

STATUTORY INSTRUMENTS

1986 No. 843 (S. 77)

HOUSING, SCOTLAND

**The Housing Defects (Application to Lenders) (Scotland)
Regulations 1986**

<i>Made</i> - - - -	<i>7th May 1986</i>
<i>Laid before Parliament</i>	<i>22nd May 1986</i>
<i>Coming into Operation</i>	<i>12th June 1986</i>

The Secretary of State, in exercise of the powers conferred on him by section 23 of the Housing Defects Act 1984(a), and of all other powers enabling him in that behalf, hereby makes the following regulations:-

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Housing Defects (Application to Lenders) (Scotland) Regulations 1986 and shall come into operation on 12th June 1986.

(2) In these regulations, “the Act” means the Housing Defects Act 1984 and references to sections and to Schedules (without more) are to the sections of and Schedules to the Act.

(3) In these regulations “lender” means the creditor and “borrower” means the debtor under a heritable security constituted over a defective dwelling and the expressions “heritable security”, “creditor” and “debtor” shall have the same meanings as in section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970(b).

Application of regulations

2.—(1) These regulations apply where -

- (a) a borrower who has obtained a loan on the security of a defective dwelling is eligible for assistance under the Act in respect of the dwelling, and
- (b) a power of sale has become exercisable by the lender, and
- (c) the lender has obtained vacant possession of the defective dwelling.

(2) Where vacant possession of a defective dwelling has already been obtained by a lender on the date on which these regulations come into operation, it shall for the purpose of these regulations be treated as if it was obtained on that date.

(3) Where the lender is also the appropriate authority, these regulations shall apply for the purpose of the acquisition of the defective dwelling by the

(a) 1984 c.50.

(b) 1970 c.35.

appropriate authority as they apply where the lender and the appropriate authority are not the same.

Modification of the Act

3. Where these regulations apply, the Act shall have effect subject to the modifications specified below being modifications to confer on the lender rights corresponding to those conferred by the Act on the borrower and in place of those rights.

4.—(1) In section 2(3)(a) for “applies” substitute “applied at the time of the acquisition,”.

(2) At the beginning of section 2(5) for “No person” substitute “No lender”.

5.—(1) At the beginning of section 3(1) for “Any person” substitute “Any lender”.

(2) For section 3(3) to (7) substitute -

“(3) If the applicant is a lender, the applicant is entitled to assistance by way of repurchase.”.

(3) In section 3(9) before “A person” insert “A lender to” and for “his” substitute “the”.

(4) After section 3(10) insert -

“(10A) Where a lender becomes eligible for assistance in respect of a defective dwelling, this Act applies as if anything done (or treated by virtue of subsection (10) as done) by or in relation to the person who was previously so eligible had been done by or in relation to the lender; but if a notice under section 4 (Notice of determination) had been served stating that the applicant was entitled to assistance by way of reinstatement grant then -

(a) if the qualifying work had not been commenced before the lender became eligible for assistance, that notice shall be regarded as not having been served and the authority shall comply again with sections 3 and 4, and

(b) if the qualifying work had been commenced before the lender became eligible for assistance that notice shall continue in force (notwithstanding section 3(3)) but paragraph 5 of Schedule 1 (Repayment of grant for breach of condition) shall apply to the lender only in respect of instalments paid to the lender.”.

6. Omit section 4(1)(b).

7. In section 7 for “person” (wherever that word occurs) substitute “lender”.

8.—(1) In section 8 for “person” and “owner” (wherever the words occur) substitute “lender”.

(2) In section 8(1) for paragraph (a) substitute -

“(a) there was, in pursuance of the power of sale, a disposal of the interest of the borrower in a defective dwelling by a lender who immediately before the time of disposal was eligible for assistance in respect of the dwelling,”.

(3) For section 8(8), substitute -

“(8) A lender or the housing authority serving a notice on the district valuer under subsection (6) above shall serve notice in writing of that fact on the other party.”.

(4) In section 8, at the end add -

“(11) Any amount paid by the housing authority under this section to a lender shall be treated as money received by the lender arising from the sale.”.

9.—(1) For section 9(1) substitute -

“(1) This section applies where a lender is entitled to assistance by way of repurchase in respect of a defective dwelling and there is a condition in the title to the dwelling whereby, before the lender disposes of the interest, the lender must offer to dispose of it to a public sector authority.”.

(2) In section 9(2) and (7) to (11) for “owner” substitute “lender”.

(3) For section 9(3) substitute -

“(3) If the public sector authority concerned are not the appropriate authority, then -

(a) so long as the condition mentioned in subsection (1) above applies, the lender is not to be treated for the purposes of section 7 of this Act as entitled to assistance by way of repurchase, and

(b) if the lender disposes of the interest to the public sector authority in pursuance of the power of sale and the interest acquired by that authority on the disposal subsists only in the defective dwelling and any garage, outhouse, garden, yard and pertinents belonging to or usually enjoyed with the dwelling or any part of it, the lender is entitled to be paid by the housing authority the amount (if any) by which 95% of the defect-free value exceeds the consideration for the disposal, and the amount so paid shall be treated as money received by the lender arising from the sale.”.

10. In section 10(4)(c) for “person” substitute “lender”.

11. In section 11 for “person” (wherever that word occurs) there shall be substituted “lender”.

12. In section 26(2) for “any person” substitute “a lender”.

13. In Schedule 2, Part I in paragraphs 1(2), 3(5), 3(6) (where occurring for the second time) and 3(8) for “person” there shall be substituted “lender”.

Modification of power of sale

14.—(1) Where these regulations apply, the power of sale in question and any enactment relating to the power of sale shall have effect subject to such modifications (if any) as are necessary to enable full effect to be given to these regulations and to the Act as modified by these regulations.

(2) Without prejudice to the foregoing generality -

(a) the exercise by a lender of the rights conferred by these regulations in relation to a defective dwelling shall be deemed to be sufficient compliance with the requirements of section 25 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (Exercise of power of sale), and

(b) section 27 of that Act (Application of proceeds of sale) shall apply for the purposes of the disposal by the lender of the price determined under Schedule 2 for the defective dwelling as it applies for the disposal of the proceeds of sale by a creditor in a heritable security who has effected a sale of the security subjects under that Act.

Michael Ancram,
Parliamentary Under Secretary of State,
Scottish Office.

New St. Andrew's House,
Edinburgh.
7th May 1986.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

Under the Housing Defects Act 1984 an owner of a defective dwelling (one in a class designated by the Secretary of State because the buildings are defective by reason of their design or construction) can, if the appropriate conditions are fulfilled, require the housing authority to give him a grant to reinstate the dwelling or, sometimes require the authority to purchase it from him at 95% of the "defect-free" value.

These regulations apply where an owner of such a dwelling has defaulted on the terms of a loan and the lender is entitled to sell the dwelling. Regulations 3 to 13 give the lender the right to require the housing authority to repurchase the dwelling at 95% of the "defect-free" value (if the appropriate conditions are fulfilled) instead of the lender having to sell it on the open market. Regulation 14 provides for consequential modifications to provisions relating to the power of sale.

SI 1986/843
ISBN 0-11-066843-X



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