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STATUTORY INSTRUMENTS

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**2003 No. 412**

**The Housing (Northern Ireland) Order 2003**

**PART III**

**GRANTS, &c. FOR RENEWAL OF PRIVATE SECTOR HOUSING**

**CHAPTER V**

**DEFERRED ACTION NOTICES. &c.**

**Interpretation of Chapter V**

**110.** In this Chapter—

- “deferred action notice” shall be construed in accordance with Article 111;  
“flat”, “house” and “owner” have the meaning given in Article 2 of the Order of 1981; and  
“flat in multiple occupation” has the same meaning as in Part IV of the Order of 1992.

*Deferred action notices*

**Deferred action notices**

**111.**—(1) If the Executive is satisfied that a house (including a house in multiple occupation) is unfit for human habitation, but is satisfied that serving a deferred action notice is the most satisfactory course of action, it shall serve such a notice.

(2) A deferred action notice is a notice—

- (a) stating that the premises are unfit for human habitation,
- (b) specifying the works which, in the opinion of the Executive, are required to make the premises fit for human habitation, and
- (c) stating the other courses of action which are available to the Executive if the premises remain unfit for human habitation.

(3) The notice becomes operative, if no appeal is brought, on the expiry of 21 days from the date of the service of the notice and is final and conclusive as to matters which could have been raised on an appeal.

(4) The fact that a deferred action notice has been served does not prevent the Executive from taking any other course of action in relation to the premises at any time.

**Service of deferred action notices**

**112.**—(1) The Executive shall serve a deferred action notice relating to a house on the owner of the house.

(2) Where the Executive is satisfied that a house which is a flat, or a flat in multiple occupation, is unfit for human habitation by virtue of Article 46(2) of the Order of 1981, it shall also serve the notice on the owner of the building or part of the building in question.

(3) In the case of a house in multiple occupation, the Executive may serve the notice on the person managing the house instead of upon the owner.

(4) Where the Executive serves a notice under paragraph (1), (2) or (3) it shall also serve a copy of the notice on any other person having an estate in the premises concerned.

### Appeals against deferred action notices

**113.**—(1) A person aggrieved by a deferred action notice may within 21 days after the service of the notice appeal to the county court.

(2) Without prejudice to the generality of paragraph (1), it is a ground of appeal that—

- (a) making a demolition order under Article 35 of the Order of 1981 or a closing order under Article 38 of that Order, or
- (b) serving a repair notice under Article 41 of that Order,

is a more satisfactory course of action.

(3) Where the grounds on which an appeal is brought are or include that specified in paragraph (2), the court, on hearing the appeal, shall have regard to any guidance given to the Executive under Article 46A of the Order of 1981 or Article 115.

(4) On an appeal the court may make such order either confirming, quashing or varying the notice as it thinks fit.

(5) Where the appeal is allowed and the reason or one of the reasons for allowing the appeal is that—

- (a) making a demolition order under Article 35 of the Order of 1981 or a closing order under Article 38 of that Order, or
- (b) serving a repair notice under Article 41 of that Order,

is a more satisfactory course of action, the judge shall, if requested to do so by the appellant or the Executive, include in his judgment a finding to that effect.

(6) If an appeal is brought, the deferred action notice does not become operative until—

- (a) a decision on the appeal confirming the notice (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought, or
- (b) if a further appeal to the Court of Appeal is brought, a decision on that appeal is given confirming the notice (with or without variation);

and for this purpose the withdrawal of an appeal has the same effect as a decision confirming the notice or decision appealed against.

### Review of deferred action notices

**114.**—(1) The Executive may at any time review any deferred action notice served by it, and it shall do so not later than 2 years after the notice becomes operative and at intervals of not more than 2 years thereafter.

The Department may by order amend this paragraph so as to specify such other period or periods as it considers appropriate.

(2) The Executive shall for the purposes of any such review inspect the premises concerned.

For this purpose Articles 13 (power to enter land) and 160 (penalty for obstruction) of the Order of 1981 apply as they apply for the purposes of that Order.

(3) If the Executive is satisfied that the deferred action notice remains the most satisfactory course of action, it shall renew the notice and serve notice of its decision.

(4) The provisions of Article 112 (service of deferred action notice) and Article 113(1) to (5) (appeals against deferred action notices) apply in relation to the Executive's decision to renew a deferred action notice as in relation to the original notice.

(5) If an appeal is brought against the decision to renew a deferred action notice, the notice remains operative until any decision on the appeal, or any further appeal, quashing or varying the notice.

(6) If the Executive takes action in relation to the premises under any of the provisions listed in Article 46A(1) of the Order of 1981, the deferred action notice shall cease to be operative on the relevant notice, order or declaration becoming operative.

### **Guidance by the Department**

**115.**—(1) In deciding for the purposes of Article 111 (deferred action notices) or Article 114 (review of deferred action notices) what is the most satisfactory course of action in relation to any premises, the Executive shall have regard to such guidance as may be given by the Department.

(2) The provisions of Article 46A(2) and (3) of the Order of 1981 (supplementary provisions as to guidance) apply in relation to such guidance.

### *Power to charge for enforcement action*

### **Unfitness for human habitation, &c.: power to charge for enforcement action**

**116.**—(1) The Executive may make such reasonable charge as it considers appropriate as a means of recovering certain administrative and other expenses incurred by it in taking action of any of the following kinds—

- (a) serving a deferred action notice under Article 111 or deciding to renew such a notice under Article 114;
- (b) making a demolition order under Article 35 of the Order of 1981;
- (c) making a closing order under Article 38 of that Order;
- (d) serving a repair notice under Article 41 of that Order.

(2) The expenses are, in the case of the service of a notice under Article 111 or a notice under Article 41 of the Order of 1981, the expenses incurred in—

- (a) determining whether to serve the notice,
- (b) identifying the works to be specified in the notice, and
- (c) serving the notice.

(3) The expenses are, in the case of a decision to renew a notice under Article 114, the expenses incurred in—

- (a) deciding whether to renew the notice, and
- (b) serving notice of the Executive's decision.

(4) The expenses are, in the case of a demolition order under Article 35 of the Order of 1981 or a closing order under Article 38 of that Order, the expenses incurred in—

- (a) determining whether to make the order, and

(b) serving notice of the order.

(5) The amount of the charge shall not exceed such amount as is specified by order of the Department.

(6) Where a court allows an appeal against the underlying notice, decision or order mentioned in paragraph (1), it may make such order as it thinks fit reducing, quashing or requiring the repayment of any charge under this Article made in respect of the notice, decision or order.

### **Recovery of charge for enforcement action**

**117.**—(1) The following provisions have effect with respect to the recovery of a charge under Article 116.

(2) The charge may be recovered by the Executive from—

- (a) in the case of a notice under Article 111 or a notice under Article 41 of the Order of 1981, any person on whom the notice is served;
- (b) in the case of a renewal of a notice under Article 114, any person on whom notice of the decision to renew the notice is served;
- (c) in the case of an order under Article 35 or 38 of the Order of 1981, any person on whom notice of the order is served as an owner of the premises.

(3) A demand for payment of the charge shall be served on the person from whom the Executive seeks to recover it.

(4) The demand becomes operative, if no appeal is brought against the underlying notice, decision or order, on the expiry of the period of 21 days from the service of the demand.

(5) The sum recoverable by the Executive is, until recovered, a charge on the premises concerned; and—

- (a) the charge takes effect when the demand becomes operative, and
- (b) the charge shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Executive by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law); and
- (c) the Executive may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 (c. 41) on mortgagees by deed accordingly.

(6) A charge under paragraph (5) shall be included in the matters required to be registered in the Statutory Charges Register.

### *Supplementary*

### **Power to prescribe forms**

**118.** The Department may by regulations prescribe the form of and the particulars to be contained in—

- (a) a deferred action notice, or a notice of the Executive's decision to renew a deferred action notice, or
- (b) a demand for payment of any charge under Article 116 (power to charge for enforcement action).