
STATUTORY INSTRUMENTS

1986 No. 1301

The Housing (Northern Ireland) Order 1986

PART II

Housing Defects

PROSPECTIVE

Interpretation of Part II

3.—(1) In this Part—

“associated arrangement” has the meaning given in Article 7(6);

“cut-off date” is to be construed in accordance with Article 4(2) (b);

“defective dwelling” is to be construed in accordance with Article 4(2);

“designation” means a designation under Article 4;

“housing association” means a housing association registered under Chapter II of Part VII of the Order of 1981, but does not include any such association whose rules—

(a) restrict membership to persons who are tenants or prospective tenants of the association, and

(b) preclude the granting or assignment of tenancies to persons other than members;

“lending institution” means any building society (as defined in Article 3(4) of the Order of 1983) and any of the bodies specified in paragraphs 3, 4 and 5 of Schedule 10 to the Order of 1981;

“person entitled to assistance by way of reinstatement grant” and “person entitled to assistance by way of repurchase” are to be construed in accordance with Article 7(5);

“qualifying defect” is to be construed in accordance with Article 4(2)(a);

“relevant interest” has the meaning given in Article 5(7)(a); and

“work required to reinstate a defective dwelling” is to be construed in accordance with Article 6(7).

(2) In this Part “relevant body” means—

(a) the Executive or a body which was its statutory predecessor,

(b) a housing association,

(c) a body specified under paragraph (3).

(3) For the purposes of paragraph (2), the Department may by order—

(a) if the Department is satisfied that a body corporate meets the requirements of paragraph (5), specify that body as one that is to be treated as a relevant body, and

- (b) whether or not the Department specifies it under sub-paragraph (a), if the Department is satisfied that a body corporate met those requirements during any period, specify it as a body that is to be treated as having been a relevant body during that period.
- (4) An order under paragraph (3) may, in the case of a body previously specified under sub-paragraph (a) of that paragraph which the Department is satisfied has ceased to meet those requirements on any date, provide that it is to be treated for the purposes of this Part as having ceased to be a relevant body on that date.
- (5) The requirements mentioned in paragraph (3) are that—
 - (a) the affairs of the body are managed by its members and its members hold office as such by virtue of their appointment to that or another office by the head of a Northern Ireland department under any enactment, or
 - (b) the body is a subsidiary (within the meaning of the Companies Act (Northern Ireland) 1960) of such a body.
- (6) References in this Part to a disposal of an interest in a dwelling by a relevant body include a reference to a disposal of such an interest by a government department.
- (7) In this Part (except Article 11 and paragraph 4 of Schedule 2) “dwelling” means any house, flat or other unit designed or adapted for living in; and for the purposes of this Part a building so designed or adapted is a house if it is a structure reasonably so called, so that—
 - (a) where a building is divided into units so designed or adapted and either it is so divided horizontally or a material part of any unit lies above or below any other unit, those units are not houses (though the building as a whole may be); and
 - (b) where a building is divided vertically into units so designed or adapted, those units may be houses.
- (8) In any case where—
 - (a) a house which is divided into flats or other units is a defective dwelling, and
 - (b) a person is eligible for assistance in respect of that dwelling,
 the fact that it is so divided is to be disregarded for the purposes of Article 6(4)(a).
- (9) Subject to paragraph (10), where any interest in land is disposed of under a contract, the time at which the disposal is made is, for the purposes of this Part, the time the contract is made (and not, if different, the time at which the interest is conveyed).
- (10) If the contract is conditional (and in particular if it is conditional on the exercise of an option) the time at which the disposal is made for those purposes is the time when the condition is satisfied.

Eligibility

Designation of defective dwellings

- 4.—(1) The Department may designate as a class any buildings each of which consists of or includes one or more dwellings if it appears to the Department that—
- (a) buildings in the proposed class are defective by reason of their design or construction; and
 - (b) by virtue of the circumstances mentioned in sub-paragraph (a) having become generally known, the value of some or all of the dwellings concerned has been substantially reduced.
- (2) Any dwelling which a building in a class designated under this Article consists of or includes is referred to in this Part as a “defective dwelling”; and in this Part in relation to such a dwelling—

- (a) “the qualifying defect” means that which, in the opinion of the Department, is wrong with the buildings in that class; and
- (b) “the cut-off date” means the date by which, in the opinion of the Department, the circumstances mentioned in paragraph (1)(a) became generally known.
- (3) A designation under this Article shall describe the qualifying defect and specify—
 - (a) the date on which the designation is to come into operation;
 - (b) the cut-off date (not being a date falling after the date specified under sub-paragraph (a)); and
 - (c) the period within which persons may seek assistance under this Part in respect of the defective dwellings concerned.
- (4) The Department may vary or revoke a designation under this Article and may by a variation of the designation extend the period referred to in paragraph (3)(c), whether or not it has expired; but
 - (a) no variation or revocation shall affect the operation of the provisions of this Part in relation to any dwelling if, before the variation or revocation comes into operation, it is a defective dwelling by virtue of the designation in question and application for assistance in respect of it has been made under Article 6; and
 - (b) no variation shall alter the cut-off date.
- (5) Notice of a designation under this Article and of the variation or revocation of such a designation shall be published in the Belfast Gazette.
- (6) Any question arising as to whether a building is or was at any time in a class designated under this Article shall be determined by the Department.
- (7) No designation shall describe a designated class by reference to the area in which the buildings concerned are situated.

Eligibility for assistance

- 5.—**(1) Subject to the following provisions of this Part, a person to whom this Article applies is eligible for assistance in respect of a defective dwelling for the purposes of this Part if—
- (a) he holds a relevant interest in the dwelling, and
 - (b) one of the sets of conditions described in paragraphs (2) and (3) is satisfied;
- and for the purposes of sub-paragraph (a) a person shall be treated as holding a relevant interest in a dwelling notwithstanding that he has conveyed or assigned that interest to another person by way of mortgage.
- (2) The first set of conditions is that—
 - (a) there was a disposal by a relevant body of a relevant interest in the dwelling before the cut-off date; and
 - (b) there has been no disposal for value by any person of a relevant interest in the dwelling on or after the cut-off date.
 - (3) The second set of conditions is that—
 - (a) a person to whom this Article applies acquired a relevant interest in the dwelling on a disposal for value occurring within the period of twelve months beginning with the cut-off date;
 - (b) on the date of that disposal that person was unaware of the association of the dwelling with the qualifying defect;
 - (c) the value by reference to which the price for the disposal was calculated did not take any, or any adequate, account of the qualifying defect; and

- (d) if the cut-off date had fallen immediately after the date of the disposal, the first set of conditions would have been satisfied.
- (4) No person is eligible for assistance in respect of a defective dwelling if the Executive is of the opinion that—
 - (a) work to the building that consists of or includes the dwelling has been carried out in order to deal with the qualifying defect, and
 - (b) on the completion of the work, no further work relating to the dwelling was required to be done to the building in order to deal satisfactorily with the qualifying defect.
- (5) In this Part, except in paragraph 2 of Schedule 2, references to a disposal include references to a part disposal; but for the purposes of this Part, a disposal of an interest in a dwelling is a disposal of a relevant interest in the dwelling if, and only if, on the disposal the person to whom it is made acquires a relevant interest in the dwelling.
- (6) This Article applies to—
 - (a) an individual who is not a trustee,
 - (b) trustees, if all the beneficiaries are individuals, and
 - (c) personal representatives.
- (7) In this Part—
 - (a) “relevant interest” means an estate in fee simple (including an estate held under a fee farm grant) or a long tenancy unless, in either case, it is subject to a long tenancy;
 - (b) references to an interest in a dwelling are references to an interest in land which is or includes the dwelling;
 - (c) in relation to a person holding an interest in a dwelling formed by the conversion of another dwelling, references to a previous disposal of an interest in the dwelling include a reference to a previous disposal on which an interest in land which included that part of the original dwelling in which his interest subsists was acquired; and
 - (d) references to a disposal of an interest for value are references to a disposal for money or money's worth, whether or not representing full value for the interest disposed of.
- (8) Subject to paragraph (9) a tenancy is a long tenancy for the purposes of paragraph (7) if—
 - (a) it is a tenancy granted for a term certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by a notice given by or to the tenant or by re-entry, forfeiture or otherwise; or
 - (b) it is a tenancy granted in pursuance of Chapter I of Part II of the Order of 1983 or Part III of this Order.
- (9) A tenancy is not a long tenancy for those purposes if it is an interest created by way of security and liable to termination by the exercise of a right of redemption or otherwise.

Entitlement to reinstatement grant or repurchase

- 6.—(1) A person seeking assistance under this Part in respect of a defective dwelling shall make a written application to the Executive within such period as is specified in the designation in question.
- (2) Subject to paragraph (8) and Article 17(3), the Executive, on receiving such an application shall, if the applicant is eligible for assistance in respect of the defective dwelling, determine^{F1} as soon as reasonably practicable] whether he is entitled to assistance by way of reinstatement grant or by way of repurchase.
- (3) For the purposes of that determination the applicant is entitled to assistance by way of reinstatement grant if—

(a) the Executive is satisfied that each of the conditions mentioned in paragraph (4) is met, and
(b) paragraph (5) does not apply in his case;
and in any other case he is entitled to assistance by way of repurchase.

(4) The conditions referred to in paragraph (3) are that—

- (a) the defective dwelling is a house;
- (b) if the work required to reinstate the dwelling (together with any other work which the Executive is satisfied the applicant proposes to carry out) were carried out—
 - (i) the dwelling would be likely to provide satisfactory housing accommodation for a period of at least 30 years, and
 - (ii) an individual acquiring a fee simple estate in the dwelling with vacant possession would be likely to be able to arrange a mortgage on satisfactory terms with a lending institution;
- (c) giving assistance by way of reinstatement grant is justified having regard, on the one hand, to the amount of reinstatement grant that would be payable in respect of the dwelling in pursuance of this Part and, on the other hand, to the likely value of the fee simple estate in the dwelling with vacant possession after the work required to reinstate it had been carried out; and

Sub#para. (d) rep. by SR 1988/329

(5) This paragraph applies in the case of an applicant where the Executive is satisfied on a claim made by him that it would be unreasonable to expect him to secure or await the carrying out of the work required to reinstate the defective dwelling.

(6) The Department may by order amend paragraph (4) (whether as originally enacted or as previously amended under this paragraph) so as to—

- (a) modify or omit any of the conditions mentioned in that paragraph, or
- (b) add or substitute for any of those conditions other conditions;

and an order made under this paragraph shall not affect the operation of this Article in relation to applications made under this Article before the order comes into force.

(7) For the purposes of this Part—

- (a) the work required to reinstate a defective dwelling is the work relating to the dwelling that is required to be done to the building that consists of or includes the dwelling in order to deal satisfactorily with the qualifying defect, and
- (b) where there is work falling within sub-paragraph (a), the work required to reinstate the defective dwelling includes—
 - (i) any work required, in order to deal satisfactorily with the qualifying defect, to be done to any garage or outhouse designed or constructed as that building is designed or constructed, being a garage or outhouse in which the interest of the person eligible for assistance subsists and which is occupied with and used for the purposes of the dwelling or any part of it, and
 - (ii) any other work reasonably required in connection with work falling within sub-paragraph (a) or this sub-paragraph.

[^{F1}(7A) In any case where—

- (a) the most satisfactory way of dealing with the qualifying defect is substantially to demolish the building that consists of or includes the defective dwelling or a part of that building, and
- (b) it is practicable to rebuild the building or part concerned on, or substantially on, its existing foundations and reconstruct the dwelling to the same, or substantially the same, plan,

the work required to carry out those operations shall be regarded for the purposes of this Part as work required to reinstate the defective dwelling.]

(8) The Executive shall not entertain an application under this Article in respect of a defective dwelling if at any time (whether before or after the designation in question comes into operation) application for^{F2} renovation grant or common parts grant under Chapter II of Part III of the Housing (Northern Ireland) Order 2003] has been made in respect of the dwelling and the relevant works include the whole or any part of the work required to reinstate the defective dwelling unless—

- (a) the application under that Part has been refused or has been withdrawn under paragraph (9), or
- (b) the relevant works have been completed.

(9) A person who has applied for^{F2} renovation grant or common parts grant under Chapter II of Part III of the Housing (Northern Ireland) Order 2003] in respect of any dwelling may, at any time when it is a defective dwelling, withdraw his application, whether or not it has been approved, if the relevant works have not been begun and those works include the whole or any part of the work required to reinstate the defective dwelling.

(10) In paragraphs (8) and (9) “the relevant works” has the same meaning as in^{F2} Chapter II of Part III of the Housing (Northern Ireland) Order 2003].

(11) Where a person who is eligible for assistance in respect of a defective dwelling dies or disposes of his interest in the dwelling to a person to whom Article 5 applies (otherwise than on a disposal for value), this Part shall apply as if anything done or treated by virtue of this paragraph as done by or in relation to the person so eligible had been done by or in relation to his personal representatives or, as the case may be, the person acquiring the interest.

F1 1992 NI 15
F2 2003 NI 2

Notice of determination

7.—(1) Where the Executive receives an application which it is required to entertain under Article 6 it shall, as soon as it is reasonably practicable to do so, give notice in writing to the applicant stating whether or not in its opinion he is eligible for assistance in respect of the defective dwelling, and also—

- (a) if it is of the opinion that he is not so eligible, the reasons for its view;
- (b) if it is of the opinion that he is so eligible, informing him of his right to make a claim under Article 6(5).

(2) Where the Executive is required to entertain an application from an applicant who is eligible for assistance, it shall, as soon as it is reasonably practicable to do so, give him notice in writing stating—

- (a) the form of assistance to which he is entitled; and
- (b) if, on a claim by the applicant, the Executive has satisfied itself that Article 6(5) does not apply in his case, the reasons for its view.

(3) A notice under paragraph (2) stating that the applicant is entitled to assistance by way of reinstatement grant shall also state—

- (a) the grounds for the Executive's determination;
- (b) the work which, in its opinion, is the work required to reinstate the defective dwelling;
- (c) the amount of expenditure which, in its opinion, may properly be incurred in executing the work;

- (d) the amount of expenditure which, in its opinion, may properly be incurred in entering into any associated arrangement;
 - (e) the condition required by Article 8(3) (including the period within which the work is to be carried out); and
 - (f) its estimate of the amount of grant that would be payable in respect of the dwelling in pursuance of this Part.
- (4) A notice under paragraph (2) stating that the applicant is entitled to assistance by way of repurchase shall also state—
- (a) the grounds for the Executive's determination; and
 - (b) the effect of the following provisions of this Part, namely—
 - Article 9(1), (2) and (6) (except sub-paragraph (b)), and
 - Article 11(2) and (4) to (6).
- (5) References in the following provisions of this Part to a person entitled to assistance by way of reinstatement grant or, as the case may be, by way of repurchase in respect of a defective dwelling are references to a person—
- (a) who is eligible for assistance in respect of the dwelling, and
 - (b) on whom a notice under this Article has been served stating that he is entitled to that form of assistance.
- (6) In this Part “associated arrangement” means any arrangement which—
- (a) is to be entered into in connection with the execution of the work required to reinstate a defective dwelling, and
 - (b) is likely to contribute towards the dwelling being regarded as acceptable security by a lending institution.

Forms of assistance

Reinstatement grant

8.—(1) Where a person is entitled to assistance by way of reinstatement grant in respect of a defective dwelling, the Executive shall, subject to and in accordance with the provisions of this Article and Schedule 1, pay reinstatement grant to him in respect of the qualifying work and in respect of any associated arrangement.

(2) In this Article and that Schedule “qualifying work”, in relation to a defective dwelling, means the work stated in a notice under Article 7(2) or paragraph 3 of that Schedule to be, in the opinion of the Executive, the work which is required to reinstate the dwelling.

(3) It shall be a condition of payment of the grant that the qualifying work is carried out to the satisfaction of the Executive within the period specified in the notice under Article 7(2) or within that period as extended; but payment of the grant shall not be subject to any other condition, however expressed.

(4) The period so specified shall be such reasonable period (not being less than 12 months) beginning with the service of the notice as the Executive may determine.

(5) The Executive shall, if there are reasonable grounds for doing so, by notice in writing served on the person entitled to assistance extend, or further extend, the period for carrying out that work (whether or not that period has expired).

(6) Part II of Schedule 1 has effect to require the repayment of grant in certain circumstances.

Repurchase

9.—(1) A person who is entitled to assistance by way of repurchase in respect of a defective dwelling may, within the period of 3 months beginning with the service of the Executive's notice under Article 7(2) (or within that period as extended) request the Executive in writing to notify him of the proposed terms and conditions for its acquisition of his interest so far as subsisting in the defective dwelling and any garage, outhouse, garden, yard and appurtenances occupied and used for the purposes of the dwelling or any part of it (in this paragraph referred to as the “interest to be acquired”).

(2) The Executive shall, within the period of 3 months beginning with the making of a request under paragraph (1), serve on the person so entitled a notice in writing specifying the proposed terms and conditions and stating—

- (a) its opinion as to the value of the interest to be acquired, and
- (b) the effect of paragraphs (3) to (5) and (6) (except sub-paragraph (a)).

(3) Subject to the following provisions of this Part, any agreement for the acquisition by the Executive of the interest to be acquired shall contain such provisions as the parties have agreed or, in default of agreement, as have been determined in accordance with this Part to be reasonable.

(4) The Executive shall, within 3 months of all the provisions to be included in the agreement being agreed or determined, draw up an agreement for execution by the parties embodying those provisions and serve a copy of the agreement on the person so entitled.

(5) The person so entitled may, at any time within the period of 6 months beginning with the service of the copy of that agreement (or within that period as extended), notify the Executive in writing that he requires it to enter into an agreement embodying those provisions and the Executive shall comply with the requirement.

(6) The Executive shall, if there are reasonable grounds for doing so, by notice in writing served on the person so entitled, extend (or further extend)—

- (a) the period within which under paragraph (1) he may make a request under that paragraph; and
- (b) the period within which under paragraph (5) he may notify it of his requirement;

whether or not the period in question has expired.

(7) Schedule 2 has effect to supplement the provisions of this Article.

Purchase of certain land by authority possessing powers of compulsory acquisition

10.—(1) In any case where—

- (a) there was a disposal of an interest in a defective dwelling, being an interest held by a person (in this Article referred to as “the owner”) who immediately before the time of disposal was eligible for assistance in respect of the dwelling,
- (b) the disposal was made to an authority possessing compulsory acquisition powers, otherwise than in pursuance of Article 9,
- (c) on the disposal, the authority acquired an interest in any affected land, that is to say, the defective dwelling and any garage, outhouse, garden, yard and appurtenances occupied with and used for the purposes of the dwelling or any part of it, and
- (d) the amount paid in consideration of the disposal did not include any amount attributable to the owner's right to apply for assistance in respect of the dwelling,

the owner is entitled, subject to the following provisions of this Article, to be paid by the Executive the amount (if any) by which ninety-five per cent of the defect-free value exceeds the amount of compensation for the disposal.

(2) For the purposes of this Article, the amount of compensation for the disposal is—

- (a) the amount that would have been the proper amount of compensation for the disposal (having regard, where any relevant determination has been made by the Lands Tribunal, to that determination), or
- (b) if greater, the amount paid as the consideration for the disposal,

but excluding any amount payable for disturbance or any other matter not directly based on the value of the land.

(3) In this Article “defect-free value” means the amount that would have been the proper amount of compensation for the disposal (excluding any amount so payable) if none of the defective dwellings to which the designation in question related had been affected by the qualifying defect.

(4) For the purposes of this Article—

- (a) it is to be assumed that the disposal occurred on a compulsory acquisition (in cases where it did not in fact do so),
- (b) where the compensation for the disposal fell to be assessed by reference to the value of the land as a site cleared of buildings and available for development then, for the purpose of determining the defect-free value, it is to be assumed that the compensation did not fall to be so assessed, and
- (c) any amount which, apart from this sub-paragraph, would be payable by the Executive under paragraph (1) shall be reduced by the amount of any payment made in respect of the defective dwelling under Article 93 of the Order of 1981.

(5) The Executive is not required to make a payment to any person under this Article unless he makes a written application to it for the payment before the end of the period of two years beginning with the time of disposal.

(6) Where the Executive refuses an application for a payment under this Article on the grounds that the owner was not eligible for assistance in respect of the defective dwelling at the time of the disposal, it shall give to the applicant a notice in writing stating the reasons for its view.

(7) Any question arising under this Article as to the amount of compensation for a disposal or defect-free value shall be determined by the district valuer if the owner or the Executive so requires by notice in writing served on the district valuer.

(8) Before making a determination in pursuance of paragraph (7), the district valuer shall consider any representations by the owner or the Executive made to him within four weeks from the service of the notice under that paragraph.

(9) A person serving a notice on the district valuer under paragraph (7) shall serve notice in writing of that fact on the Executive or, as the case may be, the owner.

(10) In this Article—

“authority possessing compulsory acquisition powers” means a person with power to acquire an interest in land otherwise than by agreement;

“district valuer” has the meaning given in Article 2(2) of the Rates (Northern Ireland) Order 1977.

(11) In this Article references to the owner include a reference to his personal representatives.

Secure tenancies

11.—(1) This Article applies where the Executive acquires an interest in a defective dwelling in pursuance of Article 9 and the land in which the interest subsists is or includes a dwelling-house occupied as a separate dwelling (in this Article referred to as a “relevant dwelling-house”).

(2) Where an individual is an occupier of a relevant dwelling-house throughout the qualifying period and either—

- (a) he is a person entitled to assistance by way of repurchase in respect of the defective dwelling, or
- (b) the persons so entitled are, in relation to the interest concerned, his trustees,

the Executive shall, subject to the following provisions of this Article, grant him a secure tenancy on completion of its acquisition of the interest concerned.

(3) Where an individual—

- (a) is at the end of the qualifying period a tenant of a relevant dwelling-house under a periodic tenancy, and
- (b) has been an occupier of the dwelling-house throughout the qualifying period,

the Executive shall, subject to the following provisions of this Article, grant him a secure tenancy on completion of its acquisition of the interest concerned.

(4) If two or more persons qualify under paragraph (2) or (3) for the grant of a secure tenancy in respect of the same relevant dwelling-house, the Executive shall, subject to the following provisions of this Article, grant the tenancy to such one or more of them as they may agree among themselves or (if there is no such agreement) to all of them.

(5) The dwelling-house let under the secure tenancy to be granted to any person under this Article shall—

- (a) if the circumstances do not fall within paragraph 2 of Schedule 3, be the dwelling-house of which he is the occupier at the end of the qualifying period;
- (b) if the circumstances do fall within paragraph 2 of that Schedule, be another dwelling-house which, so far as is reasonably practicable, affords accommodation which meets the requirements of suitability set out in paragraph 3 of that Schedule.

(6) The Executive shall not be required to grant to any person a secure tenancy under this Article unless that person requests it to do so in writing before the service on the person entitled to assistance of a copy of the agreement drawn up under Article 9(4) or paragraph 3(4) of Schedule 2.

(7) On receiving a request under paragraph (6), the Executive shall, as soon as it is reasonably practicable to do so, give notice in writing to the person making the request stating—

- (a) whether or not in its opinion the circumstances of his case fall within paragraph 2 of Schedule 3, and
- (b) if its opinion is that they do—
 - (i) which of the Cases specified in that paragraph is applicable to those circumstances, and
 - (ii) the effect of paragraph (5) and Schedule 3.

(8) If at any time after the service of a notice under Article 7(2) it appears to the Executive that a person may be entitled to request it to grant him a tenancy under paragraph (3), it shall forthwith give him notice in writing of that fact.

(9) In this Article—

“dwelling-house” has the same meaning as in Chapter II of Part II of the Order of 1983;

“occupier”, in relation to a dwelling-house, means a person who occupies the dwelling-house as his only or principal home;

“qualifying period” means the period beginning with the making of an application under Article 6 in respect of the defective dwelling and ending immediately before completion of the Executive's acquisition;

“relevant dwelling-house” has the meaning given in paragraph (1);
“secure tenancy” has the same meaning as in Chapter II of Part II of the Order of 1983;
and references to the grant of a secure tenancy are references to the grant of a tenancy which would be a secure tenancy assuming that the tenant under the tenancy occupies the dwelling-house concerned as his only or principal home.

Expenses incidental to applications for assistance

12.—(1) A person whose interest in a defective dwelling is acquired by the Executive in pursuance of Article 9 is entitled to be reimbursed by the Executive the proper amount of—

- (a) any expenses in respect of legal services provided in connection with the Executive's acquisition, and
- (b) any other expenses in connection with negotiating the terms of that acquisition,

being in each case expenses which are reasonably incurred by him after receipt of a notice under Article 9(2).

(2) Any agreement between any person and the Executive shall be void in so far as it purports to oblige him to bear any part of the costs or expenses incurred by the Executive in connection with the exercise by him of his rights under this Part.

Miscellaneous and Supplemental

Dwellings included in more than one designation

13.—(1) For the purposes of this Part, where a person is already eligible for assistance in respect of a defective dwelling at a time when a further designation comes into operation, being a designation of a class within which the building that consists of or includes the dwelling falls, that designation is to be disregarded in his case if either—

- (a) he would not be eligible for assistance in respect of the defective dwelling if it were the only designation, or
- (b) he is entitled to assistance by way of repurchase in respect of the defective dwelling.

(2) Where a person is eligible for assistance in respect of a defective dwelling and the building that consists of or includes the dwelling falls within two or more designations, being designations which are not required to be disregarded in his case (in this paragraph referred to as “applicable designations”), then, in relation to the dwelling, this Part (except Article 4) shall have effect as if—

- (a) references to the designation by virtue of which it is a defective dwelling were references to any applicable designation,
- (b) references to the qualifying defect were references to any qualifying defect described in any applicable designation,
- (c) references to the period within which persons may seek assistance under this Part were references to any period specified for that purpose in any applicable designation, and
- (d) the reference in paragraph 1(1)(c) of Schedule 1 to the maximum amount permitted to be taken into account for the purposes of that paragraph were a reference to the sum of those maximum amounts for each applicable designation.

(3) In any case where—

- (a) notice has been given to a person at any time under Article 7(1) stating that he is, in the opinion of the Executive, eligible for assistance in respect of a defective dwelling, and

(b) the building that consists of or includes the dwelling falls within a class designated under Article 4 by a designation coming into operation after that time,
the Executive shall, as soon after that time as it is reasonably practicable to do so, give him notice in writing stating whether or not in its opinion the designation referred to in sub-paragraph (b) is to be disregarded in his case; and if, in the opinion of the Executive, it is to be disregarded, the reasons for its view.

(4) Paragraphs (5) to (8) apply in any case where—

- (a) a person is entitled to assistance by way of reinstatement grant in respect of a defective dwelling at a time when a designation under Article 4 comes into operation, being a designation of a class within which the building that consists of or includes the dwelling falls (in this and the following paragraphs referred to as the “later designation”), and
- (b) the later designation is not required to be disregarded in his case.

(5) Where it becomes apparent to the Executive that this paragraph applies in the case of any person, it shall forthwith give him notice in writing—

- (a) stating the effect of paragraph (2) and paragraph (6) and of the further designation, and
- (b) informing him that he has the right to make a claim under Article 6(5).

(6) Where it becomes apparent to the Executive that this paragraph applies in the case of any person, it shall as soon as it is reasonably practicable to do so—

- (a) make a further determination under Article 6(2) (taking account of the later designation), and
- (b) give a further notice under Article 7(2) in place of the previous notice,

and where the determination is that he is entitled to assistance by way of repurchase, the notice shall state the effect of paragraphs (7) and (8).

(7) Where a further notice under Article 7(2) stating that a person is entitled to assistance by way of repurchase is given in place of a previous notice and either—

- (a) he satisfies the Executive that he has, before the further notice is received, entered into a contract with another to provide services or materials for the purpose of executing any of the work stated in the previous notice or in a notice under paragraph 3 of Schedule 1 (in this paragraph and paragraph (8) referred to as the “relevant work”), or
- (b) any of the relevant work has been carried out before the further notice is received and has been carried out to the satisfaction of the Executive,

then, notwithstanding anything in paragraph (6), the previous notice and any notice under paragraph 3 of that Schedule given before the further notice is received shall continue to have effect for the purposes of Article 8 and Schedule 1 in relation to the relevant work or, in a case falling within sub-paragraph (b), in relation to so much of the relevant work as has been carried out as mentioned in that sub-paragraph; and the Executive shall, subject to paragraph (8), pay reinstatement grant accordingly.

(8) In any case where—

- (a) the relevant work is not completed but part of that work is carried out to the satisfaction of the Executive,
- (b) the notice in question continues to have effect in relation to that part of the work by virtue of paragraph (7), and
- (c) that part of the work is carried out within the period stated in the notice in question,

paragraph 5 of Schedule 1 shall not apply in relation to reinstatement grant paid in respect of that part of the work and the amount payable in respect of that part of the work shall be an amount equal to

the maximum instalment of grant that would have been payable under paragraph 4 of that Schedule in respect of that part of the work.

Notices

14.—(1) The Executive shall, within the period of 3 months beginning with the coming into operation of a designation or a variation of such a designation—

- (a) publish in more than one newspaper a notice suitable for the purpose of bringing the effect of the designation or variation to the attention of persons who may be eligible for assistance in respect of dwellings to which the designation applies; and
- (b) in the case of persons appearing to the Executive likely to be eligible for assistance in respect of those dwellings, take such other steps as are reasonably practicable to inform them of the fact that assistance is available.

(2) If at any time it becomes apparent to the Executive that a person is likely to be eligible for assistance in respect of a defective dwelling, it shall forthwith take such steps as are reasonably practicable to inform him of the fact that assistance is available.

(3) A relevant body shall, where a person is to acquire a relevant interest in a defective dwelling on a disposal by that body, give him notice in writing before the time of disposal—

- (a) specifying the qualifying defect, and
- (b) stating that he will not be eligible for assistance under this Part in respect of the dwelling.

(4) A relevant body shall, before it conveys a relevant interest in a defective dwelling in pursuance of a contract to any person on whom a notice under paragraph (3) has not been served, give him notice in writing—

- (a) specifying the qualifying defect,
- (b) stating, where the time of disposal of the interest falls after the cut-off date, that he will not be eligible for assistance under this Part, and
- (c) stating the effect of paragraph (5).

(5) A person on whom a notice under paragraph (4) is served—

- (a) shall have the right to withdraw from the transaction and may, within the period of 6 months beginning with the service of that notice on him, exercise that right by notifying the relevant body in writing of his withdrawal, whereupon the parties to the contract shall be discharged from any obligations in connection with it and any deposit paid shall be repaid; and
- (b) shall not, in any event, be obliged to complete the conveyance before the expiry of the period referred to in sub-paragraph (a).

Para. (6) rep. by 1992 NI 15

(7) The notice under paragraph (3)^{F3} . . . or paragraph (4) is to be served at the earliest date at which it is reasonably practicable to do so.

F3 1992 NI 15

Reinstatement of defective dwelling by the Executive

15. Where a relevant interest in a defective dwelling has been disposed of by a relevant body, then (without prejudice to any of its other powers) the Executive may before the end of the period within which a person may seek assistance under this Part in respect of the dwelling enter into an agreement with any person holding an interest in the dwelling to execute at his expense any of the work required to reinstate the dwelling.

Jurisdiction of county court

16.—(1) Subject to Articles 4(6) and 10(7) and paragraph 3 of Schedule 2, a county court has jurisdiction to determine any question arising under this Part and to entertain any proceedings brought in connection with the performance or discharge of any obligations so arising, including proceedings for the recovery of damages or compensation in the event of the obligations not being performed.

(2) The jurisdiction conferred by this Article includes jurisdiction to entertain proceedings on any question so arising notwithstanding that no other relief is sought than a declaration.

(3) Where the Executive is required by Article 8(5) or 9(6) to extend or further extend any period and fails to do so, the county court may by order extend or further extend that period until such date as may be specified in the order.

Modification of this Part in relation to equity-sharing leases

17.—[^{F4}(1) If it appears to the Executive that the interest of a person eligible for assistance in respect of a defective dwelling is—

- (a) an equity-sharing lease, or
- (b) the freehold acquired under the terms of an equity-sharing lease,

the Executive shall prepare and submit to the Department a scheme providing for the provisions of this Part to have effect, in their application to such a case, subject to such modifications as may be specified in the scheme.

(2) A scheme under paragraph (1) shall not have effect unless approved by the Department; and any such approval may be made conditional on compliance with requirements specified by the Department.]

^{F5}(4) In this Article “equity-sharing lease” means—

- (a) an equity-sharing lease as defined in Article 31(6) of the Order of 1981;
- (b) a lease of a description specified in the regulations; or
- (c) a lease determined, or falling within a class[^{F4} or description] determined, by the Department to be an equity-sharing lease;

but where a lease becomes an equity-sharing lease by virtue of regulations under this Article or a determination under sub-paragraph (c), that shall not affect the operation of the provisions of this Part in relation to a person who is eligible for assistance in respect of a defective dwelling if application for assistance in respect of the dwelling has previously been made by him under Article 6.

F4 1992 NI 15

F5 power of the Department to make regulations shall cease to have effect, 1992 NI 15

Application of this Part in relation to mortgagees

18.—(1) The Department may by regulations make provision for the purpose of conferring rights and obligations on any mortgagee of a defective dwelling where—

- (a) a power of sale (whether conferred by section 19 of the Conveyancing Act 1881 or otherwise) is exercisable by the mortgagee, and
- (b) the mortgagor is eligible for assistance in respect of the defective dwelling.

(2) The rights that may be conferred on a mortgagee by regulations under this Article are—

(a) rights corresponding to those conferred by this Part on a person holding a relevant interest in the defective dwelling,

(b) the right to require the Executive to acquire in accordance with the regulations any interest in the defective dwelling to be disposed of in exercise of the power of sale, and

(c) where the mortgagee is the Executive, the right by deed to vest the dwelling in itself,

and the rights that may be so conferred may be conferred in place of any rights conferred on any other person by this Part.

(3) Regulations under this Article may provide that, where the conditions in paragraph (1)(a) and (b) are or have been satisfied, this Part, the power of sale in question and any enactment relating to the power of sale shall have effect subject to such modifications as may be specified in the regulations.

(4) Where a defective dwelling is vested in a mortgagee in pursuance of regulations under this Article, the regulations may provide for the payment in respect of the vesting of an amount calculated on the assumption that none of the defective dwellings to which the designation in question relates are affected by the qualifying defect.

(5) In this Article “mortgagee” and “mortgagor” have the same meaning as in the Conveyancing Act 1881.

Repurchase of defective dwellings disposed of by housing associations

19.—(1) Where the Executive—

- (a) gives a notice under Article 7(2) to any person stating that he is entitled to assistance by way of repurchase in respect of a defective dwelling; and
- (b) is of the opinion that there has at any time been a disposal of a relevant interest in the dwelling by a housing association or by a housing association which was a predecessor of that association;

it shall forthwith give to the housing association a notice in writing (together with a copy of the notice referred to in sub-paragraph (a)) stating that the association may acquire in accordance with this Part the interest of the person entitled to assistance.

(2) A housing association notified under paragraph (1) may, within the period of four weeks beginning with the service of the notice, give notice in writing to the Executive—

- (a) stating that the association wishes to acquire the interest, and
- (b) specifying the address of the principal office of the association and any other address that may also be used as an address for service.

(3) Where the Executive receives a notice under paragraph (2), it shall forthwith give to the person entitled to assistance notice in writing (in the following provisions of this Article referred to as a “transfer notice”) of—

- (a) the contents of the notice under paragraph (2), and
- (b) the effects of paragraphs (4) and (5).

(4) The housing association concerned shall, at any time after the transfer notice is given, be treated as being responsible (in place of the Executive) for the purposes of anything done or falling to be done under this Part by or in relation to the Executive.

(5) Where a transfer notice has been given in respect of an interest—

- (a) a request under Article 9(1) in respect of the interest may be made either to the Executive or to the housing association concerned, and
- (b) such a request made to the Executive (whether before or after the transfer notice is given) shall be forwarded by it to the housing association concerned.

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the The Housing (Northern Ireland) Order 1986, PART II.