

SCHEDULES

SCHEDULE 2

Article 9.

REPURCHASE

PART I

ACQUISITION OF INTEREST

The price

1.—(1) The price payable for the acquisition of an interest in pursuance of Part II of this Order is 95 per cent. of the value of that interest at the relevant time.

(2) In this Schedule “the relevant time” means the time at which the notice under Article 9(2) is served on the person entitled to assistance.

The value

2.—(1) For the purposes of this Schedule, the value of an interest in a defective dwelling at the relevant time is the amount which, at that time, would be realised by a disposal of that interest on the open market by a willing seller to a person other than the Executive on the assumptions specified in sub-paragraph (2) and on the basis that no account is to be taken of any right to the grant of a tenancy under Article 11.

(2) Those assumptions are—

- (a) that none of the defective dwellings to which the designation in question relates are affected by the qualifying defect;
- (b) that no liability has arisen or will arise under a covenant required by Article 10 of the Order of 1983 or paragraph 6(1) or 7(1) of Schedule 6 (covenant to repay discount or, in the case of an equity-sharing lease, pay for outstanding share) or any covenant to like effect;
- (c) that no obligation to acquire the interest arises under Part II of this Order;
- (d) where, at the time at which the value of the interest falls to be considered, there has been since the relevant time a material change in circumstances affecting the value of the interest, that the change had occurred before the relevant time; and
- (e) that (subject to the preceding paragraphs) the seller is selling with and subject to the rights and burdens with and subject to which the disposal is to be made.

Determination of value

3.—(1) Any question arising under this Schedule as to the value of an interest in a defective dwelling shall be determined by the district valuer in accordance with this paragraph.

(2) Within the period beginning with the service on the person entitled to assistance of a notice under paragraph (2) of Article 9 and ending with the service of a copy of the agreement drawn up

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under paragraph (4) of that Article for execution by the parties, the person entitled to assistance or the Executive may, by notice in writing served on the district valuer, require the value to be determined or redetermined.

(3) If, after the end of that period but before the parties enter into an agreement for the acquisition of the interest of the person so entitled, there is a material change in circumstances affecting the value of the interest, that person or the Executive may by notice in writing served on the district valuer before the parties enter into such an agreement require that value to be determined or redetermined.

(4) In any case where, in accordance with sub-paragraph (3), the district valuer is required, after the end of the period referred to in sub-paragraph (2), to determine the value of an interest, then—

(a) the Executive shall, within 3 months of all the provisions of the agreement for the acquisition of the interest of the person so entitled by the Executive being agreed or determined, draw up an agreement for execution by the parties embodying those provisions and serve a copy of the agreement on that person; and

(b) paragraph (5) of Article 9 shall, instead of applying in relation to the agreement drawn up under paragraph (4) of that Article, apply in relation to the agreement drawn up under head (a) of this subparagraph.

(5) Before making a determination in pursuance of this paragraph, the district valuer shall consider any representation made to him by the person so entitled or the Executive within 4 weeks from the service of the notice under this paragraph.

(6) A person serving notice on the district valuer under this paragraph shall serve notice in writing of that fact on the Executive or, as the case may be, the person so entitled.

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

Effect of acquisition

4.—(1) Where an interest acquired in pursuance of Article 9 is or includes a dwelling in relation to which a grant has been paid under Part III of the Order of 1983—

(a) any conditions imposed under or by virtue of that Part as conditions of the grant shall cease to be in force with respect to the dwelling with effect from the time of disposal of the interest, and

(b) the owner for the time being of the dwelling shall not be liable to make in relation to the grant any payment under any grant condition made under Article 69(2)(c) of the Order of 1983 unless the liability to do so arises from a demand made before the time of disposal of the interest.

(2) In sub-paragraph (1)—

(a) “dwelling” means a house as defined in Article 2(2) of the Order of 1981, and

(b) owner has the same meaning as in that Article.

PART II

DISCHARGE OF CHARGES ON INTEREST

Interpretation

5. In this Part—

- (a) “interest acquired” means the interest in a defective dwelling of which the vendor disposes under an agreement entered into in pursuance of Article 9;
- “purchase price” means the price which such an agreement requires the Executive to pay for the interest acquired; and
- “vendor” means the person with whom the Executive enters into such an agreement; and
- (b) references to a charge are references to a charge securing the performance of an obligation, and—
 - (i) include a mortgage or lien, but
 - (ii) do not include a rentcharge (that is to say any annual or other periodic sum charged on or issuing out of land, other than rent reserved by a lease or tenancy or any sum payable by way of interest).

Effect of conveyance

6.—(1) Subject to paragraph 7(3), a conveyance executed under an agreement entered into in pursuance of Article 9 shall, by virtue of this paragraph, be effective to discharge the interest acquired—

- (a) from any relevant charge to which it is subject immediately before it is conveyed to the Executive, and
 - (b) from the operation of any order made by a court for the enforcement of such a charge;
- without the persons entitled to or interested in such a charge, order or term of years becoming parties to or executing the conveyance.

(2) The effect of this paragraph is restricted to discharging the interest acquired from the charge concerned and does not affect personal liabilities.

(3) For the purposes of this paragraph, a charge is a relevant charge if—

- (a) it secures the performance of an obligation, and
- (b) it is not a registered statutory charge within the meaning of section 94 of the Land Registration Act (Northern Ireland) 1970.

Application of purchase price

7.—(1) Where by virtue of paragraph 6 a conveyance will be effective to discharge a charge securing the payment of money, the Executive shall, subject to sub-paragraph (2), apply the purchase price in the first instance in or towards the redemption of the charge and, if there is more than one, then according to their priorities.

(2) No duty arises under sub-paragraph (1) in the case of—

- (a) any charge in favour of the holders of a series of debentures issued by any body, or
- (b) any charge in favour of trustees for such debenture holders which at the date of the conveyance, is a floating charge,

and the Executive shall disregard such charges in performing its duty under that sub-paragraph.

(3) If the Executive—

- (a) does not apply an amount which, under sub-paragraph (1), it is required to apply in or towards the redemption of a charge, and
- (b) does not pay that amount into court in accordance with paragraph 9,

the charge shall not be discharged by virtue of paragraph 6 and the interest acquired shall remain subject to the charge as security for that amount.

(4) For the purpose of determining the amount which the Executive is required to pay under sub-paragraph (1), a person entitled to a charge shall not be permitted to exercise any right to consolidate that charge with a separate charge on other property.

(5) For the purpose of redeeming a charge in pursuance of sub-paragraph (1), a person may be required to accept three months or any longer notice of the intention to pay the principal or any part of it secured by the charge, together with interest to the date of payment, notwithstanding that this differs from the terms of the security as to the time and manner of payment.

(6) A charge to which the vendor or the Executive itself is entitled shall rank for payment in pursuance of sub-paragraph (1) as it would if another person were entitled to it.

8. Paragraphs 6(1) and 7(1) do not prevent a person from joining in the conveyance for the purpose of discharging the interest acquired from any charge without payment or for less payment than that to which he would otherwise be entitled; and, if he does so, the person to whom the purchase price ought to be paid shall be determined accordingly.

Payment into court

9.—(1) Where under paragraph 6(1) the interest acquired is to be discharged from any charge falling within that sub-paragraph, and in accordance with paragraph 7(1) a person is or may be entitled in respect of the charge to receive the whole or part of the purchase price, then if—

- (a) for any reason difficulty arises in ascertaining how much is payable in respect of the charge; or
- (b) for any reason mentioned in sub-paragraph (2) difficulty arises in making a payment in respect of the charge;

the Executive may pay into court on account of the purchase price the amount, if known, of the payment to be made in respect of the charge or, if that amount is not known, the whole of the purchase price or such less amount as the Executive thinks right in order to provide for that payment.

(2) The reasons referred to in sub-paragraph (1)(b) are—

- (a) that a person who is or may be entitled to receive payment cannot be found or ascertained;
- (b) that any such person refuses or fails to make out a title, or to accept payment and give a proper discharge, or to take any steps reasonably required of him to enable the sum payable to be ascertained and paid; or
- (c) that a tender of the sum payable cannot, by reason of complications in the entitlement to payment or the want of two or more trustees or for other reasons, be effected, or not without incurring or involving unreasonable cost or delay.

(3) Without prejudice to sub-paragraph (1)(a), the purchase price shall be paid by the Executive into court if before the execution of a conveyance under an agreement entered into in pursuance of Article 9 written notice is given to it—

- (a) that the vendor or a person entitled to a charge on the interest of which the vendor disposes under such an agreement so requires for the purpose of protecting the rights of persons so entitled, or for reasons related to the bankruptcy or winding up of the vendor; or
- (b) that steps have been taken to enforce any charge on the interest of which the vendor disposes under such an agreement by the bringing of proceedings in any court, or by the appointment of a receiver, or otherwise;

and where payment is to be made into court by reason only of a notice under this sub-paragraph, and notice is given with reference to proceedings in a court specified in the notice other than the county court, payment shall be made into the court so specified.

Changes to legislation:

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