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STATUTORY RULES OF NORTHERN IRELAND

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**2011 No. 338**

**HOUSING**

**The Housing Executive (Indemnities for Members and Officers) Order (Northern Ireland) 2011**

*Made - - - - 28th September 2011*

*Coming into operation 1st November 2011*

The Department for Social Development<sup>(1)</sup> makes the following Order in exercise of the power conferred by section 22 of the Housing (Amendment) Act (Northern Ireland) 2011<sup>(2)</sup>:

In accordance with section 22(2) of that Act, the Department for Social Development has consulted with the Executive and such representatives of officers of the Executive and such other persons as it considered appropriate.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Housing Executive (Indemnities for Members and Officers) Order (Northern Ireland) 2011 and shall come into operation on 1<sup>st</sup> November 2011.

(2) In this Order, “secure”, in relation to any indemnity provided by means of insurance, includes arranging for, and paying for, that insurance and related expressions shall be construed accordingly.

**Indemnities**

2. The Executive may, in the cases mentioned in Article 4, provide indemnities to its members<sup>(3)</sup> or officers.

**Insurance**

3. In place of, or in addition to, itself providing an indemnity under Article 2, the Executive may, in the cases mentioned in Article 4, provide an indemnity by securing the insurance of any of its members or officers.

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(1) S.I. 1999/283 (N.I. 1) Article 3(1)

(2) c. 22

(3) For the meaning of “member”, see Schedule 1 to the Housing (Northern Ireland) Order 1981(S.I. 1981/156 (N.I. 3))

### **Cases in which an indemnity may be provided**

4. Subject to Article 5, an indemnity may be provided in relation to any action of, or failure to act by, the member or officer in question which—

- (a) is authorised by the Executive, or
- (b) forms part of, or arises from, any powers conferred, or duties placed, upon that member or officer, as a consequence of any function being exercised by that member or officer (whether or not when exercising that function the member or officer does so in their capacity as a member or officer of the Executive)—
  - (i) at the request of, or with the approval of the Executive, or
  - (ii) for the purposes of the Executive.

### **Restrictions on indemnities**

5.—(1) No indemnity may be provided under this Order in relation to any action by, or failure to act by, any member or officer which—

- (a) constitutes a criminal offence: or
  - (b) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that member or officer.
- (2) Notwithstanding paragraph (1)(a), an indemnity may be provided on relation to—
- (a) subject to Article 7, the defence of any criminal proceedings brought against the officer or member, and
  - (b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

(3) No indemnity may be provided under this Order in relation to the making by the member or officer indemnified of any claim in relation to an alleged defamation of that member or officer but may be provided in relation to the defence by that member or officer of any allegation of defamation made against that member or officer.

### **Matters that exceed the powers of the Executive or member or officer**

6.—(1) Notwithstanding any limitation on the powers of the Executive, the Executive may provide an indemnity to the extent that the member or officer in question—

- (a) believed that the action, or failure to act, in question was within the powers of the Executive, or
- (b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the Executive, or any statement that certain steps have been taken or requirements fulfilled, believed that the contents of that statement were true,

and it was reasonable for that member or officer to hold that belief at the time when that member or officer acted or failed to act.

(2) An indemnity may be provided in relation to an act or omission which is subsequently found to be beyond the powers of the member or officer in question but only to the extent that the member or officer reasonably believed that the act or omission in question was within their powers at the time at which they acted.

### **Terms of indemnity or insurance**

7.—(1) Subject to paragraphs (2) and (3) below, the terms of any indemnity given (including any insurance secured) under this Order may be such as the Executive shall agree.

(2) Paragraph (3) applies where any indemnity given to any member or officer (including any insurance secured for that member or officer) has effect in relation to the defence of any criminal proceedings.

(3) Where this paragraph applies, the indemnity shall be provided, and any insurance secured, on the terms that if the member or officer is convicted of a criminal offence and that conviction is not overturned following any appeal that member or officer shall reimburse the Executive or the insurer (as the case may be) for any sums expended by the Executive or insurer in relation to those proceedings pursuant to the indemnity or insurance.

(4) Where a member or officer is obliged to reimburse an authority or insurer pursuant to the terms mentioned in paragraph (3), those sums shall be recoverable by the Executive or insurer (as the case may be) as a civil debt.

Sealed with the Official Seal of the Department for Social Development on 28<sup>th</sup> September 2011



*Jim Wilkinson*  
A senior officer of the  
Department for Social Development

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

This Order provides for circumstances in which the Northern Ireland Housing Executive may provide an indemnity for any of its members or officers.

Article 3 provides that an indemnity may be provided by means of the Housing Executive securing the provision of an insurance policy.

Article 4 sets out the cases in which indemnities (including those provided by insurance) may be provided. This article restricts the power to actions etc. authorised by the Housing Executive and to cases in which the member or employee is carrying on any function at the request of, with the approval of, or for the purposes of, the Executive. However, it does extend to cases in which when exercising the function in question the member or officer does so in a capacity other than that of a member or officer of the Executive. This would permit an indemnity, for example, to cover a case where the member or officer acts as a director of a company at the request of the Executive, and thus is acting in the capacity of a director.

Article 5 prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing of (but not the defence of) any action in defamation.

Article 6 gives a limited power to provide an indemnity (including any indemnity provided by insurance) where the action or inaction complained of is outside the powers of the Executive itself or outside the powers of the member or officer who acts. It also covers cases in which a member or an officer makes a statement that certain steps have been taken or requirements fulfilled but it later becomes clear that this is not the case. This power is limited to cases in which the person indemnified reasonably believed that the matter in question was not outside those powers, or, where a document has been issued containing an untrue statement as to the Executive's powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or authorised.

Article 7 gives the Executive freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate but requires that those terms include provision for re-payment of sums expended by the authority or the insurer in cases in which a member or officer has been convicted of a criminal offence (if the indemnity or insurance policy would otherwise cover the proceedings leading to that conviction). Any sums recoverable may be recovered as a civil debt.