STATUTORY INSTRUMENTS

1988 No. 1990

The Housing (Northern Ireland) Order 1988

PART III

MISCELLANEOUS PROVISIONS

Amendments relating to the right to buy

Discount

18.—(1) In Article 9 of the Order of 1983—

(a) for paragraph (1) there shall be substituted the following paragraph—

"(1) Subject to the following provisions of this Chapter, a person exercising the right to buy is entitled to a discount of a percentage calculated by reference to the period which is to be taken into account in accordance with Part I of Schedule 1A (qualifying period for right to buy and discount).";

(b) for paragraph (2) there shall be substituted the following paragraphs—

"(2) The discount is, subject to any order under paragraph (2A)—

(a) in the case of a house, 32 per cent. plus one per cent. for each complete year by which the qualifying period exceeds two years, up to a maximum of 60 per cent.;

(b) in the case of a flat, 44 per cent. plus two per cent. for each complete year by which the qualifying period exceeds two years, up to a maximum of 70 per cent.

(2A) The Department may by order made with the consent of the Department of Finance and Personnel provide that, in such cases as may be specified in the order—

(a) the minimum percentage discount,

(b) the percentage increase for each complete year of the qualifying period after the first two, or

(c) the maximum percentage discount,

shall be such percentage, higher than that specified in paragraph (2), as may be specified in the order.

(2B) An order under paragraph (2A) may contain such incidental, supplementary or transitional provisions as appear to the Department to be necessary or expedient.".

(2) In Article 106(3) of the Order of 1983, after the word "under" (where it occurs for the first time), there shall be inserted the words "Article 9(2A)".

(3) The amendments made by paragraphs (1) and (2) do not apply where—

(a) the tenant's notice claiming to exercise the right to buy or, as the case may be, to acquire an additional share under an equity-sharing lease was served before the commencement of those paragraphs, and

(b) the Executive has before commencement served its notice as to the terms of exercise of that right, that is, its notice under Article 11 of the Order of 1983 or paragraph 3(4) of Schedule 6 to the Order of 1986,

but without prejudice to the tenant's right to withdraw the notice served before commencement and serve a new notice.

(4) In the following provisions (which in the case of disposals at a discount require a covenant for repayment of a proportion of the discount if the dwelling-house is disposed of within five years)—

Article 10(1) and (2) of the Order of 1983 (repayment of discount on early disposal), and paragraph 6(1) and (2) of Schedule 6 to the Order of 1986,

for "five years" there shall be substituted "three years" and for "20 per cent." there shall be substituted "one-third".

(5) A conveyance or lease containing the covenant required by any of the provisions mentioned in paragraph (4) which was executed before the amendments made by that paragraph came into operation shall, provided no amount was then or had previously been payable under the covenant, have effect with such modifications as may be necessary to bring it into conformity with the amendments.

Notice of structural defects

19. In Article 11 of the Order of 1983, at the end there shall be added the following paragraph—

"(4) The notice shall contain a description of any structural defect known to the Executive affecting the dwelling-house or the building in which it is situated or any other building over which the tenant will have rights under the conveyance or lease.".

Deferment of completion

20.—(1) In Article 17(4)(*c*) of the Order of 1983 for the words "two years" there shall be substituted the words "three years".

(2) In Article 17(5)(*c*), (6) and (8) of that Order and in Articles 29(2)(*c*) and 33(2) of the Order of 1986, for "£100" there shall be substituted "£150".

(3) The above amendments apply where notice under Article 17(5) of that Order claiming to be entitled to defer completion is served after the day of the coming into operation of this Article.

(4) The above amendments to Article 17 of the Order of 1983 and Articles 29(2)(*c*) and 33(2) of the Order of 1986 also apply where notice under Article 17(5) of the Order of 1983 claiming to be entitled to defer completion was served before the day of the coming into operation of this Article if the tenant—

(a) serves a further notice on the Executive claiming the benefit of the longer period, and

(b) at the same time deposits with the Executive an additional £50;

and Article 17(8) of the Order of 1983 applies to the sum so deposited as if it had been deposited in pursuance of a notice under that Article.

(5) No such further notice may be served if the Executive has already served a notice under Article 17(3) of the Order of 1983 or Article 33(3) of the Order of 1986.

(6) Articles 21, 23, 23A and 46 of the Order of 1983 shall apply to the provisions of this Article relating to a further notice or deposit in the same manner as those Articles apply for the purposes of Part II of the Order of 1983.

(7) Article 34 of the Order of 1986 shall apply to the provisions of this Article in the same manner as that Article applies for the purposes of Part III of that Order.

Circumstances in which right to buy does not arise

21. In Part I of Schedule 1 to the Order of 1983, in paragraph 3(1)(*a*), for the words "other features" there shall be substituted the words "other major features so far as those have not been provided by the prospective purchaser".

Right to a loan in certain cases after exercise of right to buy

22.—(1) The Department may by regulations provide that where—

(a) a lease of a flat has been granted in pursuance of Chapter I of Part II of the Order of 1983 (the right to buy), and

(b) the landlord is the Executive,

the tenant has, in such circumstances as may be prescribed, a right to a loan in respect of service charges to which this Article applies.

(2) This Article applies to service charges in respect of repairs (whether to the flat, the building in which it is situated or any other building or land) which are payable in the period beginning with the grant of the lease and ending with the tenth anniversary of the grant or, where the lease provides for service charges to be payable by reference to a specified annual period, with the end of the tenth such period beginning after the grant of the lease.

(3) The regulations may provide that the right—

(a) arises only in respect of so much of a service charge as exceeds a minimum qualifying amount and does not exceed a maximum qualifying amount, and

(b) does not arise unless the amount thus qualifying for a loan itself exceeds a minimum amount,

the amounts being either prescribed or ascertained in a prescribed manner.

(4) The regulations shall provide that the right—

(a) is to leave the whole or part of the service charge outstanding; and

(b) arises only if the tenant is unable to obtain from a lending institution, within the meaning of Article 3(4) of the Order of 1983, a loan sufficient to assist him to meet the service charges.

(5) The regulations may, as regards procedure for exercising the right, provide—

(a) that a demand for service charges in respect of repairs shall inform the tenant whether, in the Executive's opinion, he is entitled to a loan and, if he is, what he must do to claim it;

(b) that the right must be claimed within a prescribed period of the demand; and

(c) that on the right being claimed the lender shall inform the tenant of the terms of the loan and of the prescribed period within which the tenant may accept the offer.

(6) In this Article "repairs" includes works for making good structural defects.

Power to make loans in other cases

23.—(1) The Department may by regulations provide that where—

(a) the Executive is the landlord of a flat under a long lease granted or assigned by the Executive, and

(b) the tenant is liable under the terms of the lease to pay service charges in respect of repairs (whether to the flat, the building in which it is situated or any other building or land),

the Executive may, in such circumstances as may be prescribed, make a loan to the tenant in respect of the service charges.

(2) Paragraphs (4) and (6) of Article 22 shall apply in relation to a loan made under this Article in the same manner as they apply to a loan made under that Article.

(3) Where the tenant is entitled to a loan in pursuance of regulations made under Article 22, the power conferred by regulations under this Article may be exercised in respect of any part of the service charge which does not qualify for a loan under that Article.

(4) This Article does not affect any other power of the Executive to make loans.

Supplementary provisions as to regulations under Articles 22 and 23

24.—(1) This Article applies to regulations under Article 22 or 23 (regulations conferring right to loan, or power to make loan, in respect of service charges).

(2) The regulations shall provide that the loan—

(a) in the case of a loan made in pursuance of regulations under Article 22 (the right to a loan), shall be on such terms as may be prescribed, and

(b) in the case of a loan made by virtue of regulations under Article 23 (power to make loan), shall be on such terms as the Executive may determine subject to any provision made by the regulations;

and shall, in either case, be secured by a mortgage of the flat in question, but may be made whether or not the flat is adequate security for the loan.

(3) The regulations may—

(a) as regards the rate of interest payable on the loan, either prescribe the rate or provide that the rate shall be such reasonable rate as may be determined by the Executive;

(b) as regards the administrative expenses of the Executive in connection with a loan, provide that the Executive may charge such expenses to the borrower, to the extent that they do not exceed such amount as may be prescribed, and that the expenses so charged may, at the option of the borrower in the case of a loan under Article 22 and that the option of the lender in the case of a loan under Article 23, be added to the amount of the loan.

(4) The regulations may apply whenever the lease in question was granted or assigned or whenever the service charge in question became payable.

(5) The regulations—

(a) may contain such incidental, supplementary and transitional provisions as the Department considers appropriate; and

(b) shall be made subject to negative resolution.

Amendments of the Order of 1981

Financing the Executive

25.—(1) In Article 15 of the Order of 1981—

(a) for paragraphs (1) and (2) there shall be substituted the following paragraphs—

"(1) The Department of Finance and Personnel may make advances to the Executive of such amounts and on such terms as that Department thinks fit.

(2) Subject to paragraph (3), there shall be issued out of the Consolidated Fund such sums as are necessary to enable the Department of Finance and Personnel to make advances under paragraph (1), and for the purpose of providing such issues the Department of Finance and Personnel may borrow money.";

(b) after paragraph (3) there shall be added the following paragraph—

"(4) In paragraph (3)—

(a) the reference to sums issued under paragraph (2) includes sums issued under that paragraph as it had effect before the day of the coming into operation of Article 25 of the Housing (Northern Ireland) Order 1988, and

(b) the reference to advances made under paragraph (1) includes advances made under that paragraph as it had effect before that day.".

(2) In Article 16(1) of the Order of 1981, after the word "with" there shall be inserted the words "the consent of the Department and with".

Re-development areas

26. In Article 47 of the Order of 1981, after paragraph (1) there shall be inserted the following paragraph—

"(1A) In relation to paragraph (1)(*a*) land is used for housing purposes if there is on the land a building constructed or adapted for housing purposes, whether or not the building is for the time being used or capable of being used for those purposes.".

Transfer of Executive's mortgages

27. After Article 88 of the Order of 1981 there shall be inserted the following Articles—

"**Transfer of mortgages by the Executive**

88A.—(1) The Executive shall not dispose of its interest as mortgagee of land without the prior written consent of the mortgagor (or, if there is more than one mortgagor, of all of them) specifying the name of the person to whom the interest is to be transferred.

(2) Consent given for the purposes of this Article—

(a) may be withdrawn by notice in writing to the Executive at any time before the instrument effecting the disposal is made, and

(b) ceases to have effect if the instrument effecting the disposal is not made within six months after it is given;

and if consent is withdrawn or ceases to have effect, the Executive shall return to the mortgagor any document in its possession by which he gave his consent.

(3) A disposal made without the consent required by this Article is void, subject to paragraph (4).

(4) If consent has been given and the Executive certifies in the instrument effecting the disposal that it has not been withdrawn or ceased to have effect, the disposal is valid notwithstanding that consent has been withdrawn or ceased to have effect.

(5) In such a case any person interested in the equity of redemption may, within six months of the disposal, by notice in writing served on the Executive, require the Executive, the transferee and any person claiming under the transferee to undo the disposal, on such terms as may be agreed between them or determined by the county court, and execute any documents and take any other steps necessary to vest back in the Executive the interest disposed of by it to the transferee.

(6) Without prejudice to Article 10, the Department may direct the Executive—

(a) to give to a mortgagor whose consent is sought such information as the Department may direct;

(b) as to the form of the document by which a mortgagor's consent is to be obtained;

(c) to secure that notice of the fact that the disposal has been made is given to the mortgagor, and

(d) as to the form of that notice and the period (being a period of not less than 28 days from the date of the disposal) within which that notice must be given.

(7) Paragraph 2 of Part II of Schedule 5 to the Land Registration Act (Northern Ireland) 1970(**1**) (Registrar of Titles to note certain restrictive provisions) shall not apply in relation to this Article or Article 88B.

Certain transfers to require Department's approval

88B.—(1) The Executive shall not, in the following circumstances, dispose of its interest as mortgagee of land, without the approval of the Department.

(2) The circumstances are that, under the terms of the disposal or of any arrangement entered into in connection with the disposal—

(a) any benefits or burdens of the mortgagee are retained by, or transferred to, the Executive, or

(b) the transferee can call on the Executive to re-acquire any interest transferred or to redeem the mortgage, or

(c) the consideration for the transfer is other than a cash sum determined at the date of the transfer, or

(d) the transfer is carried out in consideration of some other transaction or the Executive may be required to enter into an agreement with a third party.

(3) The Department may by regulations amend paragraph (2) or provide for other circumstances in which the disposal by the Executive of its interest as mortgagee of land requires the approval of the Department.".

Houses in multiple occupation: execution of works

28. After Article 113 of the Order of 1981 there shall be inserted the following Article—

"**Penalty for failure to execute works**

113A.—(1) A person on whom a notice has been served under Article 106, 107 or 108 of, or paragraph 2 of Schedule 7A to, the Order of 1981 (notices requiring the execution of works) who wilfully fails to comply with the notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) The obligation to execute the works specified in the notice continues notwithstanding that the period for compliance has expired; and a person who wilfully fails to comply with that obligation, after being convicted of an offence in relation to the notice under paragraph (1) or this paragraph, shall be guilty of a further offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) In this Article compliance with a notice means the completion of the works specified in the notice within the period of compliance, which is—

(a) if no appeal is brought against the notice, the period specified in the notice with any extension duly allowed by the Executive;

(**1**) 1970 c. 18 (N.I.)

(b) if an appeal is brought against the notice, and the notice is confirmed in whole or in part on the appeal, the period of 28 days from the final determination of the appeal or such longer period as the court in determining the appeal may fix.

(4) No liability arises under paragraph (1) if the Executive, on being notified in accordance with Article 111(2) that the person on whom the notice was served is not able to do the work in question, serves notice that it proposes to do the work and relieves him from liability under paragraph (1).

(5) The provisions of this Article are without prejudice to the exercise by the Executive of its power under Article 111 to carry out the works itself.".

Other provisions

Scheme for purchase of evacuated dwellings

29.—(1) The Executive shall submit to the Department a scheme making provision for the Executive to acquire by agreement houses owned by persons who, in consequence of acts of violence, threats to commit such acts or other intimidation, are unable or unwilling to occupy those houses.

(2) A scheme submitted under paragraph (1) may include provision as to—

(a) the circumstances in which the Executive may acquire a house under the scheme;

(b) the manner in which the purchase price is to be determined;

(c) the fittings which the Executive may purchase when acquiring a house under the scheme;

(d) the disposal of such houses; and

(e) such other matters as the Executive considers appropriate.

(3) A scheme submitted under paragraph (1) shall provide that, where any part of a house is used for purposes other than those of a dwelling, the Executive shall not acquire the house under the scheme, except with the consent of the Department.

(4) A scheme submitted under paragraph (1) may provide that where—

(a) the Executive is to acquire a house under the scheme, and

(b) there is land contiguous to that house which is not part of the curtilage of the house,

the Executive may, with the consent of the Department, acquire that land.

(5) Paragraph (2) shall apply in relation to provision made under paragraph (4) in respect of land in the same manner as it applies to provision made under paragraph (1) in respect of houses.

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

(7) The Executive shall comply with a scheme approved by the Department under paragraph (6).

(8) The Executive may at any time, and if the Department so directs shall, submit to the Department proposals for amending a scheme approved under paragraph (6) or a scheme replacing any such scheme and paragraphs (6) and (7) shall have effect in relation to those proposals or a scheme replacing an existing scheme as they have effect in relation to a scheme.

(9) In this Article "house" has the meaning given in Article 2(2) of the Order of 1981.

(10) The powers of the Executive shall be deemed always to have included power to make and operate a scheme making provision corresponding to that mentioned in paragraph (1).

Scheme for emergency house repairs

30.—(1) The Executive shall submit to the Department a scheme making provision for the Executive to carry out as a matter of urgency repairs to houses damaged—

(a) in consequence of civil disturbance, or

(b) in such other circumstances as the Department may specify in an order made subject to negative resolution.

(2) A scheme submitted under paragraph (1) may include provision as to—

(a) the classes of houses to which the scheme applies;

(b) the nature of the repairs to be carried out by the Executive under the scheme; and

(c) the terms on which the repairs are to be carried out.

(3) Paragraphs (6) to (8) of Article 29 shall apply in relation to a scheme made under this Article in the same manner as those provisions apply in relation to a scheme made under that Article.

(4) The powers of the Executive shall be deemed always to have included power to make and operate a scheme making provision corresponding to that mentioned in paragraph (1)(*a*).