

1975 No. 827 (S. 140)

LOCAL GOVERNMENT, SCOTLAND

The Local Authority Mortgages (Scotland) Regulations 1975

<i>Made</i>	- - - -	13th May, 1975
<i>Laid before Parliament</i>		15th May, 1975
<i>Coming into operation</i>		16th May, 1975

In exercise of the powers conferred on me by section 16 as read with paragraph 5(1) of Schedule 3 to the Local Government (Scotland) Act 1975(a) and of all other powers enabling me in that behalf, with the consent of the Treasury, I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Local Authority Mortgages (Scotland) Regulations 1975 and shall come into operation on 16th May, 1975.

Interpretation

2.—(1) The Interpretation Act 1889(b) applies for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

(2) In these regulations, unless the context otherwise requires—

“local authority” means a regional, islands or district council; and

“registrar” means the officer of the local authority appointed by the local authority to act as registrar for the purpose of these regulations.

(3) These regulations shall apply to a joint board having power to borrow money, a water development board or a river purification board, as they apply to a local authority.

Form of mortgage, etc.

3.—(1) Any mortgage to be entered into for the purpose of any borrowing by a local authority shall be in the form set out in Schedule I hereto, or a form substantially to the like effect, and shall be sealed with the common seal of the council, and subscribed on behalf of the council by two members of the council and the proper officer of the council; and any transfer, renewal or discharge thereof shall be in the form set out in Schedule II.

(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 local authority and the lender and the rate of interest may thereupon be altered to such other rate or rates as may be so agreed.

(a) 1975 c. 30

(b) 1889 c. 63.

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

Register of mortgages

4.—(1) The registrar shall keep at the office of the local authority a register of mortgages created by the local authority.

(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, the principal sum borrowed under the mortgage, the term or date of repayment and the rate of interest payable.

(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) On the renewal of a mortgage the registrar shall enter or cause to be entered in the register the following particulars of the renewal, that is to say:—

- (a) the date as from which the mortgage is renewed;
- (b) the term or date of repayment of the principal sum under the renewal;
and
- (c) the rate of interest payable for the period of the renewal.

(5) On the discharge of a mortgage the registrar shall forthwith make or cause to be made in the register an entry relating to the discharge and the date thereof.

(6) 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.

Transfer and transmission

5.—(1) On production to the registrar of the mortgage and—

- (a) in the case of a transfer of a mortgage, the duly executed transfer;
- (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 confirmation in favour of the executors of the deceased or 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 the registrar shall give effect to a transfer or transmission under paragraph (1) above upon receipt of such evidence and indemnity as he may require.

Entries in register

6.—(1) The registrar may enter in the register such description of the person entitled to a mortgage as that person may specify.

(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 8 below shall be a sufficient discharge to the local authority and the registrar for that interest or redemption money.

Payment of interest and redemption

7.—(1) The registrar, with the approval of the local authority, 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.

8.—(1) Unless the person entitled to a mortgage otherwise requests in writing, the local authority shall pay 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 local authority for that interest or redemption money.

(2) On the repayment or discharge of a mortgage the registrar shall obtain delivery of the mortgage or failing such delivery such indemnity as he may require.

(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 local authority 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 7 above, 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) above must be given by all of the joint holders.

(a) 1882 c. 61.

(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 the preceding provisions of the regulation 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.

Rectification of the register

9.—(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 sheriff may, on application by the person aggrieved or by the local authority, make an order for the rectification of the register.

(2) In any proceedings under this regulation the sheriff 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.

(3) An appeal shall lie to the Court of Session against any decision of the sheriff on any question relating to the title of any party to any security the nominal value of which exceeds two hundred and fifty pounds, but save as aforesaid the decision of the sheriff shall be final.

William Ross,

One of Her Majesty's Principal
Secretaries of State.

New St. Andrew's House,
Edinburgh.

13th May 1975.

We consent,

Donald R. Coleman,
M. Cocks,

Two of the Lords Commissioners
of Her Majesty's Treasury.

13th May 1975.

SCHEDULE I

FORM OF MORTGAGE BY LOCAL AUTHORITY

In consideration of the sum of £ (the receipt whereof is hereby acknowledged) we the Council of by virtue of the Local Government (Scotland) Act 1973 do hereby bind and oblige the Council out of the funds, rates and revenues of the Council to pay to(the lender) of (address) (hereinafter known as the mortgagee) the said sum of £ on the day of 19 and also to pay interest on the said sum at the rate of % per annum half yearly (or at the terms of *Whitsunday and Martinmas*) in each year; and in security of the said sum of £ and interest thereon as above we the Council hereby assign to the mortgagee and his executors and assignees such proportion of the said funds, rates and revenues for the time being of the Council as the said sum bears or will bear to the whole sum which is or will be charged on the said revenue with interest thereon; and we consent to the registration hereof for preservation and execution.

Sealed with the common seal of the Council and subscribed on behalf of the Council by two members of the Council and the proper officer of the Council on the day of 19 .

(Seal) Member of Council
 Member of Council
 Proper Officer

Date:

No. in the Register

SCHEDULE II

FORM OF TRANSFER OF MORTGAGE

(To be endorsed on Mortgage)

I, A.B., within named, in consideration of the sum of £ paid to me by D.E. of F., do hereby transfer to the said D.E. and his executors and assignees the within mortgage and all interest thereon and all my right, title and interest in and to the money thereby secured in and to the funds, rates and revenues thereby assigned.

In witness whereof these presents (*insert testing clause in usual form*).

FORM OF MINUTE OF RENEWAL OF MORTGAGE

(To be endorsed on Mortgage)

It has been agreed upon between the Council and the mortgagee within named that the repayment of the principal sum contained in the within mortgage shall be postponed and that the said principal sum shall be repayable [at the term of] [on the day of] nineteen hundred and and that interest thereon at the rate of per centum per annum shall be payable half yearly [at the terms of *Whitsunday and Martinmas*] [on the day of and the day of] in each year until the said principal sum is repaid, (*where interest is payable by means of coupons or interest warrants delivered with the minute of renewal, add which interest shall be paid on presentation of the respective interest warrants in number issued herewith*).

Dated the day of nineteen hundred and

Signed for and on behalf of the Council.

..... Clerk
 Mortgagee

FORM OF DISCHARGE OF MORTGAGE
(To be endorsed on Mortgage)

Received from the Council within named the sum of £ being the principal
sum due under the within mortgage, with all interest due thereon.

Dated the day of nineteen hundred and

..... Mortgagee.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations prescribe the form of any mortgage to be entered into for the purpose of any borrowing by a local authority and regulate the manner of transferring, dealing with and redeeming any mortgage created for such a purpose.

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