redemption money.

(3) Except as provided in paragraphs (1) and (2) no notice of any trust shall be entered in the register or be receivable by the registrar and, notwithstanding that the person entitled to a mortgage is described as mentioned in those paragraphs, the registrar shall not be affected with notice of any trust and it shall not be necessary for him to inquire concerning the propriety of anything done in relation to that mortgage or any part thereof.

Payment of interest and redemption

6.—(1) The registrar may close a register relating to mortgages during the whole or any part of the period of one month preceding the day on which the interest or redemption money is payable.

(2) Instead of closing a register in the manner aforesaid the registrar may strike the balance for interest on mortgages on any day not being more than 37 days before the day on which the interest on such mortgages is payable.

(3) Any person who, on the date on which a register is closed or the balance is struck as aforesaid, is entered in the register as the person entitled to a mortgage shall, as between himself and any transferee of such mortgage, be entitled to the then current interest thereon.

7.—(1) Unless the person entitled to a mortgage otherwise requests in writing, the council or, where the registrar is not the council, the council by the registrar shall pay

(a) 1963 c. 24 (N.I.) as amended by S.R. 1974 No. 266 and S.R. 1979 No. 66. There are other amendments not relevant to these regulations

interest and any redemption money due on any mortgage by sending a cheque or warrant to that person by post to his registered address and the posting of that cheque or warrant in a pre-paid letter directed to his address shall be a sufficient discharge to the council and the registrar for that interest or redemption money.

(2) Before making any payment of redemption monies in respect of any mortgage the registrar shall require the surrender of the mortgage deed representing the mortgage or such indemnity as he may require if the mortgage deed is lost or destroyed.

(3) If any cheque or warrant has not been encashed and has become defaced, lost or destroyed the registrar shall, on receipt of such evidence and indemnity as he may require, and on the surrender of the cheque or warrant where it is defaced, pay the money due.

(4) Every warrant so sent by post shall be deemed to be a cheque and the council and the registrar shall, in relation thereto, be deemed a banker within the Bills of Exchange Act 1882(a).

(5) For the purpose of this regulation the person entitled to a mortgage means the person whose name is recorded in the register as the person so entitled at the date on which the interest or redemption money is payable, or if the register was closed or a balance struck under regulation 6 at the date on which the register was closed or the balance was struck, and in the case where two or more persons are jointly entitled to a mortgage the registrar may treat as the person entitled to the mortgage the one first named in the register or such other of them as they all may in writing direct, but any request in writing given under paragraph (1) must be given by all of the joint holders.

(6) Where the person who would otherwise be the person entitled to a mortgage is deceased his personal representative or personal representatives shall, for the purpose of this regulation, be deemed to be the person or persons entitled to that mortgage.

(7) Where two or more persons entitled to a mortgage have given a request as to the payment of interest thereon and one of them becomes of unsound mind, such request shall not thereby become void.

(8) Nothing in paragraphs (1) to (7) shall prevent the registrar and any banker from making special arrangements for the payment of any interest or redemption money payable to the person entitled to a mortgage which is receivable by that banker, either on his own behalf, or as nominee of the person entitled to the mortgage, or otherwise.

Determination of questions affecting title and rectification of the register

8.—(1) If the name of any person is without sufficient cause entered in or omitted from a register or default is made or unnecessary delay takes place in making an entry required to be made therein, the High Court, or where the principal sum secured does not exceed five thousand pounds the county court, may, on application by the person aggrieved or by the registrar, make an order for the rectification of the register.

(2) On any proceedings under this regulation the court may decide any question relating to the title of any party thereto to have his name entered in or omitted from the register and generally any question which it may be necessary or expedient to decide for the purpose of the rectification of the register.

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on 24th March 1986.

(L.S.)

N. Hamilton

Assistant Secretary

SCHEDULE

Regulation 2

In consideration of the sum of £ (the receipt whereof is hereby acknowledged) the Council hereby charges such proportion of the revenues of the Council as the said sum bears or will bear to the whole sum which is or will be charged on the said revenues with the payment to (the lender) of (address) on the day of of the said sum with interest at per cent. per annum payable [half yearly] on the (state days of payment) in every year.

(Date and attestation clause)

Number in the register:

EXPLANATORY NOTE

(This note is not part of the Regulations.)

The regulations provide for the terms upon which mortgages may be entered into by a district council for the purpose of borrowing.

The mortgage deed must be in the form set out in the Schedule and must be endorsed to record any agreement altering the date for repayment or the rate of interest (regulation 2).

Mortgages shall be recorded in a register within 14 days from the date of the mortgage deed; the registrar shall be informed of any changes in the names or addresses of lenders; provided the register can be reproduced in legible form, it may be kept in any form, for example, by computer (regulation 3).

On production of the required documents or evidence the registrar shall give effect to the transfer or transmission of a mortgage by entering the particulars in the register (regulation 4).

The person entitled to a mortgage may be described in the register as a trustee or as the occupier of an office or official position and the occupant for the time being may transfer the mortgage or be paid interest or redemption money; no other notice of any trust shall be entered in the register (regulation 5).

The registrar may close the register not more than one month before the day when interest or redemption money is due or the balance for interest may be struck not more than 37 days before the date it is payable; the person shown in the register at the date it is closed or the date the balance is struck as entitled to the mortgage shall be entitled to the current interest (regulation 6). Interest and redemption money may be paid by cheque unless the person entitled to the mortgage requests otherwise; the mortgage deed must be surrendered before the redemption money is paid or if the deed is lost or destroyed the registrar must be indemnified (regulation 7). That regulation also contains detailed provisions relating to payment of the redemption money and interest.

On application the courts may determine questions of title and make orders for rectification of registers (regulation 8).