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STATUTORY INSTRUMENTS

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**1992 No. 1725 (N.I. 15)**

**NORTHERN IRELAND**

**The Housing (Northern Ireland) Order 1992**

*Made - - - - 15th July 1992*  
*Coming into operation in accordance with Article 1(2)*  
*and (3)*

At the Court at Buckingham Palace, the 15th day of July 1992

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974<sup>(1)</sup> and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**PART I**

**INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Housing (Northern Ireland) Order 1992.

(2) Subject to paragraph (3), this Order shall come into operation on the expiration of 2 months from the day on which it is made.

(3) Part III, Schedule 3 and Part II of Schedule 9 (and Article 108(1) in so far as it relates to that Part of that Schedule) shall come into operation on such day as the Head of the Department may by order appoint.

(4) The following Orders—

(a) the Housing (Northern Ireland) Order 1981<sup>(2)</sup>;

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(1) 1974 c. 28

(2) 1981 NI 3

- (b) the Housing (Northern Ireland) Order 1983<sup>(3)</sup>;
- (c) the Housing (Northern Ireland) Order 1986<sup>(4)</sup>;
- (d) the Housing (Northern Ireland) Order 1988<sup>(5)</sup>; and
- (e) this Order,

may be cited together as the Housing (Northern Ireland) Orders 1981 to 1992.

### General interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(6)</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

- “the Department” means the Department of the Environment;
- “the Executive” means the Northern Ireland Housing Executive;
- “the Order of 1981” means the Housing (Northern Ireland) Order 1981;
- “the Order of 1983” means the Housing (Northern Ireland) Order 1983;
- “the Order of 1986” means the Housing (Northern Ireland) Order 1986;
- “the Order of 1988” means the Housing (Northern Ireland) Order 1988; and
- “prescribe” means prescribe by regulations made by the Department.

(3) Expressions used in this Order and defined in the Order of 1981 or the Order of 1983 shall, unless the context otherwise requires, have the meanings given in the Order of 1981 or the Order of 1983, as the case may be.

## PART II

### HOUSING ASSOCIATIONS

#### Part II: Interpretation

3. In this Part—

- “the Act of 1969” means the Industrial and Provident Societies Act (Northern Ireland) 1969<sup>(7)</sup>;
- “charity” has the same meaning as in the Charities Act (Northern Ireland) 1964<sup>(8)</sup>;
- “committee” has the same meaning as in section 101(1) of the Act of 1969;
- “company” means a company incorporated under the Companies (Northern Ireland) Order 1986<sup>(9)</sup> (or under any earlier statutory provision providing for the registration of companies);
- “equity-sharing lease” has the meaning given in Article 31(6)(a) of the Order of 1981;
- “housing activities”, in relation to a registered housing association, means all its activities in pursuance of such of its purposes, objects or powers as are of a description mentioned in—
  - (a) paragraph (a) of the definition of “housing association”, or
  - (b) paragraphs (2) to (4) of Article 15;

(3) 1983 NI 15

(4) 1986 NI 13

(5) 1988 NI 23

(6) 1954 c. 33 (N.I.)

(7) 1969 c. 24 (N.I.)

(8) 1964 c. 33 (N.I.)

(9) 1986 NI 6

“housing association” means a society, body of trustees or company—

- (a) which is established for the purpose of, or amongst whose objects or powers are included those of, providing, constructing, improving or managing, or facilitating or encouraging the construction or improvement of housing accommodation, and
- (b) which does not trade for profit or whose constitution or rules prohibit the issue of capital with interest or dividend exceeding such rate as may be prescribed by the Department of Finance and Personnel, whether with or without differentiation between share and loan capital;

“housing trust” means a corporation or body of persons which—

- (a) is required by the terms of its constituent instrument to use the whole of its funds, including any surplus which may arise from its operations, for the purpose of providing housing accommodation, or
- (b) is required by the terms of its constituent instrument to devote the whole, or substantially the whole, of its funds to charitable purposes and in fact uses the whole, or substantially the whole, of its funds for the purpose of providing housing accommodation;

“registrar” means the Registrar for the purposes of the Act of 1969;

“registered” means registered in the register of housing associations maintained under Article 14;

“self-build society” means a housing association whose object is to provide, for sale to, or occupation by, its members, houses built or improved principally with the use of its members' own labour;

“society” means a society registered under the Act of 1969;

“unregistered self-build society” means a self-build society which is not a registered housing association; and

“voluntary organisation” means an organisation whose activities are not carried on for profit.

## CHAPTER I

### FUNCTIONS OF HOUSING ASSOCIATIONS

#### **Functions of the Department**

4.—(1) Without prejudice to any specific function conferred on the Department by or under this Part or any other statutory provision, the Department may—

- (a) promote and assist the development of registered housing associations and of unregistered self-build societies;
- (b) facilitate the proper exercise and performance of the functions, and publicise the aims and principles, of registered housing associations and unregistered self-build societies;
- (c) establish and maintain a register of housing associations, exercise supervision and control over registered housing associations, and consider applications for and make payments of grants to registered housing associations.

(2) In the exercise of its functions under paragraph (1)(a) the Department may, with the approval of the Department of Finance and Personnel, make such contributions as it may determine towards the administrative and other expenses of registered housing associations, unregistered self-build societies and such bodies as appear to it to be representative of housing associations.

(3) In exercising its functions under paragraph (1)(a) and (b) the Department may, with the consent of the Department of Finance and Personnel, make grants to voluntary organisations which are not registered housing associations towards the expenses incurred by them in carrying out the

objects mentioned in Article 15(3)(f); and any such grant may be made subject to such conditions as the Department may, with the consent of the Department of Finance and Personnel, determine.

(4) For the purposes of paragraph (2) the term “registered housing association” shall include an unregistered housing association which at the date of payment of the contribution has made application to the Department for registration under Article 16 and the application has not yet been disposed of by the Department.

#### **Power of housing trusts to hold land**

5. For the purpose of constructing, improving or repairing, or facilitating or encouraging the construction, improvement or repair of, housing accommodation, a housing trust—

- (a) may acquire and dispose of any estate in land; and
- (b) if it is not already a body corporate shall, for the purpose of holding any estate in land acquired under this Article, and of suing and being sued in respect thereof, be deemed to be a body corporate with perpetual succession, and consequently for the purpose of acquiring, holding or disposing of such an estate shall have a common seal.

#### **Borrowing by housing associations**

6.—(1) The Department may, on such terms and subject to such conditions as it thinks fit, make loans to—

- (a) registered housing associations, and
- (b) unregistered self-build societies,

for the purpose of enabling those bodies to meet the whole or any part of any expenditure incurred, or to be incurred, by them in carrying out their objects.

(2) Where the Department makes a loan to a registered housing association under paragraph (1), so long as any part of the principal of, or any interest on, the loan remains outstanding, the loan shall be a charge on all the revenues of that association and, subject to any statutory provision to the contrary, the charge shall rank equally with other charges on those revenues.

(3) The Department may guarantee, in such manner and on such conditions as it may think fit, the repayment of the principal of, and the payment of interest on, any sums which a registered housing association or an unregistered self-build society borrows from any person.

(4) Any sum required by the Department for fulfilling a guarantee under paragraph (3) shall be charged on and issued out of the Consolidated Fund, and for the purpose of providing such issues the Department of Finance and Personnel may borrow money.

#### **Recovery of possession of premises let by a housing association**

7.—(1) Subject to paragraph (2), on the termination of the tenancy of any premises let by a housing association, possession of the premises may (without prejudice to any other method of recovery) be recovered by the housing association in a summary manner under Part VI of the Magistrates' Courts (Northern Ireland) Order 1981(10) relating to ejectment proceedings, whatever may be the rent or term of the tenancy.

(2) Paragraph (1) does not apply to any tenancy which is a secure tenancy within the meaning of Article 25 of the Order of 1983.

## **Rents**

**8.**—(1) Subject to the following provisions of this Article, a registered housing association may fix the amount of rent to be charged for any housing accommodation which it provides—

- (a) under a tenancy granted by it on or after the day of the coming into operation of this Part; or
- (b) under a tenancy—
  - (i) granted by it before that day, and
  - (ii) in respect of which the Department has not made a determination under paragraph (2).

(2) The Department, if it considers it appropriate to do so, may make a determination with respect to the rent to be charged under a tenancy granted by a registered housing association before the day of the coming into operation of this Part.

(3) Paragraph (1) shall not apply to a tenancy, by way of an equity-sharing lease, whenever granted, but the Department shall make a determination with respect to the rent to be charged under such a tenancy.

(4) For the purposes of paragraphs (2) and (3) the Department—

- (a) may make a determination with respect to a particular tenancy or a general determination with respect to a class of tenancy or to tenancies generally; and
- (b) may make exceptions to a general determination.

(5) A general determination—

- (a) shall be made with the consent of the Department of Finance and Personnel; and
- (b) may fix a rent in such manner as the Department considers appropriate including, in particular, by reference to a scheme made under Article 17 of the Order of 1981 (scheme to determine rent to be charged by the Executive).

(6) Paragraph (2) does not apply to any housing accommodation provided under a co-ownership tenancy, that is to say a tenancy—

- (a) granted by a registered housing association whose rules restrict membership to persons who are tenants or prospective tenants, and preclude the granting or assignment of tenancies to persons other than members; and
- (b) under which the tenant (or his personal representatives) either by virtue of the tenancy agreement or the agreement under which he became a member of the association may be entitled on ceasing to be a member of the association to a sum calculated by reference, directly or indirectly, to the value of the house of which he is a tenant.

(7) The power conferred on a registered housing association under paragraph (1) may be exercised to increase the rent payable under a tenancy, but such power—

- (a) shall not be exercisable until the expiration of the period of 12 months from the day of the coming into operation of the tenancy, and
- (b) may be exercised in relation to any particular tenancy on one occasion only during any period of 12 months.

(8) Article 26 of the Order of 1981 (increase of Executive rents) shall apply to registered housing associations and their tenants in the same manner as it applies to the Executive and its tenants.

## **Tenancy agreements, etc.**

**9.** Articles 25 and 26A of the Order of 1981 (which relate to the substitution or variation of tenancies of houses let by the Executive and to the length of notice to quit required in respect of

such tenancies) shall apply to registered housing associations and their tenants in the same manner as they apply to the Executive and its tenants.

### **Persons eligible for housing accommodation**

- 10.** Except with the consent of the Department, a housing association shall not—
- (a) if it is a registered housing association, accept as a tenant of any housing accommodation provided by it; or
  - (b) if it is not a registered housing association—
    - (i) accept as a tenant of housing accommodation provided by it under section 1 of the Housing Act (Northern Ireland) 1945(**11**) as applied by section 12 of the Housing and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1946(**12**), or
    - (ii) accept as an occupier of accommodation in a hostel provided by it in respect of which any contribution has been made to it under section 15 of the Housing Act (Northern Ireland) 1963(**13**),

any person whom the Executive would be precluded by a scheme made under Article 22 of the Order of 1981 from accepting as a tenant of housing accommodation provided by it.

### **Guidance as to management of accommodation by registered housing associations**

**11.**—(1) In accordance with the provisions of this Article, the Department may issue guidance with respect to the management of housing accommodation by registered housing associations and, in considering under this Part whether action needs to be taken to secure the proper management of an association's affairs or whether there has been mismanagement, the Department may have regard (among other matters) to the extent to which any such guidance is being or has been followed.

(2) Guidance issued under this Article may make different provision in relation to different cases and, in particular, in relation to different areas, different descriptions of housing accommodation and different descriptions of registered housing associations.

(3) Without prejudice to the generality of paragraphs (1) and (2), guidance issued under this Article may relate to—

- (a) the housing demands for which provision should be made and the means of meeting those demands;
- (b) the allocation of housing accommodation between individuals;
- (c) the terms of tenancies and the principles upon which the levels of rent should be determined;
- (d) standards of maintenance and repair and the means of achieving these standards; and
- (e) consultation and communication with tenants.

(4) Guidance issued under this Article may be revised or withdrawn but, before issuing or revising any guidance under this Article, the Department shall consult such bodies appearing to it to be representative of housing associations as it considers appropriate.

(5) The Department shall issue the guidance or, as the case may be, the revision concerned in such manner as the Department considers appropriate for bringing it to the notice of the housing associations concerned.

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(11) 1945 c. 2 (N.I.)

(12) 1946 c. 4 (N.I.)

(13) 1963 c. 26 (N.I.)

### **Acquisition of land**

**12.**—(1) The Department may, for the purpose of selling or leasing land to a registered housing association or to an unregistered self-build society—

- (a) acquire any land by agreement or compulsorily;
- (b) dispose of any land so acquired.

(2) Where the Department in exercise of the power conferred on it by paragraph (1) desires to acquire any land compulsorily, the Department may make an order (in this Article referred to as a “vesting order”) vesting the land in the Department.

(3) Section 97(3) of, and Schedule 6 to, the Local Government Act (Northern Ireland) 1972<sup>(14)</sup> shall, subject to the modifications specified in Schedule 1, apply for the purposes of the acquisition of land by means of a vesting order made under this Article in the same manner as they apply to the acquisition of land by means of a vesting order made under that Act.

(4) Section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933<sup>(15)</sup> shall not affect the disposal of any land acquired or taken on lease under this Article.

### **Disposal of land, etc.**

**13.**—(1) Subject to paragraph (2), any provision contained in the rules of a registered housing association which prevents it from disposing of any land (where such disposal would otherwise be lawful) shall be of no effect.

(2) Notwithstanding anything contained in section 30 of the Act of 1969—

- (a) a registered housing association may not dispose of or mortgage any land, and
- (b) an unregistered housing association may not dispose of any grant-aided land as defined in Schedule 2,

without the consent of the Department.

(3) Any such consent may be given—

- (a) subject to such conditions as the Department sees fit to impose; and
- (b) either generally in relation to all housing associations or to a particular housing association or description of association; or
- (c) in relation to particular land or in relation to a particular description of land.

(4) Paragraph (2)(b) shall not prevent an unregistered housing association from disposing of any land by the granting of a lease for a term ending within the period of 7 years and 3 months beginning on the date of the grant unless—

- (a) there is conferred on the lessee (whether by the lease or otherwise) an option for renewal for a term which, together with the original term, would expire outside that period; or
- (b) the lease is granted wholly or partly in consideration of a fine.

(5) Without prejudice to the generality of the expression “dispose” in paragraph (2), in paragraph (4) the expression “lease” includes an agreement for a lease and a licence to occupy and the expressions “grant” and “term” shall be construed accordingly.

(6) This Article does not apply to a letting of land to one or more individuals by a registered housing association under a secure tenancy or under what would be a secure tenancy but for paragraphs 1(b) to 9 of Schedule 2 to the Order of 1983.

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(14) 1972 c. 9 (N.I.)

(15) 1933 c. 6 (N.I.)

(7) There shall be included among the matters which are required to be registered in the Statutory Charges Register the statutory condition attaching by virtue of this Article to land acquired by a registered housing association.

(8) An application for registration of the statutory condition attaching to land by virtue of this Article shall be made by the Department as soon as is reasonably practicable after the acquisition of the land.

(9) For the purposes of paragraph (8), a registered housing association shall upon acquiring any land forthwith—

- (a) inform the Department of the acquisition, and
- (b) provide such information with respect to the acquisition as the Department may require.

(10) Any person who suffers loss by reason of the failure of the Department to comply with paragraph (8) may bring proceedings in any court of competent jurisdiction against the Department and recover from it the amount of that loss.

## CHAPTER II

### REGISTRATION OF HOUSING ASSOCIATIONS

#### **The register of housing associations**

14. The Department shall maintain a register of housing associations which shall be open to inspection at such place and at such times as the Department considers appropriate.

#### **Eligibility for registration**

15.—(1) A housing association is eligible for registration if it—

- (a) is a society registered under the Act of 1969, and
- (b) fulfils the following conditions.

(2) The conditions are that the housing association does not trade for profit and is established for the purpose of, or has among its objects or powers, the provision, construction, improvement or management of—

- (a) houses to be kept available for letting, or
- (b) houses for occupation by members of the association where the rules of the association restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by the association, or
- (c) hostels,

and that any additional purposes or objects are among the following.

(3) The permissible additional purposes or objects are—

- (a) providing land, amenities or services, or providing, constructing, repairing or improving buildings, for the benefit of the association's residents, either exclusively or together with other persons;
- (b) acquiring, or repairing and improving, or creating by the conversion of houses or other property, houses to be disposed of on sale, or lease or by equity-sharing lease;
- (c) constructing houses to be disposed of by equity-sharing lease;
- (d) managing houses which are held on leases or other lettings (not being houses falling within paragraph (2)(a) or (b)), or blocks of flats;



- (e) providing services of any description for owners or occupiers of houses in arranging or carrying out works of maintenance, repair or improvement, or encouraging or facilitating the carrying out of such works;
  - (f) encouraging and giving advice on the formation of other housing associations or providing services for, and giving advice on the running of, such associations and other voluntary organisations concerned with housing, or matters connected with housing.
- (4) A housing association shall not be ineligible for registration by reason only that its powers include power—
- (a) to acquire commercial premises or businesses as an incidental part of a project or series of projects undertaken for purposes or objects falling within paragraph (2) or (3);
  - (b) to repair, improve or convert any commercial premises acquired as mentioned in subparagraph (a) or to carry on, for a limited period, any business so acquired.
- (5) The Department may by order amend paragraphs (3) and (4), but not so as to restrict or limit the permissible purposes, objects or powers.
- (6) An order under paragraph (5) may contain such incidental, supplemental or transitional provisions as the Department thinks fit.
- (7) In this Article—
- “block of flats” means a building—
    - (a) containing 2 or more flats which are held on leases or other lettings; and
    - (b) occupied or intended to be occupied wholly or mainly for residential purposes;
  - “letting” includes the grant of a licence to occupy;
  - “residents” in relation to a housing association, means the persons occupying the houses or hostels provided or managed by the association.

## **Registration**

- 16.**—(1) Subject to paragraphs (2) and (3), the Department may register any housing association which is eligible for registration.
- (2) The Department shall, after consultation with such bodies as appear to it to be representative of housing associations, establish criteria which should be satisfied by a housing association seeking registration, and may vary those criteria in such manner as it may determine.
- (3) In deciding whether to register a housing association, the Department shall have regard to the question whether the association satisfies the criteria established in accordance with paragraph (2).
- (4) For all purposes other than rectification of the register, a society shall be conclusively presumed to be or to have been a housing association eligible for registration at any time when it is or was on the register of housing associations.

## **Removal of societies from the register**

- 17.**—(1) Where a society has been registered in the register of housing associations, that society shall not be removed from the register except by the Department in accordance with the provisions of this Article.
- (2) If it appears to the Department that any society which is registered—
- (a) is no longer a housing association falling within Article 15(1), or
  - (b) has ceased to exist or does not operate,

the Department shall, on giving not less than 14 days' notice to that society, remove it from the register; and in a case where subparagraph (b) applies, any such notice shall be deemed to be given

to a society if it is served at the address last known to the Department to be the principal place of business of that society.

- (3) Where a society which is registered—
- (a) has not at any time received—
    - (i) a loan under Article 6 or a grant under Article 33 or 34,
    - (ii) a loan under Article 117 of the Order of 1981 or a grant under Article 137 or 139 of that Order,
    - (iii) any such payment or loan as is specified in paragraph 2 or 3 of Schedule 2, or
    - (iv) a loan under Article 6 of the Housing (Northern Ireland) Order 1976(16), or a grant under Article 27 or 29 of that Order; and
  - (b) requests the Department to remove it from the register;

the Department may, if it thinks fit, remove that society from the register.

(4) A society which is aggrieved by a decision of the Department to remove it from the register of housing associations may appeal against the decision to the High Court.

(5) If an appeal is brought under paragraph (4) and is not withdrawn the Department shall not remove the society concerned from the register of housing associations until the appeal has been finally determined.

(6) No sum shall be paid in respect of a grant under Article 33 or 34 to a society which has been removed under this Article from the register of housing associations.

(7) Where, at the time of its removal under paragraph (2) from the register of housing associations, a society owns land, Article 13 shall continue to apply to that land after the removal as if the society concerned continued to be a registered housing association.

#### **Notifications to and by the registrar**

**18.**—(1) As soon as may be after registering a housing association or removing a society from the register the Department shall give notice of the registration or removal to the registrar.

(2) Where notice is given under paragraph (1), the registrar shall record the registration or removal from the register by the Department.

(3) As soon as may be after an appeal is brought under Article 17(4), the Department shall give notice of the appeal to the registrar.

(4) As soon as may be after cancelling or suspending the registration of a society which is a registered housing association, the registrar shall give notice of the cancellation or suspension to the Department.

(5) As soon as may be after an appeal is brought under section 17(1) of the Act of 1969, the registrar shall give notice of the appeal to the Department.

#### **Accounts and audit**

**19.**—(1) The Department may by order lay down accounting requirements for registered housing associations with a view to ensuring that the accounts of every registered housing association are prepared in the requisite form and give a true and fair view of the state of affairs of the association, so far as its housing activities are concerned, and of the disposition of funds and assets which are, or at any time have been, in its hands in connection with those activities.

(2) The accounts of every registered housing association must comply with those requirements; and the auditor's report shall state (in addition to any other matters which it is required to state) whether in the auditor's opinion they do so comply.

(3) Every registered housing association shall furnish to the Department a copy of its accounts and auditor's report within 6 months of the end of the period to which they relate.

(4) A registered housing association shall be subject to section 38(1) of the Act of 1969 (obligation to appoint auditors) without regard to the volume of its receipts and payments, the number of its members or the value of its assets; and such an association is in no case to be treated as an exempt society under that section.

### **Enforcement of Article 19**

**20.**—(1) All persons who are directly concerned with the conduct and management of the affairs of a registered housing association and are in that capacity responsible for the preparation and audit of accounts shall have the duty to ensure that Article 19 is complied with by the association.

(2) If—

- (a) the accounts of a registered housing association, as furnished to the Department under Article 19(3), do not comply with the accounting requirements laid down under paragraph (1) of that Article;
- (b) Article 19(3) is not complied with in respect of the accounts and auditor's report; or
- (c) Article 37(9) is not complied with,

the association as well as each of the persons on whom the above duty is imposed shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) It is a defence—

- (a) for a person charged under paragraph (2) to prove that he did everything that could reasonably have been expected of him by way of discharging the duty imposed by paragraph (1); and
- (b) for an association charged under paragraph (2) to prove that the persons mentioned in paragraph (1) did everything that could reasonably have been expected of them by way of discharging the duty imposed by paragraph (1) in relation to the association.

(4) No proceedings for an offence under this Article shall be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland or the Department.

### **Power of Department to monitor housing associations**

**21.**—(1) If at any time required to do so by the Department,—

- (a) a registered housing association shall produce to a person authorised in that behalf by the Department such books, accounts and other documents relating to the association's business as may be specified by the Department; and
- (b) any officer, employee or member of the committee of the registered housing association shall provide an explanation of any such books, accounts and other documents.

(2) Where, by virtue of paragraph (1), any books, accounts or other documents are produced to a person authorised in that behalf by the Department, he may take copies of or make extracts from them.

**Tax relief grants**

**22.**—(1) If a housing association makes a claim to the Department in respect of a period and satisfies the Department that throughout the period it was a housing association to which this Article applies and its functions either—

- (a) consisted exclusively of the function of providing or maintaining housing accommodation for letting or hostels and activities incidental to that function, or
- (b) included that function and activities incidental to that function,

the Department may make grants to the association for affording relief from tax chargeable on the association.

(2) This Article applies to a housing association at any time if, at that time—

- (a) it is registered;
- (b) it does not trade for profit; and
- (c) it is not approved for the purposes of section 488 of the Income and Corporation Taxes Act 1988(17) (tax treatment of co-operative housing associations).

(3) References in this Article to tax chargeable on an association are to income tax (other than income tax which the association is entitled to deduct on making any payment) and corporation tax.

(4) A grant under this Article may be made—

- (a) in a case falling within paragraph (1)(a), for affording relief from any tax chargeable on the association for the period in respect of which the claim is made; and
- (b) in a case falling within paragraph (1)(b), for affording relief from such part of any tax so chargeable as the Department considers appropriate having regard to the other functions of the association;

and in any case shall be of such amount, shall be made at such times and shall be subject to such conditions as the Department thinks fit.

(5) The conditions may include conditions for securing the repayment in whole or in part of a grant made to an association—

- (a) in the event of tax in respect of which it was made being found not to be chargeable; or
- (b) in such other events (including the association beginning to trade for profit) as the Department may determine.

(6) A claim under this Article shall be made in such manner and shall be supported by such evidence as the Department may direct.

(7) The Commissioners of Inland Revenue and their officers may disclose to the Department such particulars as it may reasonably require for determining whether a grant should be made on a claim or whether a grant should be repaid or the amount of such grant or repayment.

(8) In this Article “letting” includes the grant of an equity-sharing lease or a licence to occupy.

**Inquiries into affairs of registered housing associations**

**23.**—(1) The Department may appoint a person to conduct an inquiry into the affairs of any registered housing association and, if the appointed person considers it necessary for the purposes of the inquiry, he may also inquire into the business of any other body which, at a time which the appointed person considers material, is or was a subsidiary or associate of the association concerned.

(2) No person who is, or at any time has been, an officer of the Department shall be appointed to conduct an inquiry under paragraph (1).

- (3) The appointed person may, by notice in writing served on—
- (a) the association concerned; or
  - (b) any person who is, or has been, an officer, agent or member of the association; or
  - (c) any person who is, or has been, an officer, agent or member of a subsidiary or associate of the association; or
  - (d) any other person whom the appointed person has reason to believe is or may be in possession of information of relevance to the inquiry;

require the association or that person to produce to him such books, accounts and other documents relating to the business of the association or of any other such body as is referred to in paragraph (1) and to furnish to him such other information relating to that business, as he considers necessary for the purpose of the inquiry.

(4) Any association or other person who without reasonable excuse fails to comply with the requirements of a notice under paragraph (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) Where, by virtue of paragraph (3), any books, accounts or other documents are produced to the appointed person he may take copies of or make extracts from them.

(6) The appointed person may, if he thinks fit during the course of the inquiry, make one or more interim reports to the Department on such matters as appear to him to be appropriate.

(7) On completion of the inquiry the appointed person shall make a report to the Department on such matters and in such form as the Department may specify.

(8) In paragraph (3) “agent” includes banker, solicitor and auditor; but nothing in this Article requires disclosure—

- (a) by a solicitor, of any privileged communication made to him in his capacity as solicitor; or
- (b) by a housing association’s bankers, of any information as to the affairs of any of their other customers.

(9) In this Article, in relation to a housing association, “subsidiary” means a company with respect to which one of the following conditions is fulfilled,—

- (a) the association is a member of the company and controls the composition of the board of directors; or
- (b) the association holds more than half in nominal value of the company’s equity share capital; or
- (c) the company is a subsidiary, within the meaning of the Companies (Northern Ireland) Order 1986(18) or the Act of 1969, of another company which, by virtue of paragraph (a) or paragraph (b), is itself a subsidiary of the housing association.

(10) For the purposes of paragraph (9)(a), the composition of a company’s board of directors shall be deemed to be controlled by a housing association if, but only if, the association, by the exercise of some power exercisable by the association without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships.

(11) In this Article, in relation to a housing association, “associate” means—

- (a) any body of which the association is a subsidiary, and
- (b) any other subsidiary of such a body,

and in this paragraph “subsidiary” has the same meaning as in the Companies (Northern Ireland) Order 1986(19) or the Act of 1969 or, in the case of a body which is itself a housing association, has the meaning assigned by paragraph (9).

- (12) In relation to a company which is an industrial and provident society—
- (a) any reference in paragraph (9)(a) or paragraph (10) to the board of directors is a reference to the committee of management of the society; and
  - (b) the reference in paragraph (10) to the holders of all or a majority of the directorships is a reference to all or a majority of the members of the committee or, if the housing association is itself a member of the committee, such number as together with the association would constitute a majority.

### **Extraordinary audit for purposes of inquiry**

**24.**—(1) For the purposes of an inquiry under Article 23 into the affairs of a registered housing association, the Department may require the accounts and balance sheet of the association concerned, or such of them as the Department may specify, to be audited by an auditor appointed by the Department.

- (2) An auditor appointed under paragraph (1) shall be a person who—
- (a) under section 41(1) of the Act of 1969, is a qualified auditor for the purposes of that Act, or
  - (b) under section 41(2) of the Act of 1969, is a qualified auditor in relation to the particular association whose accounts are required to be audited under this paragraph.

(3) On completion of the audit the appointed auditor shall make a report to the Department on such matters and in such form as the Department may specify.

(4) The expenses of the audit, including the remuneration of the auditor, shall be paid by the Department.

(5) An audit under this Article shall be additional to, and shall not affect, any audit made or to be made under any other statutory provision.

### **Department’s power to act for protection of registered housing associations**

**25.**—(1) Where the Department is satisfied as the result of an inquiry or an audit under Article 23 or 24 that there has been any misconduct or mismanagement in the administration of a registered housing association, the Department may do all or any of the following, namely—

- (a) by order remove any member of the committee of the association, or any officer, agent or employee of the association, who has been responsible for or privy to the misconduct or mismanagement or has by his conduct contributed to it or facilitated it;
- (b) by order suspend such a person for up to 6 months, pending determination whether he should be removed;
- (c) order any bank or other person who holds money or securities on behalf of the association not to part with the money or securities without the approval of the Department;
- (d) by order restrict the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the association without the approval of the Department.

(2) Where a person is suspended, the Department may give directions with respect to the performance of his functions and otherwise as to matters arising from the suspension.

(3) If at any time the appointed person makes an interim report under Article 23(6) and, as a result of that interim report, the Department is satisfied that there has been misconduct or mismanagement as mentioned in paragraph (1),—

- (a) the Department may at that time exercise any of the powers conferred by sub-paragraphs (b) to (d) of that paragraph; and
- (b) in relation to the exercise at that time of the power conferred by paragraph (1)(b), the reference therein to a period of 6 months shall be construed as a reference to a period beginning at that time and ending 6 months after the date of the report under Article 23(7).

(4) The Department may also by order remove a member of the committee of a registered housing association where that member—

- (a) is a bankrupt, or has made an arrangement with his creditors or is incapable of acting by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986(20);
- (b) has not acted; or
- (c) cannot be found or does not act and his absence or failure to act impedes the committee's proper management of the association's affairs.

(5) The Department may by order appoint a person to be a member of the committee of a registered housing association (whether or not he is a member of the association and, if he is not, notwithstanding that the rules of the association restrict membership of the committee to members of the association)—

- (a) in place of a member of the committee removed by it under this Article or otherwise;
- (b) where there are no members of the committee; or
- (c) where the Department is of opinion that it is necessary for the proper management of the association's affairs to have an additional member of its committee;

and the power conferred by sub-paragraph (c) may be exercised notwithstanding that it will cause the maximum number of the committee members permissible under the association's rules to be exceeded.

(6) A person appointed under paragraph (5) as a member of the committee of a housing association shall be entitled—

- (a) to attend, speak and vote at any general meeting of the association and to receive all notices of and other communications relating to any general meeting which a member of the association is entitled to receive; and
- (b) to require a general meeting of the association to be convened within 21 days of a request to that effect made in writing to the committee of the association.

(7) A person appointed to be a member of the committee of a registered housing association under paragraph (5) shall hold office for such period and on such terms as the Department may specify and, on the expiry of any such period, the Department may renew the appointment for such period as it may specify; but nothing in this paragraph shall prevent any such person from retiring from the appointment in accordance with the rules of the association.

(8) Any member of the committee of a registered housing association or any officer, agent or employee of the association who is ordered by the Department to be removed under paragraph (1) (a) or (4) or suspended under paragraph (1)(b) may appeal against the order to the High Court.

(9) Before making an order under paragraph (1)(a) or (4) the Department shall give not less than 14 days' notice of its intention to do so—

- (a) to the person whom it intends to remove, and

(b) to the registered housing association concerned.

(10) Any person who contravenes an order under paragraph (1)(c) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5, or to imprisonment for a term not exceeding 3 months, or to both; but no proceedings for an offence punishable under this paragraph shall be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland or the Department.

(11) As soon as may be after making an order under this Article the Department shall send a copy of the order to the registrar.

### **Transfer of land of registered housing associations**

**26.**—(1) Where the Department is satisfied, as the result of an inquiry or an audit under Article 23 or 24, that—

- (a) there has been in the administration of a registered housing association any misconduct or mismanagement, or
- (b) the management of the land belonging to any such association would be improved if the land were to be transferred in accordance with this Article,

the Department may direct the association to transfer the land belonging to it to another body in accordance with paragraph (2).

(2) A direction under paragraph (1) may require the association concerned to transfer the land belonging to it,—

- (a) in a case where that association is a charity, to another registered housing association which is a charity and the objects of which appear to the Department to be, as nearly as practicable, akin to those of the association directed to make the transfer; and
- (b) in any other case, to the Department or to another registered housing association.

(3) A transfer in pursuance of a direction under paragraph (1) shall be made on the terms that the Department or, as the case may be, the association to which the land is transferred will pay or undertake to pay to the association making the transfer such sum, if any, as will be necessary to defray all its proper debts and liabilities (including any debts and liabilities secured on the land to be transferred) after taking into account any money or other assets belonging to the association.

(4) If it appears to the Department to be likely that, as a result of a transfer in pursuance of a direction under paragraph (1), the association making the transfer will be dissolved as mentioned in paragraph (a) or paragraph (b) of section 64 of the Act of 1969, the Department shall secure that the costs of such a dissolution are taken into account in determining the sum payable to the association under paragraph (3).

### **Winding up of registered housing associations**

**27.** Subject to section 64(a) of the Act of 1969, the Department may present a petition for the winding up under the Insolvency (Northern Ireland) Order 1989(21) of a registered housing association—

- (a) on the ground that the association is failing properly to carry out its purposes or objects;
- (b) on the ground that the association is unable to pay its debts within the meaning of Article 103 of that Order.



### **Transfer of net assets on dissolution of registered housing associations**

**28.**—(1) If a registered housing association is dissolved as mentioned in paragraph (a) or (b) of section 64 of the Act of 1969 then, notwithstanding anything in that Act or in the rules of the association, there shall be transferred to the Department, or, if the Department so directs, to such registered housing association as may be specified in the direction, so much of the property of the association as remains after meeting the claims of its creditors and any other liabilities arising on or before the dissolution.

(2) If it appears to the Department to be appropriate to do so in order to avoid the necessity for the sale of any land belonging to a registered housing association which is being dissolved as mentioned in paragraph (1) and thereby secure the transfer of the land under that paragraph, the Department may make payments to discharge any such claims or liabilities as are referred to in that paragraph.

(3) The Department may not dispose of any property transferred to it by virtue of paragraph (1) otherwise than to a registered housing association, and in any case where the property so transferred to the Department includes land subject to an existing mortgage, the Department may dispose of the land subject to that mortgage.

(4) Notwithstanding anything in paragraph (3), where property is transferred to the Department by virtue of paragraph (1) on the dissolution of a registered housing association which is a charity, the Department may not dispose of that property except to another registered housing association which is a charity and the objects of which appear to the Department to be, as nearly as practicable, akin to those of the association which was dissolved.

### **Restrictions on exercise of certain powers of registered housing associations**

**29.**—(1) The provisions of this Article apply in relation to a registered housing association, the registration of which by the Department has been recorded by the registrar under Article 18(2), and references in the following provisions of this Article to a registered housing association shall be construed accordingly.

(2) The registrar shall not register a special resolution, as defined in section 59(2) of the Act of 1969, which is passed by a registered housing association for the purposes of section 59 or 60 of that Act (amalgamation of societies and transfer of engagements between societies) unless, together with the copy of the special resolution sent to him as mentioned in section 59(4) of that Act, there is sent a copy of the Department's consent to the amalgamation or transfer concerned.

(3) Section 61 of the Act of 1969 (power of registered society to convert itself into, or to transfer its engagements to, a company registered under the Companies (Northern Ireland) Order 1986(22)) shall not apply to a registered housing association.

(4) If, in pursuance of section 64(a) of the Act of 1969, a registered housing association resolves by special resolution, as defined in Article 386 of the Companies (Northern Ireland) Order 1986, that it be wound up voluntarily, the resolution shall not have effect for the purposes of that Act as a resolution for voluntary winding up unless—

- (a) before the passing of the resolution the Department has given its consent to the passing of the resolution, and
- (b) together with the copy of the resolution required to be forwarded to the registrar under Article 388 of the Companies (Northern Ireland) Order 1986 (as that section has effect by virtue of the said section 64(a)) there is forwarded a copy of the Department's consent.

(5) If, in pursuance of section 64(b) of the Act of 1969, a registered housing association is to be dissolved by an instrument of dissolution, the registrar shall neither register that instrument, as required by section 67(5) of that Act, nor cause notice of the dissolution to be advertised as mentioned

in section 67(6) unless, together with the instrument of dissolution required to be sent to him under section 67(4), there is sent a copy of the Department's consent to the making of that instrument.

(6) Section 9 of the Act of 1969 shall have effect in relation to a registered housing association as if—

- (a) in subsection (1) after the words “shall not be valid” there were inserted the words “without the consent of the Department of the Environment nor” and after paragraph (b) there were inserted the words “and there shall also be sent with the copies of the amendment a copy of the consent of the Department of the Environment under this subsection”; and
- (b) in subsection (2) at the end of the words preceding the paragraphs there were inserted the words “notice of any such change shall be sent to the Department of the Environment and”.

**Payments by registered housing associations to members, etc.**

**30.**—(1) Subject to paragraph (2), a registered housing association shall not make a gift or pay any sum by way of dividend or bonus—

- (a) to any person who is or has been a member of the association;
- (b) to any person who is a member of the family of any such person as is referred to in sub-paragraph (a); or
- (c) to any company of which a person falling within sub-paragraph (a) or (b) is a director.

(2) Paragraph (1) does not apply to—

- (a) any sum paid, in accordance with the rules of the association concerned, as interest on capital lent to the association or subscribed by way of shares in the association; or
- (b) any sum which—
  - (i) is paid by an association whose rules restrict membership to persons who are tenants or prospective tenants of the association and preclude the granting or assignment of tenancies to persons other than members; and
  - (ii) is paid to a person who has ceased to be a member of the association; and
  - (iii) is due to that person under his tenancy agreement with the association or under the terms of the agreement under which he became a member of the association.

(3) The Department may specify the maximum amounts which may be paid by a registered housing association—

- (a) by way of fees or other remuneration or by way of expenses to a member of the association who is not a member of its committee or an officer or employee of the association;
- (b) by way of expenses to a member of its committee who is not an officer or employee of the association; or
- (c) by way of expenses to an officer of the association who does not have a contract of employment with the association.

(4) Different amounts may be specified under paragraph (3) for different purposes.

(5) Where a registered housing association—

- (a) pays any sum or makes any gift in breach of paragraph (1); or
- (b) pays to any person a sum which exceeds any maximum amount specified in relation to that person under paragraph (3);

the sum or, as the case may be, the value of the gift or, in a case falling within sub-paragraph (b), the amount by which the sum exceeds the maximum shall be recoverable by the association; and proceedings for its recovery shall be taken by the association if the Department gives the association a direction to that effect.

(6) For the purposes of paragraph (3)(b) and Article 31, a person co-opted by the committee of a registered housing association to serve on the committee (whether he is a member of the association or not) shall be treated as a member of the committee.

### **Payments and grant of benefits by registered housing associations**

**31.**—(1) Subject to paragraph (5), a registered housing association shall not make any payment or grant any benefit to—

- (a) a person who is, or at any time within the relevant period has been, a committee member, officer or employee of the association;
- (b) a close relative of such a person; or
- (c) a business trading for profit in which a person falling within sub-paragraph (a) has a personal interest.

(2) In paragraph (1)(a), “the relevant period” means the period of 12 months immediately preceding the making of the payment or the grant of the benefit.

(3) For the purposes of paragraph (1)(c), a person has a personal interest in a business if he, or a close relative of his, either is one of the principal proprietors of the business or is directly concerned with its management.

(4) Any sum paid, or the value of any benefit granted, by a registered housing association in breach of paragraph (1) shall be recoverable by the association; and proceedings for its recovery shall be taken by the association if the Department gives it a direction to that effect.

(5) This Article does not apply to—

- (a) any payment made or benefit granted by a registered housing association to an officer or employee under his contract of employment with the association;
- (b) any payment of expenses made by such an association to a member of its committee;
- (c) any payment to which, by virtue of paragraph (2) of Article 30, paragraph (1) of that Article does not apply;
- (d) any payment of expenses to which Article 30(3)(c) applies;
- (e) the grant or renewal of a tenancy of a house; or
- (f) any payment made or benefit granted by a registered housing association in such class or classes of case as may be specified in a determination made by the Department.

(6) The Department may make different determinations for the purposes of paragraph (5)(f) and, before making such a determination, the Department shall consult such bodies appearing to it to be representative of registered housing associations as it considers appropriate; and after making such a determination the Department shall publish the determination in such manner as it considers appropriate for bringing it to the notice of the associations concerned.

### **Great Britain societies**

**32.** Section 102(3) of the Act of 1969 (which provides that references to a registered society in certain provisions of that Act are to include references to a registered Great Britain society where copies of its registered rules have been recorded by the registrar) shall not apply for the purposes of this Chapter.

CHAPTER III  
FINANCIAL ASSISTANCE FOR HOUSING ASSOCIATIONS

**Housing association grants**

**33.**—(1) The Department may make grants to registered housing associations in respect of expenditure incurred or to be incurred by them in connection with housing activities.

- (2) As respects grants under this Article the following, namely—
- (a) the procedure to be followed in relation to applications for grant;
  - (b) the circumstances in which grant is or is not to be payable;
  - (c) the method for calculating, and any limitations on, the amount of grant; and
  - (d) the manner in which, and time or times at which, grant is to be paid,

shall be such as may be specified by the Department, acting in accordance with such principles as it may determine.

(3) In making a grant under this Article, the Department may provide that the grant is conditional on compliance by the association with such conditions as it may specify.

- (4) Where—
- (a) a grant under this Article is payable to an association, and
  - (b) at any time property to which the grant relates becomes vested in, or is leased for a term of years to, or reverts to, some other registered housing association,

this Article (including this paragraph) shall have effect after that time as if the grant, or such proportion of it as is specified or determined under paragraph (5), were payable to that other association.

(5) The proportion referred to in paragraph (4) is that which, in the circumstances of the particular case—

- (a) the Department, acting in accordance with such principles as it may determine, may specify as being appropriate; or
- (b) the Department may determine to be appropriate.

**Revenue deficit grants**

**34.**—(1) The Department may make a grant to a registered housing association if—

- (a) in relation to all housing activities of the association,
- (b) in relation to housing activities of the association of a particular description, or
- (c) in relation to particular housing activities of the association,

the association's expenditure as calculated by the Department for any period (including a period which is wholly or partly a future period) exceeds its income as so calculated for that period.

(2) In calculating an association's expenditure or income for the purposes of paragraph (1), the Department—

- (a) shall act in accordance with such principles as it may determine; and
- (b) may act on such assumptions (whether or not borne out or likely to be borne out by events) as it may determine.

(3) Paragraphs (2) and (3) of Article 33 shall apply for the purposes of this Article as they apply for the purposes of that Article.

### **Recovery, etc. of grants**

35.—(1) Where a grant to which this Article applies, that is to say—

- (a) a grant under Article 33 or 34, or
- (b) a grant under Article 137 of the Order of 1981 or any provision replaced by that Article,

has been made to a registered housing association, the powers conferred by paragraph (2) are exercisable in such events (including the association not complying with any conditions) as the Department may determine (in this Article referred to as “relevant events”).

(2) The Department, acting in accordance with such principles as it may determine, may—

- (a) reduce the amount of, or of any payment in respect of, the grant;
- (b) suspend or cancel any instalment of the grant; or
- (c) direct the association to pay to it an amount equal to the whole, or such proportion as it may specify, of the amount of any payment made to the association in respect of the grant,

and a direction under sub-paragraph (c) requiring the payment of any amount may also require the payment of interest on that amount in accordance with paragraphs (6) to (8).

(3) Where, after a grant to which this Article applies has been made to an association, a relevant event occurs, the association shall notify the Department and, if so required by written notice of the Department, shall furnish it with such particulars of and information relating to the event as are specified in the notice.

(4) Where—

- (a) a grant to which this Article applies has been made to an association, and
- (b) at any time property to which the grant relates becomes vested in, or is leased for a term of years to, or reverts to, some other registered housing association,

this Article (including this paragraph) shall have effect after that time as if the grant, or such proportion of it as is specified or determined under paragraph (5), had been made to that other association.

(5) The proportion referred to in paragraph (4) is that which, in the circumstances of the particular case—

- (a) the Department, acting in accordance with such principles as it may determine, may specify as being appropriate; or
- (b) the Department may determine to be appropriate.

(6) A direction under paragraph (2)(c) requiring the payment of interest on the amount directed to be paid to the Department shall specify in accordance with paragraph (8)—

- (a) the rate or rates of interest (whether fixed or variable) which is or are applicable;
- (b) the date from which interest is payable, being not earlier than the date of the relevant event; and
- (c) any provision for suspended or reduced interest which is applicable.

(7) In paragraph (6)(c)—

- (a) the reference to a provision for suspended interest is a reference to a provision whereby, if the amount which is directed to be paid to the Department is paid before a date specified in the direction, no interest will be payable for any period after the date of the direction; and
- (b) the reference to a provision for reduced interest is a reference to a provision whereby, if that amount is so paid, any interest payable will be payable at a rate or rates lower than the rate or rates which would otherwise be applicable.

(8) The matters specified in a direction as mentioned in sub-paragraphs (a) to (c) of paragraph (6) shall be either—

- (a) such as the Department, acting in accordance with such principles as it may determine, may specify as being appropriate, or
- (b) such as the Department may determine to be appropriate in the particular case.

### **Determinations under this Part**

**36.**—(1) A general determination may either—

- (a) make the same provision for all cases; or
- (b) make different provision for different cases or descriptions of cases, including different provision for different areas or for different descriptions of housing associations or housing activities;

and for the purposes of this paragraph descriptions may be framed by reference to any matters whatever, including in particular, in the case of housing activities, the manner in which they are financed.

(2) The Department shall not make a general determination under the foregoing provisions of this Part except with the consent of the Department of Finance and Personnel.

(3) Before making a general determination, the Department shall consult such bodies appearing to it to be representative of housing associations as it considers appropriate; and after making such a determination, the Department shall publish the determination in such manner as it considers appropriate for bringing the determination to the notice of the associations concerned.

(4) In this Article “general determination” means a determination under any provision of Articles 33 to 35, other than a determination relating solely to a particular case.

### **Surplus rental income**

**37.**—(1) An association to which this Article applies, that is to say, a registered housing association which has at any time received a payment in respect of—

- (a) a grant under Article 33, or
- (b) a grant under Article 137 of the Order of 1981 or any provision replaced by that Article,

(in this Article referred to as a “relevant grant”) shall show separately in its accounts for any period ending on or after the day of the coming into operation of this Part the surpluses arising from increased rental income during that period from such housing activities to which the grant relates as the Department may determine.

(2) The surpluses shall be shown by each association in a fund to be known as its rent surplus fund; and the method of constituting that fund and of showing it in the association’s accounts shall be as required by order of the Department under Article 19(1) (requirements as to accounts) and such an order may make provision applying to any period to which this Article applies.

(3) The surpluses in respect of a period shall be calculated in such manner as the Department may determine; and a determination under this paragraph may provide that, in calculating surpluses, an association shall act on such assumptions (whether or not borne out or likely to be borne out by events) as may be specified in the determination.

(4) A determination under paragraph (1) or (3) may—

- (a) make the same provision for all cases; or
- (b) make different provision for different cases or descriptions of cases, including different provision for different areas or for different descriptions of housing associations or housing activities;

and for the purposes of this paragraph descriptions may be framed by reference to any matters whatever, including in particular, in the case of housing activities, the manner in which they are financed.

(5) Before making a determination under paragraph (1) or (3), the Department shall consult such bodies appearing to it to be representative of housing associations as it considers appropriate; and after making such a determination, the Department shall publish it in such manner as the Department considers appropriate for bringing it to the notice of the associations concerned.

(6) The Department may give notice to an association to which this Article applies requiring it to pay to the Department, with interest if demanded, or to apply or appropriate for purposes the Department specifies, any sums standing in its rent surplus fund at the end of a period of account.

(7) Any interest demanded by such a notice is payable—

- (a) at the rate or rates (whether fixed or variable) previously determined by the Department, with the consent of the Department of Finance and Personnel, for housing associations generally and published by the Department or, if no such determination has been made, at the rate or rates (whether fixed or variable) specified with the consent of the Department of Finance and Personnel in the notice; and
- (b) either from the date of the notice or from such other date, not earlier than the end of the period of account, as may be specified in the notice.

(8) A notice under paragraph (6) demanding interest may with the consent of the Department of Finance and Personnel provide that, if the sums required by the notice to be paid to the Department are paid before a date specified in the notice—

- (a) no interest shall be payable for any period after the date of the notice; and
- (b) any interest payable shall be payable at a rate or rates lower than the rate or rates given by paragraph (7).

(9) The Department may give notice—

- (a) to all associations to which this Article applies,
- (b) to associations to which this Article applies of a particular description, or
- (c) to particular associations to which this Article applies,

requiring them to furnish the Department with such information as the Department may reasonably require in connection with the exercise of its functions under this Article; and a notice under subparagraph (a) or (b) may be given by publication in such manner as the Department considers appropriate for bringing it to the attention of the associations concerned.

(10) Where—

- (a) an association has received a payment in respect of a relevant grant, and
- (b) at any time property to which the grant relates becomes vested in, or is leased for a term of years to, or reverts to, some other registered housing association,

this Article (including this paragraph) shall have effect in relation to periods after that time as if the payment, or such proportion of it as may be determined by the Department to be appropriate, had been made to that other association.

## PART III

## GRANTS

## CHAPTER I

## GRANTS TOWARDS COST OF IMPROVEMENTS AND REPAIRS, ETC.

*Introductory***Interpretation of this Chapter**

**38.**—(1) In this Chapter, except where the context otherwise requires,—

“certified date” means the date certified by the Executive as the date on which the execution of the eligible works is completed to its satisfaction;

“charity” does not include a registered housing association but, subject to that, has the same meaning as in the Charities Act (Northern Ireland) 1964<sup>(23)</sup>;

“common parts”, in relation to a building, includes the structure and exterior of the building and common facilities provided, whether in the building or elsewhere, for persons who include the occupiers of one or more flats in the building;

“disabled person” has the meaning assigned by Article 52(6);

“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it;

“the eligible works” shall be construed in accordance with Article 54(2)(a);

“the estimated expense” shall be construed in accordance with Article 54(2);

“flat”, in relation to a building, means a dwelling which is a separate set of premises, whether or not on the same floor, divided horizontally from some other part of the building;

“group repair scheme” has the meaning assigned by Article 65(1);

“house in multiple occupation” has the same meaning as in Part IV;

“improvement” includes alteration and enlargement;

“initial period” means the period of 5 years beginning with the certified date;

“landlord’s common parts application” has the meaning assigned by Article 43(2)(b);

“occupying tenant” has the meaning assigned by Article 43(2)(a);

“owner”, in relation to a dwelling, means the person who—

- (a) is for the time being entitled to receive from a lessee of the dwelling (or would be so entitled if the dwelling were let) a rent of not less than two-thirds of the net annual value of the dwelling; and
- (b) is not himself liable as lessee of the dwelling, or of property which includes the dwelling, to pay such a rent to a superior landlord;

and, in relation to a house in multiple occupation, “owner” has the same meaning as in Article 2 of the Order of 1981;

“owner’s interest” has the meaning assigned by Article 42(2);

“participating landlord” has the meaning assigned by Article 43(3);



- “preliminary or ancillary services and charges” has the meaning assigned by Article 40(3);
- “the relevant works” has the meaning assigned by Article 40(2)(a);
- “tenancy” includes a sub-tenancy and an agreement for a tenancy or sub-tenancy;
- “tenant” includes a sub-tenant and any person deriving title under the original tenant or sub-tenant;
- “tenants' common parts application” has the meaning assigned by Article 43(2)(c).

(2) Article 2(4) and (5) of the Order of 1981 (meaning of “members of a person’s family”) shall apply in determining whether a person is a member of another’s family for the purposes of this Part.

### **Grants for improvements and repairs**

**39.**—(1) In accordance with this Chapter, grants are payable by the Executive towards the cost of works required—

- (a) for the improvement or repair of dwellings, houses in multiple occupation or the common parts of buildings containing one or more flats; and
- (b) for the provision of dwellings or houses in multiple occupation by the conversion of a house or other building; and
- (c) for the provision of facilities for disabled persons in dwellings and in the common parts of buildings containing one or more flats.

(2) In this Chapter—

- (a) a grant relating to the improvement or repair of a dwelling or to the provision of dwellings by the conversion of a house or other building is referred to as a “renovation grant”; and
- (b) a grant relating to the improvement or repair of the common parts of a building is referred to as a “common parts grant”; and
- (c) a grant for the provision of facilities for a disabled person in a dwelling or in the common parts of a building containing one or more flats is referred to as a “disabled facilities grant”; and
- (d) a grant for the improvement or repair of a house in multiple occupation or for the provision of a house in multiple occupation by the conversion of a house or other building is referred to as an “HMO grant”;

and in the following provisions of this Chapter the expression “grant”, without more, means any of these types of grant.

(3) This Chapter shall have effect in place of Part III of the Order of 1983 (grants towards works of improvement, repair and conversion); but that Part shall continue to apply to any application for a grant—

- (a) made under Article 50 of that Order, and
- (b) received by the Executive before the day appointed under Article 1(3) for the coming into operation of this Part.

### **Applications for grants**

**40.**—(1) No grant shall be paid unless an application for it is made to the Executive in accordance with the provisions of this Chapter and is approved by it.

(2) An application for a grant shall be in writing and shall specify the premises to which it relates and contain—

- (a) particulars of the works in respect of which the grant is sought (in this Part referred to as “the relevant works”);

- (b) unless the Executive otherwise directs in any particular case, an estimate from a contractor acceptable to the Executive of the cost of carrying out the relevant works;
  - (c) particulars of any preliminary or ancillary services and charges in respect of the cost of which the grant is also sought; and
  - (d) such other particulars as may be prescribed.
- (3) In this Chapter “preliminary or ancillary services and charges”, in relation to an application for a grant, means services and charges which—
- (a) relate to the application and the preparation for and the carrying out of works; and
  - (b) are specified for the purposes of this paragraph by the Department.

*Preliminary conditions*

**The age of the property**

**41.**—(1) The Executive may not entertain an application for a grant, other than a disabled facilities grant, unless it is satisfied that, at the date of the application, the dwelling, common parts or house or other building concerned was provided not less than the relevant period before that date.

(2) In paragraph (1)—

- (a) “provided” means provided by construction or conversion; and
- (b) “the relevant period” means 10 years or such other period as the Department may by order provide.

**The interest of the applicant in the property**

**42.**—(1) Subject to paragraphs (4) and (5), the Executive may not entertain an application for a grant, other than a common parts grant, unless it is satisfied that—

- (a) the applicant has, or proposes to acquire, an owner’s interest in every parcel of land on which the relevant works are to be carried out; or
- (b) in the case of an application for a renovation grant (other than an application in respect of works required for the provision of one or more dwellings by the conversion of a house or other building), the applicant is a tenant of the dwelling (alone or jointly with others) but does not have, or propose to acquire, an owner’s interest in the dwelling; or
- (c) in the case of an application for a disabled facilities grant in respect of works to a dwelling, the applicant is a tenant of the dwelling (alone or jointly with others) but does not have, or propose to acquire, an owner’s interest in the dwelling; or
- (d) in the case of an application for a disabled facilities grant in respect of works to the common parts of a building containing one or more flats, the applicant is a tenant of a flat in the building (alone or jointly with others) but does not have, or propose to acquire, such an owner’s interest as is referred to in sub-paragraph (a);

and references in this Chapter to an “owner’s application” or a “tenant’s application” shall be construed accordingly.

(2) In this Chapter “owner’s interest” means an interest which—

- (a) is held by the applicant alone or jointly with others; and
- (b) is either a freehold interest in possession (whether legal or equitable) or a tenancy granted or extended for a term of years of which not less than 5 years remain unexpired at the date of the application.

(3) Where the Executive entertains an owner's application made by a person who proposes to acquire the necessary interest, it shall not approve the application until it is satisfied that he has done so.

(4) In accordance with directions given by the Department, the Executive may treat the condition in paragraph (1)(a) as fulfilled by a person who has, or proposes to acquire, an owner's interest in only part of the land concerned.

(5) This Article does not apply to—

- (a) an application for a grant by a religious denomination or body, or on behalf of a religious denomination or body by the trustees of the denomination or body; and
- (b) an application for a grant made by a charity or on behalf of a charity by the trustees of the charity.

(6) The Executive may not entertain a tenant's application unless—

- (a) the tenant is required by the terms of his tenancy to carry out the relevant works and he signed an agreement in respect of the tenancy before 5th December 1991; or
- (b) his application is for a disabled facilities grant.

#### **Common parts grants: preliminary conditions**

**43.**—(1) The Executive may not entertain an application for a common parts grant unless it is satisfied—

- (a) that, at the date of the application, at least the required proportion of the flats in the building concerned is occupied by occupying tenants; and
- (b) that the application is either a landlord's common parts application or a tenants' common parts application.

(2) In this Chapter—

- (a) an “occupying tenant”, in relation to a flat in a building, is a person—
  - (i) who has (alone or jointly with others) such an interest in the flat as is mentioned in any of sub-paragraphs (b) to (e) of paragraph (4); and
  - (ii) who occupies the flat as his only or main residence;
- (b) a “landlord's common parts application”, in relation to works to the common parts of a building, is an application for a common parts grant made by a person who—
  - (i) has (alone or jointly with others) such an interest in the building as is mentioned in sub-paragraph (a) or sub-paragraph (b) of paragraph (4); and
  - (ii) has a duty or power to carry out the relevant works; and
- (c) a “tenants' common parts application”, in relation to works to the common parts of a building, is an application for a common parts grant made, subject to paragraph (3), by at least three-quarters of the occupying tenants of the building who, under their tenancies, have a duty to carry out, or to make a contribution in respect of the carrying out of, some or all of the relevant works;

and in any case where a tenancy is held by 2 or more persons jointly, those persons shall be regarded as a single occupying tenant in deciding, for the purposes of sub-paragraph (c), whether the application is made by at least three-quarters of the occupying tenants referred to in that paragraph.

(3) For the purposes of sub-paragraph (c) of paragraph (2), a tenant whose tenancy is of a description specified for the purpose of that paragraph by an order made by the Department shall be treated as an occupying tenant falling within that sub-paragraph; and a person who falls within sub-paragraph (b)(i) of that paragraph and has a duty or power to carry out any of the relevant works may

also join in a tenants' common parts application; and, where such a person does join in an application, he is in this Chapter referred to as a “participating landlord”.

(4) The interests referred to in paragraph (2) are as follows—

- (a) a freehold estate in possession (whether legal or equitable);
- (b) a tenancy granted or extended for a term of years of which not less than 5 years remain unexpired at the date of the application;
- (c) a protected tenancy within the meaning of Article 3(1) of the Rent (Northern Ireland) Order 1978<sup>(24)</sup>;
- (d) a statutory tenancy within the meaning of Article 4(5) of that Order; and
- (e) a tenancy which satisfies such conditions as may be specified by order made by the Department.

(5) The required proportion mentioned in paragraph (1) is three-quarters or such other proportion as may be—

- (a) specified for the purposes of this Article by an order made by the Department; or
- (b) approved by the Department, in relation to a particular case or description of case, on application made by the Executive.

#### **Certificate as to future occupation, etc.**

**44.**—(1) Subject to paragraph (9) and Article 64, the Executive may not entertain an application for a renovation grant or a disabled facilities grant unless it is accompanied by a certificate falling within one of paragraphs (2) to (5) in respect to the dwelling, building or flat to which the application relates.

(2) A certificate under this paragraph (an “owner-occupation certificate”) certifies—

- (a) that the applicant has, or proposes to acquire, an owner’s interest in the dwelling or building; and
- (b) that he, or a member of his family, intends to live in the dwelling or, as the case may be, a flat in the building as his (or that member's) only or main residence for a period of not less than 12 months beginning on the certified date.

(3) A certificate under this paragraph (a “tenant’s certificate”) certifies—

- (a) that the applicant is a tenant of the dwelling who falls within paragraph (5) of Article 42 or that his application is a tenant’s application for a disabled facilities grant; and
- (b) that he or a member of his family intends to live in the dwelling or, as the case may be, a flat in the building as his (or that member's) only or main residence.

(4) A certificate under this paragraph (a “certificate of intended letting”) certifies that the applicant has or proposes to acquire an owner’s interest in the dwelling or building and intends to or already has let the dwelling or, as the case may be, one or more flats in the building as a residence—

- (a) to some one other than a member of his family; and
- (b) except where the tenancy relates to a disabled facilities grant, for a period of not less than 5 years beginning on the certified date.

(5) A certificate under this paragraph (a “special certificate”) certifies that the applicant has, or proposes to acquire, an owner’s interest in the dwelling or building and is an applicant of a class prescribed for the purposes of this Article.

(6) The Executive may not entertain a tenant’s application unless—

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(a) it is also accompanied by a certificate of intended letting made by the person who at the time of the application is the landlord under the tenancy; or

(b) the Executive considers it unreasonable in the circumstances to seek such a certificate.

(7) The Executive may not entertain an application for an HMO grant unless it is accompanied by a certificate that the applicant has or proposes to acquire an owner's interest in the house in question and intends—

(a) to license the use of part of it as a residence as mentioned in sub-paragraphs (a) and (b) of paragraph (4), or

(b) to let part of it as a residence as mentioned in those sub-paragraphs,

or has already so licensed or let part of it.

(8) The Executive may not entertain an application for a common parts grant unless it is accompanied by a certificate signed by the applicant or, as the case may be, by each of the applicants which—

(a) specifies the interest of the applicant or, as the case may be, each of the applicants in the building or in each flat in the building; and

(b) certifies that the required proportion, within the meaning of Article 43, of the flats in the building is occupied by occupying tenants.

(9) This Article does not apply to—

(a) an application for a grant by a religious denomination or body, or on behalf of a religious denomination or body by the trustees of the denomination or body; and

(b) an application for a grant made by a charity or on behalf of a charity by the trustees of the charity.

#### *Restrictions on grant aid*

#### **Certain dwellings and works excluded from grant aid**

**45.—**(1) In each of the cases in paragraph (2), the Executive may not approve an application for a grant unless—

(a) it is an application which it is required to approve by virtue of Article 50 and completion of the relevant works is necessary to comply with a notice under Article 41 of the Order of 1981 (repair notice requiring works to render premises fit for human habitation); or

(b) it is an application which it is required to approve by virtue of Article 51.

(2) The cases referred to in paragraph (1) are as follows—

(a) if, in the case of an application in respect of a dwelling or house which is not fit for human habitation, the Executive considers that the carrying out of the relevant works will not be sufficient to cause the dwelling or house to be fit for human habitation;

(b) if or to the extent that the relevant works have been completed before the date of service of the notice of refusal under Article 54(1);

(c) if, within the period of 3 months beginning on the date of service of the notice of refusal, the Executive intends to make a demolition or closing order relating to the dwelling, house or building under Article 35 or 38 of the Order of 1981;

(d) if, within the period of 12 months beginning on the date of service of the notice of refusal, the Executive intends to declare a clearance area under Article 32 of the Order of 1981 or a re-development area under Article 47 of that Order for an area which includes the dwelling, house or building;

- (e) if the dwelling, house or building is or forms part of a building of a class designated under Article 4 of the Order of 1986 (defective dwellings), the applicant is eligible for assistance under Part II of that Order in respect of a defective dwelling which is or forms part of the dwelling, house or building concerned and the relevant works are, within the meaning of that Part, work required to reinstate that defective dwelling; and
  - (f) if, in the case of an application for a common parts grant, the Executive considers that the carrying out of the relevant works will not be sufficient to cause the building to meet the requirements mentioned in sub-paragraphs (a) to (e) of Article 46(2) of the Order of 1981 (fitness for human habitation).
- (3) Where a group repair scheme has been approved by the Department, the Executive may not approve an application for a grant in so far as it relates to works which will be carried out in pursuance of agreements entered into, or to be entered into, in pursuance of the scheme.
- (4) The Executive may not approve an application for a grant so far as it relates to works which are of a description excluded from grant aid by directions made by the Department.
- (5) Unless it is an application which it is required to approve by virtue of Article 51, the Executive may not approve an application for an HMO grant so far as it relates to works—
- (a) which relate to means of escape from fire or other fire precautions; and
  - (b) which are required to be carried out under or by virtue of any statutory provision (whenever passed).
- (6) If directions made by the Department under paragraph (4) specify a description of works for which grant aid is not to be available without its consent, the Executive may not approve an application for a grant, so far as it relates to works of that description, unless the Department has given its consent with respect to those works.
- (7) The Department may give its consent for the purposes of paragraph (6) with respect to applications generally or to a particular description of applications.

### **Restriction on grants for works already begun**

- 46.—**(1) Subject to paragraphs (2) and (3), the Executive may not approve an application for a grant if the relevant works have been commenced before the application is approved and shall serve a notice of refusal to that effect on the applicant.
- (2) Paragraph (1) does not apply to—
- (a) an application which the Executive is required to approve by virtue of Article 50 if completion of the relevant works is necessary to comply with a notice under Article 41 of the Order of 1981 (repair notice requiring works to render premises fit for human habitation); or
  - (b) an application which the Executive is required to approve by virtue of Article 51.
- (3) Where the relevant works have not been completed, the Executive may approve the application for a grant if it is satisfied that there were good reasons for beginning the works before the application was approved.
- (4) Where the Executive decides to approve an application in accordance with paragraph (3)—
- (a) it may, with the consent of the applicant, treat the application as varied so that the relevant works are limited to those that remain to be completed at the date of the application; and
  - (b) in determining for the purposes of Articles 51, 52 and 53 the physical condition of the dwelling, common parts or house or other building concerned, it shall consider the condition of the premises at the date of the application.

### **Owner-occupiers and tenants**

**47.**—(1) Where an application for a grant is accompanied by an owner-occupier certificate, a tenant's certificate or a special certificate, then, if the financial resources of the applicant exceed the applicable amount, the amount of any grant which may be paid shall be reduced from what it would otherwise have been in accordance with regulations made by the Department with the consent of the Department of Finance and Personnel.

(2) For the purposes of this Chapter, the Department may by regulations made with the consent of the Department of Finance and Personnel—

- (a) make provision for the determination of the amount which is to be taken to be the financial resources of an applicant for a grant; and
  - (b) make provision for the determination of the applicable amount referred to in paragraph (1).
- (3) Without prejudice to the generality of paragraph (2), regulations under this Article—
- (a) may make provision for account to be taken of the income, assets, needs and outgoings not only of the applicant himself but also of his spouse, any person living with him or intending to live with him and any person on whom he is dependent or who is dependent on him;
  - (b) may make provision for amounts specified in or determined under the regulations to be taken into account for particular purposes.

### **Landlords**

**48.**—(1) Subject to Article 64, this Article applies—

- (a) where an application for a grant is accompanied by a certificate of intended letting with respect to a dwelling and is not a tenant's application;
- (b) where an application for an HMO grant is accompanied by a certificate under Article 44(7);
- (c) where, by virtue of Article 42(5) or 44(9), Article 42 or, as the case may be, Article 44 does not apply to an application for a grant; and
- (d) where an application for a grant is a landlord's common parts application.

(2) Subject to the following provisions of this Article and to Article 54(5), the amount of the grant (if any) shall be such as may be determined by the Executive, having regard to—

- (a) the cost of the relevant works;
- (b) where a regulated tenancy (within the meaning of the Rent (Northern Ireland) Order 1978(25)) subsists in the dwelling, the amount of the rent recoverable and of any increase which might reasonably be expected in that rent to take account of the relevant works, when completed;
- (c) where the dwelling is currently let, but sub-paragraph (b) does not apply, the amount of the rent payable and of any increase which might reasonably be expected in that rent to take account of the relevant works, when completed;
- (d) where the dwelling is not currently let, the amount of rent which might reasonably be expected to be obtained on a letting of the dwelling on the open market when the relevant works are complete; and
- (e) such other matters as the Department may direct.

(3) In making a determination under paragraph (2), the Executive may take account—

- (a) in relation to sub-paragraph (b) of that paragraph, of any certificate of future rent issued under Article 32 of the Rent (Northern Ireland) Order 1978(26); and

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- (b) in relation to sub-paragraph (c) or (d) of that paragraph, of any assessment of rent undertaken by a rent officer in pursuance of regulations made under paragraph (4).
- (4) The Department may by regulations make such provision as it thinks fit with respect to assessments of rent for the purposes of paragraph (3)(b).
- (5) Without prejudice to the generality of paragraph (4), the regulations may, in particular, make provision as to—
- (a) the functions of the rent officer;
  - (b) the procedure to be followed in making an assessment of rent; and
  - (c) the basis on which an assessment of rent is to be made.
- (6) In paragraphs (3) and (5) “rent officer” means the rent officer nominated under paragraph 3 of Schedule 5 to the Rent (Northern Ireland) Order 1978 and includes the deputy rent officer.
- (7) Where the applicant is a charity or the application is in respect of a religious denomination or body, the Executive shall also have regard—
- (a) to any obligation or practice on the part of the applicant to let dwellings at a rent less than that which could be obtained on the open market;
  - (b) to any financial resources available to the applicant in addition to the rent from the dwelling; and
  - (c) generally to the circumstances of the applicant concerned.
- (8) In the case of an application for an HMO grant, in paragraphs (2) to (7), any reference to rent shall be construed as a reference to the aggregate of the consideration under licences or lettings of the house in question and any reference to letting a dwelling shall be construed accordingly.
- (9) Where the application is for a grant in respect of the residence house of a religious denomination, paragraphs (b) to (d) of paragraph (2) shall not apply and the Executive shall also have regard—
- (a) to any financial resources available to the applicant; and
  - (b) generally to the circumstances of the applicant.
- (10) In a case where the application is a landlord’s common parts application, each of the dwellings in the building concerned shall be taken into account under sub-paragraph (b) or (c) of paragraph (2) so as to determine an aggregate rent for the purposes of that paragraph.

### **Tenants' common parts applications**

**49.**—(1) This Article applies where an application for a grant is a tenants' common parts application.

(2) The Executive shall decide how much of the cost of the relevant works is attributable to the applicants (in this Article referred to as “the attributable cost”); and, for the purposes of this Article, the attributable cost is an amount equal to the proportion, referred to in paragraph (3), of the cost of the relevant works.

- (3) The proportion mentioned in paragraph (2) is as follows—
- (a) where it can be ascertained, the proportion that the aggregate of each of the applicant’s respective liabilities to carry out or contribute to the carrying out of the relevant works bears to the aggregate of all such liabilities on the part of all persons (including the applicants) so liable; or
  - (b) where the proportion mentioned in sub-paragraph (a) cannot be ascertained, the proportion that the number of applicants bears to the number of persons (including the applicants) liable to carry out or contribute to the carrying out of works to the building;



and in any case where the interest by virtue of which the liability referred to in sub-paragraph (b) arises is held jointly by 2 or more persons, those persons shall be regarded as a single person in deciding for the purposes of that sub-paragraph the number of persons so liable.

- (4) The Executive shall then apportion the attributable cost to each of the applicants—
- (a) in a case where the attributable cost is calculated by reference to the proportion mentioned in sub-paragraph (a) of paragraph (3), according to the proportion that his liabilities to carry out or contribute to the carrying out of the relevant works bears to the aggregate of the applicants' liabilities mentioned in that sub-paragraph; or
  - (b) in a case where the attributable cost is calculated by reference to the proportion mentioned in sub-paragraph (b) of that paragraph, equally;

and the amount of grant payable shall be the aggregate of the grants that would be payable to each of the applicants under Article 47 or, in the case of a participating landlord, Article 48 if each of the applicants was an individual applicant under Article 47 or, as the case may be, Article 48 in respect of his apportionment of the attributable cost under sub-paragraph (a) or, as the case may be, sub-paragraph (b).

#### *Approvals, notification and payment*

#### **Duty to approve applications to render certain dwellings fit for human habitation**

**50.**—(1) Subject to the preceding provisions of this Chapter, on receipt of an application for a renovation grant (other than an application in respect of works required for the provision of one or more dwellings by the conversion of a house or other building), the Executive shall determine whether the dwelling is fit for human habitation.

- (2) In any case where the Executive—
- (a) determines under paragraph (1) that a dwelling is not fit for human habitation, and
  - (b) considers that completion of the relevant works will cause the dwelling to be fit for human habitation, and
  - (c) is satisfied that completion of the relevant works is the most satisfactory course of action,
- then, subject to paragraphs (4) and (5), it shall approve the application so far as it relates to that dwelling.

(3) If, in the case of any application, the Executive considers that the relevant works include works for which assistance is available under Part II of the Order of 1986 (assistance for owners of defective housing), it shall treat the application as if the relevant works did not include those works.

(4) If, in the case of any application, other than one to which Article 51 or 53(6) applies, the Executive considers that the relevant works include works in addition to those which will cause the dwelling to be fit for human habitation (“the additional works”), it shall treat the application—

- (a) as an application under this Article in so far as it relates to works other than the additional works; and
- (b) as an application under Article 53 in so far as it relates to the additional works;

but, for the purposes of Article 54 and the subsequent provisions of this Chapter, the 2 applications shall be treated as one application.

- (5) The Executive shall not be under a duty under this Article to approve an application—
- (a) which is accompanied by a certificate of intended letting and is not a tenant’s application; or

- (b) if it expects, within the period of 12 months beginning with the date of receipt of the application, to prepare a group repair scheme in respect of a building which includes or comprises the dwelling.

(6) Article 46 of the Order of 1981 (fitness for human habitation) applies for the purposes of this Chapter, as it applies for the purposes of that Order.

(7) In deciding whether it is satisfied as mentioned in paragraph (2)(c), the Executive shall have regard to any guidance given under Article 46A of the Order of 1981 and, for that purpose, the Executive shall treat any guidance given in respect of the serving of a repair notice under Article 41(1) of that Order as guidance given in respect of the completion of the relevant works.

#### **Duty to approve applications arising out of certain statutory notices**

**51.** Subject to Article 50(3), the Executive shall approve an application falling within Article 48(1) (in this Article referred to as a “landlord’s application”) if completion of the relevant works is necessary to comply with a notice or notices under either of the following provisions—

- (a) Article 80 of this Order (notice requiring works to render premises fit for number of occupants);
- (b) Article 41 of the Order of 1981 (repair notice requiring works to render premises fit for human habitation).

#### **Approval of applications to provide certain facilities for the disabled**

**52.—(1)** The Executive shall not approve an application for a disabled facilities grant unless it is satisfied—

- (a) that the relevant works are necessary and appropriate to meet the needs of the disabled occupant; and
- (b) that it is reasonable and practicable to carry out the relevant works, having regard to the age and condition of the dwelling or building;

and, in considering the matter specified in sub-paragraph (a), the Executive shall consult the relevant Health and Social Services Board.

(2) The Executive shall not approve an application for a disabled facilities grant in respect of works to the common parts of a building containing one or more flats unless it is satisfied that the applicant has a power or is under a duty to carry out the relevant works.

(3) Subject to the preceding provisions of this Chapter, the Executive shall approve an application for a disabled facilities grant if the relevant works are for any one or more of the following purposes—

- (a) facilitating access by the disabled occupant to and from the dwelling or the building in which the dwelling or, as the case may be, flat is situated;
- (b) facilitating access by the disabled occupant to a room used or usable as the principal family room;
- (c) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room used or usable for sleeping;
- (d) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room in which there is a lavatory, bath, shower or washhand basin or facilitating the use by the disabled occupant of such a facility;
- (e) facilitating the preparation and cooking of food by the disabled occupant;

- (f) improving any heating system in the dwelling to meet the needs of the disabled occupant or, if there is no existing heating system in the dwelling or any such system is unsuitable for use by the disabled occupant, providing a heating system suitable to meet his needs;
- (g) facilitating the use by the disabled occupant of a source of power, light or heat by altering the position of one or more means of access to or control of that source or by providing additional means of control; and
- (h) facilitating access and movement by the disabled occupant around the dwelling in order to enable him to care for a person who is normally resident in the dwelling and is in need of such care.

(4) Subject to the preceding provisions of this Chapter, the Executive may approve an application for a disabled facilities grant where the relevant works do not fall within paragraph (3) but are for the purpose of making the dwelling or building suitable for the accommodation, welfare or employment of the disabled occupant.

(5) In this Article “the disabled occupant” means the disabled person for whose benefit it is proposed to carry out any of the relevant works.

(6) In this Part “disabled person” means—

- (a) a person who is registered in pursuance of arrangements made under Article 15(1) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(27)</sup>; or
- (b) any other person for whose welfare arrangements have been made under that provision or, in the opinion of the relevant Health and Social Services Board, might be made under it.

(7) For the purposes of this Article “the relevant Health and Social Services Board” means the Health and Social Services Board for the area in which the dwelling is situated.

### **Discretionary approval of certain applications**

**53.**—(1) Subject to the preceding provisions of this Chapter, the Executive may approve an application for a grant, other than a common parts grant, in any case where—

- (a) the relevant works go beyond or are other than those which will cause the dwelling to be fit for human habitation, but
- (b) the Executive is satisfied that the relevant works are necessary for one or more of the purposes set out in paragraph (3).

(2) Subject to the preceding provisions of this Chapter, the Executive may approve an application for a common parts grant if the Executive is satisfied that the relevant works—

- (a) are necessary for one or more of the purposes set out in sub-paragraphs (a) and (c) to (f) of paragraph (3); or
- (b) will cause the building to meet the requirements mentioned in sub-paragraphs (a) to (e) of Article 46(2) of the Order of 1981.

(3) The purposes referred to in paragraph (1) are—

- (a) to put the dwelling or building in reasonable repair;
- (b) to provide the dwelling by the conversion of a house or other building;
- (c) to provide adequate facilities for space heating;
- (d) to provide satisfactory internal arrangements;
- (e) to ensure that the dwelling or building complies with such requirements with respect to construction or physical condition as may for the time being be specified by the Department for the purposes of this Article; and

- (f) to ensure that there is compliance with such requirements with respect to the provision or condition of services and amenities to or within the dwelling or building as may for the time being be so specified.
- (4) In the case of an application for an HMO grant, any reference in paragraphs (1) and (3) to the dwelling shall be construed as a reference to the house.
- (5) In considering whether to approve an application for a grant in exercise of its discretion under paragraph (1) or (2), the Executive shall have regard to the expected life of the building (taking account, where appropriate, of the effect of carrying out the relevant works).
- (6) Subject to the preceding provisions of this Chapter, the Executive may approve an application falling within Article 48(1) (in this Article referred to as a “landlord’s application”) if—
- (a) the relevant works are for the purpose of rendering the dwelling or house to which the application relates fit for human habitation, or
  - (b) in the case of an application for an HMO grant, the relevant works are for the purpose of enabling the house in question to meet one or more of the requirements in Article 80(2),
- and (in either case) the Executive is satisfied that the relevant works are necessary for the purpose concerned.
- (7) If in the opinion of the Executive the relevant works are more or less extensive than is necessary to achieve the result referred to in sub-paragraph (b) of paragraph (2) or any of the purposes set out in paragraph (3), or, as the case may be, the purpose falling within paragraph (6), the Executive may, with the consent of the applicant, treat the application as varied so that the relevant works are limited to or, as the case may be, include such works as seem to the Executive to be necessary for that purpose.
- (8) In determining what is “reasonable repair”, in relation to a dwelling or building for the purposes of paragraph (3)(a), the Executive—
- (a) shall have regard to the age and character of the dwelling or building and the locality in which it is situated; and
  - (b) shall disregard the state of internal decorative repair.
- (9) In the exercise of the powers conferred by sub-paragraphs (e) and (f) of paragraph (3), the Department—
- (a) may specify requirements generally or for particular cases; and
  - (b) may specify different requirements for different areas.

### **Approval and refusal of applications**

**54.**—(1) The Executive shall, by notice in writing, notify an applicant for a grant as soon as reasonably practicable, and, in any event, not later than 6 months after the date of the application concerned, whether the application is approved or refused.

- (2) Where the Executive decides to approve an application for a grant, it shall determine—
- (a) which of the relevant works, taking into account any variation of the application under Article 46(4)(a) or Article 53(7), are eligible for grant (in this Chapter referred to as “the eligible works”);
  - (b) the amount of the expenses which in its opinion are properly to be incurred in the execution of the eligible works;
  - (c) the amount of the costs which in its opinion have been or are to be properly incurred with respect to preliminary or ancillary services and charges; and

- (d) the amount of grant it has decided to pay in respect of the eligible works, taking into account sub-paragraphs (b) and (c), paragraph (5) and such of Articles 47 to 53 as may be applicable;

and shall specify in the notice under paragraph (1) the eligible works, the total of the amounts referred to in sub-paragraphs (b) and (c) (in this Chapter referred to as “the estimated expense”) and the amount of the grant.

- (3) Where an application for a grant is approved, then, except—

- (a) with the consent of the Department, or
- (b) as provided by Article 56(1),

the Executive may not impose any condition in relation to the approval or making of the grant, whether purporting to operate by way of a condition of the grant, a personal covenant or otherwise.

- (4) If, after an application for a grant has been approved, the Executive is satisfied that, owing to circumstances beyond the control of the applicant,—

- (a) the eligible works cannot be, or could not have been, carried out on the basis of the amount of expenses referred to in paragraph (2)(b), or
- (b) the eligible works cannot be, or could not have been, carried out without carrying out additional works which could not have been reasonably foreseen at the time the application was made,

the Executive may re-determine the estimated expense and, subject to paragraph (5), the amount of the grant.

- (5) The Department may, if it thinks fit, by order specify a maximum amount, or a formula for calculating a maximum amount, of grant which the Executive may pay in respect of an application for a grant; and the Executive may not pay any grant in excess of that amount.

### **Payment of grants**

**55.**—(1) Where the Executive has approved an application for a grant, it shall pay the grant, subject to paragraph (3) and to Articles 70 and 71.

- (2) The grant may be paid—

- (a) in whole after the completion of the eligible works, or
- (b) in part by instalments as the works progress and the balance after completion of the works.

- (3) The payment of a grant, or part of a grant, is conditional upon—

- (a) the eligible works or the corresponding part of the works being executed to the satisfaction of the Executive; and
- (b) the Executive being provided with an acceptable invoice, demand or receipt for payment for the works and any preliminary or ancillary services and charges in respect of which the grant or part of the grant is to be paid.

- (4) For the purposes of paragraph (3) an invoice, demand or receipt is acceptable if it satisfies the Executive and is not given by the applicant or a member of his family.

- (5) Where a grant is paid by instalments, the aggregate of the instalments paid before the completion of the eligible works shall not at any time exceed nine-tenths of the amount of the grant.

*Conditions of grants and repayments***Conditions as to completion of works**

**56.**—(1) In approving an application for a grant, the Executive may require as a condition of the grant that the eligible works are carried out in accordance with such specification as it determines.

(2) Subject to paragraph (3), it is a condition of the grant that the eligible works are carried out within 12 months from the date of approval of the application concerned.

(3) The Executive may, if it thinks fit, extend the period of 12 months referred to in paragraph (2) and may, in particular, do so where it is satisfied that the eligible works cannot be, or could not have been, carried out without carrying out other works which could not have been reasonably foreseen at the time the application was made.

**Condition as to availability for letting**

**57.**—(1) This Article applies where an application for a renovation grant or a disabled facilities grant, other than an application for a disabled facilities grant in respect of works to the common parts of a building containing flats, has been approved by the Executive and the application for the grant was accompanied by a certificate of intended letting.

(2) It is a condition of the grant that throughout the initial period—

- (a) the dwelling will be let or available for letting as a residence, and not for a holiday, by the owner for the time being of the dwelling to a person who is not connected with him, or
- (b) the dwelling will be occupied or available for occupation by an approved worker, that is to say, a worker on a farm which is certified by the Department of Agriculture to be of such a nature and extent as to provide full-time employment for a worker in agricultural operations on the farm.

(3) For the purposes of paragraph (2), a person is connected with the owner for the time being of a dwelling if,—

- (a) in a case where personal representatives or trustees are the owner, he is a person who under the will or intestacy or, as the case may be, under the terms of the trust concerned is beneficially entitled to an interest in the dwelling or to the proceeds of sale of the dwelling;
- (b) in a case where the owner has a life estate in the dwelling, he is entitled in remainder or reversion; and
- (c) in any other case, he is a member of the family of the owner.

(4) It is also a condition of the grant—

- (a) that if, at any time within the initial period, the Executive serves notice on the owner of the dwelling requiring him to do so, he will, within the period of 21 days beginning on the date on which the notice was served, furnish to the Executive a statement showing how the condition in paragraph (2) is being fulfilled; and
- (b) that, if required to do so by the owner of the dwelling, any tenant of the dwelling will furnish the owner with such information as he may reasonably require to enable him to comply with a notice served under sub-paragraph (a).

(5) Any condition under paragraph (2) or (4)—

- (a) shall be included among the matters required to be registered in the Statutory Charges Register; and
- (b) shall, subject to paragraph (9) and Article 63 remain in force with respect to the dwelling for a period of 5 years from the certified date.

(6) So long as a condition under paragraph (2) or (4) remains in force with respect to a dwelling—

- (a) it is binding on any person, other than the Executive or registered housing association, who is for the time being the owner of the dwelling; and
- (b) it is enforceable against all other persons having an interest in the dwelling as if it were a condition of the terms of every tenancy of, or of property including, the dwelling.

(7) In the event of a breach of a condition under paragraph (2) or (4), the Executive may demand that the owner for the time being of the dwelling pay a sum equal to the amount of the grant less so much (if any) of it as has already been repaid under Article 58, together with compound interest on that sum as from the certified date, calculated at such reasonable rate as the Executive may determine and with yearly rests.

(8) The Executive may determine not to make such a demand or may demand a lesser amount.

(9) On satisfaction of the liability arising from a demand under this Article, the conditions under paragraphs (2) and (4) and paragraph (2) of Article 58 shall cease to be in force with respect to the dwelling in question.

#### **Condition requiring repayment of grant in case of certain disposals where certificate of intended letting given**

**58.**—(1) This Article applies where an application for a renovation grant (other than a tenant’s application) has been approved by the Executive and where the application for the grant was accompanied by a certificate of intended letting.

(2) It is a condition of the grant that—

- (a) where an owner makes a relevant disposal (other than an exempt disposal) of the dwelling with vacant possession within the initial period, he shall pay to the Executive on demand the amount of the grant; and
- (b) where an owner makes such a disposal otherwise than with vacant possession within the initial period, he shall pay to the Executive on demand the amount of the grant, reduced by one-fifth for each complete year which has elapsed after the certified date and before the disposal.

(3) A condition under paragraph (2)—

- (a) shall be included among the matters required to be registered in the Statutory Charges Register; and
- (b) shall, subject to paragraph (5) and Article 63, remain in force with respect to the dwelling for a period of 5 years from the certified date.

(4) So long as a condition under paragraph (2) remains in force with respect to a dwelling it is binding on any person who is for the time being an owner of the dwelling.

(5) On satisfaction of the liability arising from a demand under this Article, any condition under paragraph (2) shall cease to be in force with respect to the dwelling in question.

(6) The expressions “relevant disposal” and “exempt disposal” have the meanings assigned by Article 62.

#### **Condition requiring repayment of a grant in case of certain disposals where owner-occupation certificate given**

**59.**—(1) This Article applies where an application for a renovation grant has been approved by the Executive and the application for the grant was accompanied by an owner-occupation certificate.

(2) It is a condition of the grant that, where an owner makes a relevant disposal (other than an exempt disposal) of the dwelling within the period of 3 years beginning on the certified date, he shall

pay to the Executive on demand the amount of the grant, reduced by one-third for each complete year which has elapsed after the certified date and before the disposal.

(3) A condition under paragraph (2)—

- (a) shall be included among the matters required to be registered in the Statutory Charges Register; and
- (b) shall subject to paragraphs (5) to (7) and Article 63, remain in force with respect to the dwelling for a period of 3 years from the certified date.

(4) So long as a condition under paragraph (2) remains in force with respect to a dwelling it is binding on any person who is for the time being an owner of the dwelling.

(5) In any case where—

- (a) there is a relevant disposal of the dwelling concerned which is an exempt disposal; or
- (b) there is a relevant disposal of the dwelling concerned (not being an exempt disposal) for no consideration or for consideration of an amount less than that either prescribed, or calculated in accordance with a formula prescribed, by regulations made by the Department;

any condition under paragraph (2) shall cease to be in force with respect to the dwelling.

(6) On satisfaction of the liability arising from a demand under this Article, any condition under paragraph (2) shall cease to be in force with respect to the dwelling in question.

(7) In any case where—

- (a) within the period referred to in paragraph (2) an owner makes a relevant disposal of the dwelling concerned (not being an exempt disposal), and
- (b) the Executive is satisfied that he is elderly or infirm and is making the disposal with the intention of going to live in sheltered housing or a residential care home as his only or main residence,

the Executive may determine not to make any demand under paragraph (2) and, on the making of such a determination, any condition under that paragraph shall cease to be in force with respect to the dwelling.

(8) The expressions “relevant disposal” and “exempt disposal” have the meanings assigned by Article 62.

### **Conditions relating to HMO grant**

**60.**—(1) This Article applies where an application for an HMO grant has been approved by the Executive; and in the following provisions of this Article “the house” means the house to which the eligible works relate.

(2) It is a condition of the grant that, throughout the initial period, the house will be residentially occupied or available for residential occupation, under tenancies or licences, by persons who are not connected with the owner for the time being of the house.

(3) The references in paragraph (2) to residential occupation do not include occupation for a holiday; and paragraph (3) of Article 57 applies for the purposes of paragraph (2), substituting a reference to a house for any reference to a dwelling.

(4) It is also a condition of the grant—

- (a) that if, at any time within the initial period, the Executive serves notice on the owner of the house requiring him to do so, he will, within the period of 21 days beginning on the date on which the notice was served, furnish to the Executive a statement showing how the condition in paragraph (2) is being fulfilled; and



- (b) that, if required to do so by the owner of the house, any tenant or licensee in residential occupation of the house will furnish the owner with such information as he may reasonably require to enable him to comply with a notice served under sub-paragraph (a).

(5) In any case where—

- (a) there is, with respect to the house, a breach of a condition under paragraph (2) or (4), or
- (b) at any time within the initial period the Executive has given a direction under Article 85 (power to limit number of occupants of house) with respect to the house and that direction has not been revoked or varied under that Article,

the Executive may demand that the owner for the time being of the house pay a sum equal to the amount of the grant, together with compound interest on that sum as from the certified date, calculated at such reasonable rate as the Executive may determine and with yearly rests; but the Executive may determine not to make such a demand or may demand a lesser amount.

(6) It is also a condition of the grant that, if an owner makes a relevant disposal of the house (other than an exempt disposal) within the initial period, he shall pay to the Executive on demand the amount of the grant.

(7) A condition under any of paragraphs (2), (4) and (6) (in the following provisions of this Article referred to as “an HMO condition”)—

- (a) shall be included among the matters required to be registered in the Statutory Charges Register; and
- (b) shall, subject to paragraph (9) and Article 63, remain in force with respect to the house for a period of 5 years from the certified date.

(8) So long as an HMO condition remains in force with respect to a house it is binding on any person, other than a registered housing association, who is for the time being an owner of the house.

(9) On satisfaction of the liability arising from a demand under paragraph (5) or (6), any HMO condition shall cease to be in force with respect to the house.

(10) The expressions “relevant disposal” and “exempt disposal” have the meanings assigned by Article 62.

### **Condition requiring repayment of grant on certain disposals in case of landlord’s common parts application**

**61.**—(1) This Article applies where a landlord’s common parts application has been approved by the Executive.

(2) It is a condition of the grant that where the applicant makes a relevant disposal (other than an exempt disposal) of the building within the initial period, he shall pay to the Executive on demand the amount of the grant.

(3) A condition under paragraph (2)—

- (a) shall be included among the matters required to be included in the Statutory Charges Register; and
- (b) shall, subject to paragraph (5) and Article 63, remain in force with respect to the building for a period of 5 years from the certified date.

(4) So long as a condition under paragraph (2) remains in force with respect to a building it is binding on any person who is for the time being a successor in title to that interest in the building by virtue of which, under Article 43(2)(b), the applicant made his application.

(5) On satisfaction of the liability arising from a demand under this Article, any condition under paragraph (2) shall cease to be in force with respect to the building in question.

(6) The expressions “relevant disposal” and “exempt disposal” have the meanings assigned by Article 62.

### **Meaning of relevant disposal and exempt disposal for the purposes of Articles 58 to 61**

**62.**—(1) A disposal, whether of the whole or part of the dwelling, is a relevant disposal for the purposes of Articles 58 to 61 if it is—

- (a) a conveyance of a freehold estate or an assignment of the lease, or
  - (b) the grant of a lease (other than a mortgage term) for a term of more than 21 years otherwise than at a rack rent.
- (2) For the purposes of paragraph (1)(b) it shall be assumed—
- (a) that any option to renew or extend a lease or sub-lease, whether or not forming part of a series of options, is exercised, and
  - (b) that any option to terminate a lease or sub-lease is not exercised.
- (3) A disposal is an exempt disposal for the purposes of Articles 58 to 61 if it is—
- (a) a disposal of the whole of the dwelling and a conveyance of a freehold estate or an assignment of the lease and the person or each of the persons to whom it is made is a qualifying person as defined in paragraph (4);
  - (b) a vesting of the whole of the dwelling in a person taking under a will or on an intestacy;
  - (c) a disposal of the whole of the dwelling in pursuance of an order (not being an order for sale) made under Article 26(1) of the Matrimonial Causes (Northern Ireland) Order 1978<sup>(28)</sup> (property adjustment orders in connection with matrimonial proceedings) or Article 4 of the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979<sup>(29)</sup> (orders as to financial provision to be made from estate);
  - (d) a compulsory disposal, that is to say, a disposal to a person who has made or who would have made, or for whom another person has made or would have made, a vesting order authorising its acquisition compulsorily for the purposes for which it is acquired;
  - (e) a disposal of property consisting of land included in the dwelling and used for the purposes of the dwelling; or
  - (f) a disposal under which the interest of a person entitled to assistance by way of repurchase under Part II of the Order of 1986 (assistance for owners of defective housing) is acquired in accordance with Schedule 2 to that Order.
- (4) A person is a qualifying person for the purposes of paragraph (3)(a) if—
- (a) in the case of an individual, he is—
    - (i) the person, or one of the persons, by whom the disposal is made;
    - (ii) the spouse, or former spouse, of that person or one of those persons; or
    - (iii) a member of the family of that person or one of those persons; or
  - (b) in the case of a company, it is an associated company of the company by whom the disposal is made;

and, for the purposes of sub-paragraph (b), section 416 of the Income and Corporation Taxes Act 1988<sup>(30)</sup> (meaning of associated company) shall apply in determining whether a company is an associated company of another.

<sup>(28)</sup> 1978 NI 15

<sup>(29)</sup> 1979 NI 8

<sup>(30)</sup> 1988 c. 1

(5) For the purposes of Articles 58 to 61, the grant of an option enabling a person to call for a relevant disposal which is not an exempt disposal shall be treated as such a disposal made to him.

### **Repayment of grant**

**63.**—(1) Any reference in this Article to a “grant condition” is a reference to a condition for the time being in force under paragraph (2) or (4) of Article 57, paragraph (2) of Article 58, paragraph (2) of Article 59, any of paragraphs (2), (4) and (6) of Article 60 or paragraph (2) of Article 61.

(2) If at any time while a grant condition remains in force with respect to a dwelling, house or building—

- (a) the owner of the dwelling, house or building to which the condition relates pays the amount of the grant to the Executive, or
- (b) a mortgagee of the interest of the owner in that dwelling, house or building being a mortgagee entitled to exercise a power of sale, makes such a payment,

the grant condition and any other grant conditions shall cease to be in force with respect to that dwelling, house or building.

(3) In the case of a grant condition imposed on a landlord’s common parts application any reference in paragraph (2) to the owner of the building is a reference to the applicant or any such successor in title as is referred to in Article 61(4).

(4) An amount paid by a mortgagee under paragraph (2)(b) shall be treated as part of the sums secured by the mortgage and may be discharged accordingly.

(5) The purposes authorised for the application of capital money by sections 21 and 63 of the Settled Land Act 1882(31), include the making of payments under paragraph (2).

### **Renovation grants relating to 2 or more dwellings**

**64.**—(1) Subject to paragraph (2), no application for a renovation grant may be made in respect of more than one dwelling.

(2) A single application may be made for a renovation grant towards the cost of works required for the provision of 2 or more dwellings by the conversion of a house or other building.

(3) In the case of such a single application as is referred to in paragraph (2)—

- (a) for the purposes of Article 44, a separate certificate may be given in respect of each dwelling or in respect of any one or more of them;
- (b) if the application is accompanied by more than one certificate and at least one of them is an owner-occupation certificate or a special certificate the application shall be treated as falling within Article 47 and not within Article 48;
- (c) each dwelling shall be treated separately for the purposes of Articles 57 to 63; and
- (d) the grant shall, for those purposes, be treated as apportioned equally between each of the dwellings, and any reference in those Articles to the amount of the grant shall be construed accordingly.

### *Group repair schemes*

### **Group repair schemes and persons eligible to participate**

**65.**—(1) In accordance with a scheme under this Article prepared by the Executive and approved by the Department, the Executive may, with the consent of the persons participating in the scheme,

enter into agreements to secure the carrying out of such external works to qualifying buildings to which the scheme relates as will ensure that, on completion of the works, the exterior of those buildings will be in reasonable repair; and in this Chapter such a scheme is referred to as a “group repair scheme”.

(2) The approval of the Department under paragraph (1) may be given either to a specific scheme or generally to schemes which fulfil such criteria as the Department may specify; and any such approval may be made conditional upon compliance with requirements specified by the Department.

(3) Subject to paragraphs (4) and (5), every person who, at the date of the approval of the scheme, has an owner’s interest in a dwelling or other premises comprised in a building to which a group repair scheme relates and who fulfils the conditions in paragraph (6) is eligible to participate in the scheme as an assisted participant.

(4) A registered housing association (within the meaning of Article 3) which has an owner’s interest in a dwelling or other premises comprised in a building to which a group repair scheme relates is eligible to participate in the scheme, but only as an unassisted participant.

(5) The Executive may participate in a group repair scheme by including in the scheme a dwelling or other premises comprised in a building in which it has an owner’s interest.

(6) The conditions referred to in paragraph (3) are—

- (a) that, as respects the dwelling or other premises in which he has an owner’s interest, the person concerned either is able to give possession of any part of the building to which external works are proposed to be carried out or has the consent of the occupier of that part to the carrying out of those works; and
- (b) that, if the owner’s interest which he has is an interest in a dwelling and this paragraph is not excluded by paragraph (7), he gives a certificate of future occupation which falls within paragraph (2) or (4) of Article 44; and
- (c) that, if the owner’s interest which the person concerned has is an interest in a house in multiple occupation and that person is not a charity or the trustee of a charity, he gives a certificate under Article 44(7).

(7) Paragraph (6)(b) does not apply if—

- (a) the person concerned is a charity or the trustee of a charity; or
- (b) the person concerned is a religious denomination or body or the trustee of such a denomination or body, acting on its behalf, and the dwelling is the residence of a minister of religion.

(8) If the Department so directs in the case of any scheme or any description of scheme, such of the provisions of this Article and Articles 66 to 68 as are specified in the direction shall not apply in relation to that scheme or, as the case may be, in relation to a scheme of that description.

(9) The power to give directions under paragraph (8) may be exercised so as to make different provision for different cases, different descriptions of cases and different areas.

### **Qualifying buildings and external works, etc.**

**66.**—(1) A building is not a qualifying building in relation to a group repair scheme unless, at the time the scheme is prepared, the whole or some part of the exterior of the building is not in reasonable repair and that lack of reasonable repair affects at least 75 per cent. of the houses contained in the building.

(2) Every group repair scheme shall relate to at least one qualifying building (in this Article referred to as “the primary building”) which was constructed so as to comprise not less than 4 separate houses and may also relate to one or more other qualifying buildings if the following conditions are fulfilled with respect to each of them—

- (a) the building was constructed so as to comprise at least one house and is contiguous or adjacent to the primary building; and
  - (b) the exterior of the building is not in reasonable repair and is in need of works similar to those required to the exterior of the primary building; and
  - (c) carrying out the works to the building and the primary building at the same time is the most effective way of securing the repair of each of them.
- (3) The question whether a building was constructed so as to comprise not less than 4 houses or at least one house shall be determined according to the configuration of the building at the date of its construction.
- (4) For the purposes of this Article—
- (a) a terrace of houses shall be regarded as one building except that, if it appears appropriate to the Executive to do so, having regard in particular to the requirements of paragraph (1), it may treat part only of the terrace as a building; and
  - (b) if, apart from this sub-paragraph, one building would be regarded as containing 2 or more purpose-built flats and one or more houses, the part of the building containing the purpose-built flats and the part or parts of the building containing the houses shall be regarded as separate buildings.
- (5) In relation to a group repair scheme, “external works” are works to any part of the exterior of a building to which the scheme relates and, so far only as may be necessary to give satisfactory effect to such works, additional works to other parts of the building.
- (6) For the purposes of this Chapter, the exterior of a building means—
- (a) any part thereof which is exposed to the elements of wind and rain or otherwise faces into the open air (including, in particular, roofs, chimneys, walls, doors, windows, rainwater goods and external pipework); and
  - (b) the curtilage of the building, including any wall within the curtilage which is constructed as a retaining wall or otherwise to protect the structure of the building;
- and, in relation to works to any part of the curtilage referred to in sub-paragraph (b), the reference in paragraph (5) to additional works to other parts of the building includes a reference to additional works on land outside the curtilage.
- (7) In this Article—
- (a) “house” means a dwelling which is not a flat (and, accordingly, does not include a house constructed as a house in multiple occupation); and
  - (b) a “purpose-built flat” means a part of a building which, at the date of the construction of the building, was constructed as a flat.
- (8) For the purposes of this Chapter, unless the exterior of a building is substantially free from rising or penetrating damp, it shall not be regarded as in reasonable repair.

### **Contributions by participants and limitations on works**

**67.**—(1) Those persons who are eligible to participate in a group repair scheme and who participate in the scheme by signifying consent (in this Article referred to as “scheme consent”), in accordance with the terms of the scheme, to the proposals to carry out the external works specified in the scheme shall be liable, subject to paragraph (2), to contribute to the cost, as notified to them under the scheme, of such of those works as relate to the house or other premises in which they have an interest at a rate determined in accordance with this Article.

(2) For the purposes of paragraph (1), “house” includes premises which were originally constructed as a house but which, by the time the group repair scheme is prepared, have been divided so as to form one or more flats, with or without other premises; and, in the case of a house which has

been so divided, the cost of such of the external works as relate to the house shall be apportioned between the several parts into which the house has been divided in such way as may be agreed between the persons with owner's interests in those parts or, in default of agreement, equally.

(3) In the case of a person who participates in a scheme as an unassisted participant, the rate of contribution shall be 100 per cent.

(4) In the case of a person who participates in a scheme as an assisted participant but whose owner's interest in the part of the qualifying building in question is an interest in premises other than a house or flat, the rate of contribution, subject to paragraph (5), shall be—

- (a) 25 per cent. in a case where the qualifying building is in a housing action area; and
- (b) 50 per cent. in any other case;

and in this paragraph "house" includes a house in multiple occupation.

(5) The Department may by order amend sub-paragraph (a) or (b) of paragraph (4) so as to specify a percentage different from that which applied before the coming into operation of the order.

(6) In the case of any other person who participates in a scheme as an assisted participant, the rate of contribution shall be such percentage as may be determined by the Executive, being a percentage between nil and that which would be appropriate if paragraph (4) applied; and, in making its determination under this paragraph in the case of any person, the Executive shall have regard—

- (a) to the way in which Article 47 or 48 would apply in his case if he were an applicant for a renovation grant or, as the case may require, an HMO grant; and
- (b) to any guidance given by the Department for the purposes of this Article;

and paragraph (8) of Article 65 applies to the power to give guidance as mentioned in sub-paragraph (b) as it applies to any power to give directions under that Article.

(7) Except as provided by paragraph (8), no external works shall be carried out to a part of a building which consists of a house, flat or other premises in respect of which no person eligible to participate has signified scheme consent.

(8) Paragraph (7) does not apply—

- (a) to works carried out to a part of a building in respect of which there is no person (or no ascertainable person) eligible to participate in the scheme; or
- (b) to works which—
  - (i) are carried out to a part of a building in respect of which the person eligible to participate consents to their being carried out but has not signified scheme consent (and, accordingly, is not liable to contribute); and
  - (ii) it is necessary to carry out in order satisfactorily to carry out any external works specified in the scheme to another part of the building in respect of which a person eligible to participate has signified scheme consent.

### **Payment of balance of costs in case of certain disposals**

**68.**—(1) When the external works specified in a group repair scheme are completed, the Executive shall, for the purposes of this Article, send to each assisted participant a certificate specifying the date on which the works were completed to its satisfaction; and in paragraph (2) that date is referred to as "the completion date".

(2) It shall be a condition of participation in a group repair scheme as an assisted participant that if, before the expiry of the period of 3 years beginning with the completion date, the assisted participant makes a relevant disposal (other than an exempt disposal) of the dwelling or other premises in which he had an owner's interest at the date of the approval of the scheme, then, subject to paragraph (8), he shall pay to the Executive on demand the outstanding balance determined in accordance with

paragraphs (5) and (6) or such lesser amount, being not less than one-third of that outstanding balance, as the Executive may specify in the demand.

(3) A condition under paragraph (2)—

- (a) shall be included among the matters required to be registered in the Statutory Charges Register; and
- (b) subject to paragraph (8), shall remain in force with respect to the dwelling for a period of 3 years from the completion date.

(4) So long as a condition under paragraph (2) remains in force with respect to a dwelling it shall be binding on any person who is for the time being the owner of the dwelling.

(5) Subject to paragraph (6), in the case of any assisted participant, the outstanding balance referred to in paragraph (2) is the difference between—

- (a) the cost, as notified to him under the scheme, of such of the external works specified in the scheme as relate to the house or other premises in which his owner's interest subsisted; and
- (b) the amount of the contribution in respect of that cost paid by him by virtue of Article 67.

(6) If, in the case of any assisted participant, the cost of the external works relating to the house in which he had an owner's interest falls to be apportioned as mentioned in paragraph (2) of Article 67, the reference in paragraph (5) to the cost of the works relating to the house shall be construed as a reference to that part of the cost which is apportioned to the part of the house in which his owner's interest subsisted.

(7) Article 62 applies for the purposes of this Article as it applies for the purposes of Articles 58 to 61, except that for any reference in that Article to the dwelling there shall be substituted a reference to the house (or part of a house) or other premises in which the assisted participant had an owner's interest.

(8) The duty of an assisted participant under paragraph (2) shall cease to apply if he makes such a disposal as is mentioned in that paragraph either for no consideration or for consideration of an amount less than that either prescribed, or calculated in accordance with a formula prescribed by regulations made by the Department.

(9) In paragraphs (5) to (7) "house" shall be construed in accordance with Article 67(2).

#### *Minor works*

#### **Assistance for provision of minor works to dwellings**

**69.**—(1) Subject to the provisions of regulations made under paragraph (3), on an application made to it for the purpose, the Executive may give assistance as mentioned in paragraph (2)—

- (a) for the carrying out of works of repair to a dwelling—
  - (i) which, at the time of the application, is included in a clearance area, within the meaning of Article 32 of the Order of 1981, or a re-development area, within the meaning of Chapter III of Part III of that Order, or
  - (ii) which the Executive intends to include in such a clearance area or a re-development area within the period of 12 months beginning at the date of the application;
- (b) to an elderly owner or tenant of a dwelling for the carrying out of works of repair, improvement or adaptation;
- (c) for the carrying out of works to adapt a dwelling to enable an elderly person who is not an owner or tenant of the dwelling but who is or proposes to be resident in the dwelling to be cared for;

- (d) for carrying out to a dwelling occupied by a disabled person, works for one or more of the purposes mentioned in Article 52(3); or
  - (e) for any other purpose specified by order made by the Department.
- (2) Assistance under this Article may be in the form of a grant or the provision of materials but—
- (a) the total amount or value of the assistance given on any one application shall not exceed £1,000 or such other sum as may be determined for the purposes of this sub-paragraph in accordance with regulations under paragraph (3);
  - (b) the total amount or value of assistance given under this Article in any period of 3 years in respect of any one dwelling shall not exceed £3,000 or such other sum as may be determined for the purposes of this sub-paragraph in accordance with regulations under paragraph (3); and
  - (c) no assistance may be given under this Article in respect of works if they are or are included in the eligible works in relation to an application for a grant which has been approved under the preceding provisions of this Chapter, unless that application is withdrawn.
- (3) The Department may by regulations make provision for the determination of sums for the purposes of sub-paragraphs (a) and (b) of paragraph (2) and, in addition, may for the purposes of this Article specify—
- (a) the manner in which an application for assistance is to be made and the content of such an application;
  - (b) the descriptions of dwellings and works in respect of which assistance may be given;
  - (c) the descriptions of persons to whom assistance may be given;
  - (d) the procedure for dealing with applications under paragraph (1) and for ensuring that works are carried out to any standard specified in the regulations; and
  - (e) the way in which the amount of assistance to be given on any application is to be calculated, taking account, in such manner and to such extent as may be determined under the regulations, of the financial circumstances of the applicant.

### *Supplementary provisions*

#### **Persons entitled to grants**

**70.**—(1) In relation to a grant or an application for a grant, references in the preceding provisions of this Part, and in paragraph (2), to the applicant shall be construed in relation to any time after his death as a reference to his personal representatives.

(2) Where an application for a grant is approved but before the certified date the applicant ceases to be a person entitled to apply for a grant of that description—

- (a) in the case of any grant, other than a common parts grant, no grant shall be paid or, as the case may be, no further instalments shall be paid, and
- (b) in the case of a common parts grant, other than one made on a tenants' common parts application, the Executive may refuse to pay the grant or any further instalment,

and the Executive may demand that any instalment of the grant which has been paid be repaid forthwith, together with interest from the date on which it was paid until repayment at such reasonable rate as the Executive may determine.

(3) For the purposes of paragraph (2) an applicant ceases to be a person entitled to apply for a grant, other than a common parts grant,—

- (a) if he ceases to have the owner's interest by virtue of which the condition in Article 42(1) (a) was (or was treated as) fulfilled, or



- (b) if he ceases to be a tenant of the dwelling, or
  - (c) if he, or a member of his family, ceases to have the intention specified in a certificate under paragraph (2), (3) or (4) (as the case may be) of Article 44, or
  - (d) if, in the case of an applicant for an HMO grant, he ceases to have the intention specified in a certificate under Article 44(7).
- (4) For the purposes of paragraph (2) an applicant whose application is a landlord's common parts application ceases to be a person entitled to apply for a common parts grant—
- (a) if he ceases to have a duty or power to carry out the relevant works; or
  - (b) if he ceases to have such an interest in the building as is referred to in sub-paragraph (a) or (b) of Article 43(4).

### **Cases in which grants may be re-calculated, withheld or repaid**

**71.**—(1) Where an application for a grant has been approved by the Executive, paragraph (2) applies in any case where—

- (a) the eligible works are not completed to the satisfaction of the Executive within the period specified under paragraph (2) of Article 56, or such extended period as they may allow under paragraph (3) of that Article; or
- (b) the Executive ascertains that the aggregate of the cost of completing the eligible works and the costs incurred with respect to preliminary or ancillary services and charges, is or is likely to be lower than the estimated expense; or
- (c) the Executive ascertains that without its knowledge the eligible works were started before the application was approved and the application was neither—
  - (i) one which the Executive was required to approve by virtue of Article 50 in a case where completion of the relevant works was necessary to comply with a notice under Article 41 of the Order of 1981 (repair notice requiring works to render premises fit for human habitation); nor
  - (ii) one which the Executive was required to approve by virtue of Article 51.

(2) Where this paragraph applies, the Executive may—

- (a) refuse to pay the grant or any further instalment of grant which remains to be paid; or
- (b) make a reduction in the grant which, in a case falling within paragraph (1)(b), is to be a reduction proportionate to the reduction in the estimated expenses;

and may demand repayment by the applicant forthwith, in whole or part, of the grant or any instalment of the grant paid, together with interest at such reasonable rate as the Executive may determine from the date of payment until repayment.

### **Power of Executive to carry out works which would attract grant**

**72.**—(1) The Executive may by agreement with a person having the requisite interest execute at his expense—

- (a) any works towards the cost of which a grant under this Chapter is payable or might be paid on an application duly made and approved; and
- (b) any further works which it is in the opinion of the Executive necessary or desirable to execute together with the works mentioned in sub-paragraph (a).

(2) Except in the case of a common parts grant, the “requisite interest” means an owner's interest in every parcel of land on which the works are to be carried out or, in a case where (if an application was made) Article 42(4) might apply, in part only of the land concerned.

(3) In the case of a common parts grant, the reference in paragraph (1) to a person having the requisite interest is a reference to the person who—

- (a) has a power or duty to carry out the relevant works; and
- (b) has such an interest in the building or in a flat in the building as is referred to in paragraph (4) of Article 43.

## CHAPTER II

### OTHER GRANTS TOWARDS THE REPLACEMENT AND REPAIR OF DWELLINGS

#### **Replacement grants**

**73.**—(1) The Executive may, in accordance with regulations made by the Department, pay grant (in this Article referred to as “replacement grant”) towards the cost of the replacement of dwellings.

(2) Regulations made under this Article may contain such provision as the Department considers appropriate and, without prejudice to the generality of the foregoing, may include in particular provision with respect to the matters mentioned in paragraph (3).

(3) Regulations made under this Article may—

- (a) include provision prescribing—
  - (i) the class and location of dwellings to which the scheme applies,
  - (ii) the eligibility of persons to receive grant,
  - (iii) the amount of any grant to be made under the regulations or the manner in which any such amount is to be computed, and
  - (iv) the conditions subject to which any grant is to be made including, in particular, conditions as to the circumstances in which grant is to be repayable;
- (b) provide for the Executive to exercise a discretion in dealing with any matter; and
- (c) provide that such provision made under Chapter I of this Part as may be prescribed shall apply (with or without modifications) in relation to replacement grants.

(4) Regulations made under this Article may provide that any of the conditions prescribed under paragraph (3)(a)(iv) is to be included among the matters required to be registered in the Statutory Charges Register.

(5) Regulations under this Article shall be made subject to the approval of the Department of Finance and Personnel.

#### **Repairs grants towards costs of meeting certain statutory repairing obligations in respect of dwelling-houses**

**74.**—(1) Subject to the following provisions of this Article, repairs grants shall be payable by the Executive towards the costs of works specified—

- (a) in a certificate of disrepair issued in respect of a dwelling-house under Article 46 of the Rent (Northern Ireland) Order 1978<sup>(32)</sup>; or
- (b) in a notice served in respect of a dwelling-house under the Public Health (Ireland) Act 1878<sup>(33)</sup>.

(2) Repairs grant shall be payable to the person to whom the certificate of disrepair was issued or, as the case may be, upon whom the notice was served.

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<sup>(32)</sup> 1978 NI 20

<sup>(33)</sup> 1878 c. 52

(3) Schedule 3 shall have effect with respect to applications for, and the payment of, grants under this Article.

## PART IV

### HOUSES IN MULTIPLE OCCUPATION

#### **Meaning of “multiple occupation”**

**75.**—(1) In this Part “house in multiple occupation” means a house which is occupied by persons who do not form a single household.

(2) For the purposes of this Article “house”, in the expression “house in multiple occupation”, includes any part of a building which—

(a) apart from this paragraph would not be regarded as a house; and

(b) was originally constructed or subsequently adapted for occupation by a single household; and any reference in this Part to a flat in multiple occupation is a reference to a part of a building which, whether by virtue of this paragraph or without regard to it, constitutes a house in multiple occupation.

#### **Overcrowding in houses in multiple occupation**

**76.**—(1) If it appears to the Executive, in the case of a house in multiple occupation, that an excessive number of persons is being or is likely to be accommodated on the premises having regard to the rooms available, the Executive may serve a notice under this paragraph (an “overcrowding notice”) complying with paragraphs (3) and (4) and including either—

(a) the requirement set out in paragraph (5); or

(b) that set out in paragraph (6).

(2) The notice may be served—

(a) on the person having control of the house; or

(b) on the person managing the house;

and the Executive shall inform any other person who is to its knowledge an owner, lessee, occupier or mortgagee of the house of the fact that the notice has been served.

(3) An overcrowding notice shall state, in relation to every room on the premises, what is in the Executive’s opinion the maximum number of persons by whom it is suitable to be occupied as sleeping accommodation at any one time or, as the case may be, that it is in its opinion unsuitable to be occupied as sleeping accommodation.

(4) An overcrowding notice may, in relation to any room, specify special maxima applicable in any case where some or all of the persons occupying the room are under such age as may be specified in the notice.

(5) The requirement referred to in paragraph (1)(a) is that the person on whom the overcrowding notice is served must refrain from—

(a) knowingly permitting any room to be occupied as sleeping accommodation otherwise than in accordance with the overcrowding notice; or

(b) knowingly permitting such number of persons to occupy the premises as sleeping accommodation that it is not possible, without—

(i) one or more rooms to which the overcrowding notice relates being occupied as sleeping accommodation otherwise than in accordance with that notice; or

(ii) any part of the premises which is not a room being occupied as sleeping accommodation;

to avoid persons of opposite sexes and over the age of 12 years (other than persons living together as husband and wife) occupying sleeping accommodation in the same room.

(6) The requirement referred to in paragraph (1)(b) is that the person on whom the overcrowding notice is served must refrain from—

(a) knowingly permitting any room to be occupied by a new resident as sleeping accommodation otherwise than in accordance with the overcrowding notice; or

(b) knowingly permitting a new resident to occupy any part of the premises as sleeping accommodation if it is not possible, without—

(i) one or more rooms to which the overcrowding notice relates being occupied as sleeping accommodation otherwise than in accordance with that notice; or

(ii) any part of the premises which is not a room occupied as sleeping accommodation;

both to permit the new resident so to occupy any part of the premises and to avoid persons of opposite sexes and over the age of 12 years (other than persons living together as husband and wife) occupying sleeping accommodation in the same room.

(7) In paragraph (6) “new resident” means a person who was not living in the house immediately before the date on which the overcrowding notice was served.

(8) Where the Executive has served an overcrowding notice on any person and that notice includes the requirement referred to in paragraph (6), the Executive may, at any time, withdraw that overcrowding notice and serve on that person, in its place, an overcrowding notice which includes the requirement referred to in paragraph (5).

(9) Not less than 7 days before serving an overcrowding notice, the Executive shall—

(a) in writing inform the person on whom the notice is to be served of its intention to serve the notice, and

(b) ensure, so far as is reasonably possible, that every person living in the house is informed of that intention;

and shall afford to any such person an opportunity of making representations regarding its proposal to serve the notice.

(10) The Executive may serve on the person on whom it has served the overcrowding notice, a further notice requiring him to furnish it within 7 days with a statement in writing giving all or any of the following particulars, that is to say—

(a) the number of individuals who are, on a date specified in the notice, occupying any part of the premises as sleeping accommodation;

(b) the number of families or households to which those individuals belong;

(c) the names of those individuals and of the heads of each of those families or households; and

(d) the rooms used by those individuals and families or households respectively.

(11) Any person aggrieved by an overcrowding notice may, within 21 days from the date of service of the notice, appeal to a court of summary jurisdiction and, on any such appeal the court may make such order confirming, quashing or varying the notice as it thinks fit.

(12) The Executive may at any time, on the application of any person having an estate in the house, revoke an overcrowding notice or vary it so as to allow more people to be accommodated in the house.

(13) If the Executive refuses an application under paragraph (12), or does not within 35 days from the making of such an application, or within such further period as the applicant may in writing

allow, notify the applicant of its decision on the application, and the applicant may appeal to a court of summary jurisdiction, and on the appeal the court shall have power to revoke the notice or vary it in any manner in which it might have been varied by the Executive.

(14) Any person who contravenes an overcrowding notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(15) Any person who knowingly fails to comply with the requirements of a notice under paragraph (10), or furnishes a statement which he knows is false in a material particular, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Date of operation of notices**

77.—(1) A notice served under paragraph (1) of Article 76 shall, if no appeal is brought under paragraph (11) of that Article, become operative on the expiration of 21 days from the date of service of the notice and shall be final and conclusive as to any matters which could have been raised on such an appeal.

(2) A notice served under paragraph (1) of Article 76 against which an appeal is brought under paragraph (11) of that Article shall, if and so far as it is confirmed by the court, become operative on such date as may be specified by the court or, where no date is so specified, as from the final determination of the appeal.

(3) For the purposes of this Article, the withdrawal of an appeal shall be deemed to be the final determination thereof, having the like effect as a decision confirming the notice against which the appeal is brought.

### **Regulations prescribing management code**

78.—(1) The Department may, with a view to providing a code for the management of houses in multiple occupation, by regulations make provision for the purpose of ensuring that a house is occupied in accordance with proper standards of management.

(2) Subject to paragraph (3), regulations under this Article may in particular, require—

- (a) the repair, maintenance, cleansing and good order of—
  - (i) all means of water supply and drainage in the house,
  - (ii) all means of escape from fire and all apparatus, systems and other things provided by way of fire precautions,
  - (iii) kitchens, bathrooms and water closets in common use,
  - (iv) sinks and wash-basins in common use,
  - (v) common staircases, corridors and passage ways, and
  - (vi) outbuildings, yards and gardens in common use;
- (b) the making of satisfactory arrangements for the disposal of refuse and litter from the house; and
- (c) that all means of escape from fire are kept clear of obstructions.

(3) The person managing the house shall only be liable by virtue of regulations under paragraph (2) to ensure the repair, maintenance, cleansing and good order of any premises outside the house if and to the extent that he has power or is otherwise liable to ensure those matters in respect of any such premises.

(4) Regulations under this Article may—

- (a) provide for keeping a register of the names and addresses of those who are managers of houses;
- (b) impose duties on persons who have an estate in a house or any part of a house, to which the regulations apply as to the giving of information to the Executive, and in particular may make it the duty of any person who acquires or ceases to hold an estate in the house to notify the Executive;
- (c) prescribe the persons who are, for the purposes of this Part and of regulations made thereunder, to be treated as the managers of houses;
- (d) impose duties on persons who live in the house for the purpose of ensuring that the person managing the house can effectively carry out the duties imposed on him by the regulations;
- (e) authorise the Executive to obtain information as to the number of individuals or households accommodated in the house;
- (f) make it the duty of the person managing the house to cause a copy of the regulations, to be displayed in a suitable position in the house; and
- (g) contain such other incidental and supplementary provisions as appear to the Department to be expedient.

(5) Any person who knowingly contravenes or without reasonable excuse fails to comply with any regulations under this Article as applied under this Part in relation to any house shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Power to require work to make good neglect of proper standards of management**

**79.**—(1) If, in the opinion of the Executive, the condition of a house to which regulations under Article 78 apply is defective in consequence of failure to comply with the requirements imposed by the regulations, the Executive may serve a notice specifying the works which, in the opinion of the Executive, are required to make good the neglect, and requiring the person on whom the notice is served to execute those works.

(2) If it is not practicable after reasonable inquiry to ascertain the name or address of the person managing the house, the notice under this Article may be served by addressing it to him by the description of “manager of the house” (naming the house to which it relates) and by delivering it to some person on the premises.

(3) A notice under this Article shall require the person on whom it is served to execute the works specified in the notice as follows, namely—

- (a) to begin those works not later than such reasonable date, being not earlier than the twenty-first day after the date of service of the notice, as is specified in the notice; and
- (b) to complete those works within such reasonable period as is so specified.

(4) Where the Executive serves a notice on any person under this Article, it shall inform any other person who appears to it to be an owner, lessee or mortgagee of the house of the fact that such a notice has been served.

(5) A person on whom a notice is served under this Article or any other person who is an owner, lessee or mortgagee of the house to which the notice relates may, within 21 days from the service of the notice or within such longer period as the Executive may in writing allow, appeal to a court of summary jurisdiction on any of the following grounds which are appropriate in the circumstances—

- (a) that the condition of the house did not justify the Executive in requiring the execution of the works specified in the notice;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;

- (c) that the Executive has refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the date specified for beginning the works is not reasonable;
- (e) that the time within which the works are to be executed is not reasonably sufficient for the purpose;
- (f) that some person other than the appellant is wholly or in part responsible for the state of affairs calling for the execution of the works, or will, as the holder of an estate in the premises, derive a benefit from the execution of the works, and that that person ought to pay the whole or any part of the expenses of executing the works.

(6) Where an appeal under this Article is based solely on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(7) Where the grounds on which an appeal is brought under this Article include the ground specified in paragraph (5)(f), the appellant shall serve a copy of his notice of appeal on each other person referred to, and, on the hearing of the appeal any such other person may appear and be heard and, the court may make such order as it considers just with respect to the payment to be made by any such other person to the appellant or, where the work is executed by the Executive, to the Executive.

(8) Paragraph (2) of Article 76 shall apply in relation to the service of a notice under this Article as it applies to the service of a notice under that Article.

### **Power to require execution of works to render premises fit for number of occupants**

**80.**—(1) Subject to Article 82, the Executive may serve a notice under this Article where, in the opinion of the Executive, a house in multiple occupation fails to meet one or more of the requirements in sub-paragraphs (a) to (e) of paragraph (2) and, having regard to the number of individuals or households or both for the time being accommodated on the premises, by reason of that failure the premises are not reasonably suitable for occupation by those individuals or households.

(2) The requirements in respect of a house in multiple occupation referred to in paragraph (1) are the following, that is to say,—

- (a) there are satisfactory facilities for the storage, preparation and cooking of food including an adequate number of sinks with a satisfactory supply of hot and cold water;
- (b) it has an adequate number of suitably located water-closets for the exclusive use of the occupants;
- (c) it has, for the exclusive use of the occupants, an adequate number of suitably located fixed baths or showers and wash-hand basins each of which is provided with a satisfactory supply of hot and cold water;
- (d) subject to Article 82, there are adequate means of escape from fire; and
- (e) there are adequate other fire precautions.

(3) The Executive may serve a notice specifying the works which, in the opinion of the Executive, are required for rendering the house reasonably suitable for such occupation as aforesaid, and requiring the person on whom the notice is served to execute those works; but the notice shall not specify any works to any premises outside the house.

(4) If the Executive is satisfied that, after the service of the notice, the number of individuals or households living on the premises has been reduced to a level which will make the work specified in the notice unnecessary, and that, either in consequence of its exercise of the powers conferred by this Part to limit the number of persons living on the premises or otherwise, that number will be maintained at or below that level, it may notify in writing the person on whom the notice was

served of the withdrawal of the notice, but the withdrawal of the notice shall be without prejudice to the issue of a further notice.

- (5) A notice under this Article shall require the execution of the works as follows, namely—
- (a) to begin those works not later than such reasonable date, being not earlier than the twenty-first day after the date of service of the notice, as is specified in the notice; and
  - (b) to complete those works within such reasonable period as is so specified.

(6) Where the Executive serves a notice on any person under this Article, it shall inform every other person on whom a notice under paragraph (1) may be served of the fact that such a notice has been served.

(7) Paragraph (2) of Article 76 shall apply in relation to the service of a notice under this Article as it applies to the service of a notice under that Article.

#### **Further provisions relating to overcrowded houses**

**81.**—(1) If the condition of a house which, or a part of which, is in multiple occupation fails, in the opinion of the Executive, to meet one or more of the requirements set out in paragraph (2) of Article 80, having regard to the number of individuals or households, or both, accommodated for the time being on the premises, the notice which the Executive may serve under paragraph (1) of that Article may be a notice specifying the works which, in the opinion of the Executive, are required for rendering the premises reasonably suitable for occupation by a number of individuals or households smaller than the number accommodated on the premises.

(2) A notice served under Article 80 in pursuance of paragraph (1) shall specify the number of individuals or households, or both, which, in the opinion of the Executive, the premises could reasonably accommodate if the works specified in the notice were carried out.

(3) Where the Executive has, in pursuance of paragraphs (1) and (2), served a notice under Article 80 specifying the number of individuals or households, or both, which, in the opinion of the Executive, the premises could reasonably accommodate if the works specified in the notice were carried out, the Executive may adopt that number in fixing a limit under Article 85 as respects the house.

#### **Means of escape from fire**

**82.** Schedule 4 shall have effect as to the means of escape from fire to be provided in houses in multiple occupation.

#### **Right of appeal against notice requiring execution of works**

**83.**—(1) A person on whom a notice is served under Article 80 or paragraph 2 of Schedule 4 may, within 21 days from the service of the notice or within such longer period as the Executive may in writing allow, appeal to a court of summary jurisdiction on any of the following grounds which are appropriate in the circumstances—

- (a) that the condition of the house did not justify the Executive, having regard to the requirements set out in paragraph (2) of that Article, in requiring the execution of the works specified in the notice, or, in the case of a notice under paragraph 2 of Schedule 4, that the notice is not justified by the terms of that Article;
- (b) that there has been some informality, defect or error in, or in connection with the notice;
- (c) that the Executive has refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary;



- (d) that the time within which the works are to be executed is not reasonably sufficient for the purpose;
- (e) that the date specified for the beginning of the works is not reasonable;
- (f) that some person other than the appellant is wholly or in part responsible for the state of affairs calling for the execution of the works, or will as the holder of an estate in the premises derive a benefit from the execution of the works, and that that person ought to pay the whole or any part of the expenses of executing the works;
- (g) where the appeal is against a notice served under Article 80 in pursuance of Article 81(1), that the number of persons or households, or both, specified in the notice pursuant to Article 81(2) is unreasonably low.

(2) Where an appeal under this Article is based solely on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(3) Where the grounds upon which an appeal under this Article is brought include the ground specified in paragraph (1)(f), the court, if satisfied that any other person referred to in the notice of appeal has had proper notice of the appeal, may, on the hearing of the appeal, make such order as it thinks fit with respect to the payment to be made by that other person to the appellant or, where the work is done by the Executive, to the Executive.

(4) For the purposes of paragraph (3), any person referred to in a notice of appeal may appear and be heard on the hearing of the appeal.

(5) If, on an appeal under this Article against a notice served under Article 80—

- (a) the court is satisfied that the number of persons living in the house has been reduced, and
- (b) that adequate steps (whether by the exercise by the Executive of the powers conferred by the following provisions of this Part to limit the number of persons living in the house or otherwise) have been taken to prevent that number being again increased,

the court may, if it thinks fit, revoke the notice or vary the list of works specified in the notice.

### **Carrying out of works by the Executive**

**84.—**(1) If a notice under Article 79, 80 or 81 or the following provisions of this Article or paragraph 2 of Schedule 4 is not complied with, the Executive may do the work required to be done by the notice.

(2) Compliance with a notice means beginning and completing the works specified in the notice—

- (a) if no appeal is brought against the notice, not later than such date and within such period as is specified in the notice;
- (b) if an appeal is brought against the notice and is not withdrawn, not later than such date and within such period as may be fixed by the court determining the appeal; and
- (c) if an appeal brought against the notice is withdrawn, not later than the twenty-first day after the date of withdrawal of the appeal and within such period (beginning on that twenty-first day) as is specified in the notice.

(3) If, before the expiry of the period which under paragraph (2) is appropriate for completion of the works specified in the notice, it appears to the Executive that reasonable progress is not being made towards compliance with the notice, the Executive may itself do the work required to be done by the notice.

(4) Not less than 7 days before the Executive enters any house for the purpose of doing any works by virtue of paragraph (1) or (3), it shall serve notice of its intention to do so on the person on whom the notice referred to in paragraph (1) was served and, if it thinks fit, also on any other owner of the house.

(5) If, after the Executive has served notice under paragraph (4), the works are in fact carried out (otherwise than by the Executive), any administrative and other expenses incurred by the Executive with a view to doing the work itself in accordance with paragraph (1) or (3) shall be treated for the purposes of the following provisions of this Article as expenses incurred by it under this Article in carrying out the works in a case where the notice referred to in paragraph (1) has not been complied with.

(6) Notwithstanding anything in paragraph (1), if, before the expiration of the time mentioned in that paragraph, the person on whom the notice was served notifies the Executive in writing that he is not able to do the work in question, the Executive may, if it considers fit, do the work forthwith.

(7) Any expenses reasonably incurred by the Executive under this Article, together with interest at the prescribed rate from the date when a demand for the expenses is served until payment, may, except so far as they are by any direction of the court on appeal recoverable under an order of the court, be recovered by it summarily as a civil debt from the person on whom the notice was served or, if he was served with the notice in his capacity only as an agent or trustee for some other person, then either from him or from that other person, or as to part from him and as to the remainder from that other person; but if the person on whom the notice is served proves that he—

- (a) was served with the notice in his capacity only as an agent or trustee for some other person; and
- (b) has not, and since the date of the service on him of the demand has not had, in his hands on behalf of that other person, sufficient money to discharge the whole demand of the Executive;

his liability shall be limited to the total amount of the money which he has, or has had, in his hands as aforesaid.

(8) Any expenses recoverable by the Executive under paragraph (7), together with interest accrued due thereon, shall, until recovered, be a charge on the estate in the premises of the person on whom the notice was served; but, if that person was only properly served with the notice as being an agent or trustee for some other person, those expenses shall be a charge on the estate (if any) in the premises of that other person, and not on that of the first-mentioned person.

(9) The charge under paragraph (8) may be recovered by the same means and in the like manner in all respects as if it were a mortgage by deed created by the owner of the estate in favour of the Executive, and, for the recovery thereof, the Executive may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881(34) on mortgages by deed.

(10) If the Executive applies to a court of summary jurisdiction and satisfies the court—

- (a) that any expenses reasonably incurred by it under this Article (with the interest accrued due thereon) have not been, and are unlikely to be, recovered; and
- (b) that some person is profiting by the execution of the works in respect of which the expenses were incurred to obtain rents or other payments which would not have been obtainable if the number of persons living in the house was limited to that appropriate for the house in its state before the works were executed;

the court may, if satisfied that that person has had proper notice of the application, order him to make such payment or payments to the Executive as appear to the court to be just.

(11) In all summary proceedings by the Executive for the recovery of expenses under this Article, the time within which the proceedings may be taken shall be reckoned from the date of the service of the demand.

(12) In proceedings by the Executive for the recovery of any expenses under paragraph (7), it shall not be open to the defendant to raise any question which he could have raised on an appeal under this Part against the notice requiring the execution of the works.

(34) 1881 c. 41

### **Directions to prevent or reduce overcrowding in houses in multiple occupation**

**85.**—(1) The Executive may, for the purpose of preventing the occurrence of, or remedying, a state of affairs calling for the service of a notice or a further notice under Article 80, fix as a limit for the house what is, in its opinion, the highest number of individuals or households, or both, who or which should, having regard to the requirements set out in paragraph (2) of that Article, occupy the house in its existing condition, and give a direction applying that limit to the house.

(2) A direction under paragraph (1) shall have effect so as to make it the duty of the occupier of the house not to permit the number of individuals or households occupying the house to increase to a number above the limit specified in the direction, and, if it is above that number, not to permit it to increase further.

(3) References in paragraphs (1) and (2) to a house include references to part of a house, and the Executive shall have regard to the desirability of applying separate limits where different parts of a house are, or are likely to be, occupied by different persons.

(4) The reference in paragraph (2) to the occupier includes a reference to any person who is entitled or authorised to permit individuals or households to take up residence in the house, or any part of it.

(5) Not less than 7 days before giving a direction under this Article, the Executive shall—

- (a) serve on every person appearing to it to be an owner of the house notice of its intention to give the direction; and
- (b) exhibit such a notice in some position in the house where it is accessible to those living in the house;

and shall afford to any person on whom a notice is so served an opportunity of making representations regarding its proposal to give the direction.

(6) The Executive shall, within 7 days from the giving of the direction—

- (a) serve a copy of the direction on every person appearing to it to be an owner of the house; and
- (b) exhibit a copy of the direction in some position in the house where it is accessible to those living in the house.

(7) The power conferred by paragraph (1) may be exercised as regards any premises notwithstanding the existence of any previous direction under that paragraph laying down a higher maximum.

(8) The Executive may at any time, having regard to the works which have been executed in the house, or any other change of circumstances, and on the application of any person having an estate in the house, revoke any direction given under paragraph (1), or vary it so as to allow more individuals to be accommodated in the house.

(9) If the Executive—

- (a) refuses an application under paragraph (8); or
- (b) does not within 35 days from the making of such an application, or within such further period as the applicant may in writing allow, notify the applicant of its decision on the application;

the applicant may appeal to a court of summary jurisdiction, and, on the appeal, the court may revoke the direction or vary it in any manner in which it might have been varied by the Executive.

(10) The Executive may serve on the person appearing to it to be the occupier of a house, or part of a house, in respect of which a direction under this Article is in force a notice requiring him to furnish it, within 7 days, with a statement in writing giving all or any of the following particulars—

- (a) the number of individuals who are, on a date specified in the notice, living in the house or, as the case may be, the part of the house;
- (b) the number of families or households to which those individuals belong;
- (c) the names of those individuals and of the heads of each of those families or households;
- (d) the rooms used by those individuals and families or households respectively.

(11) Any person on whom a notice is served under paragraph (10) who fails to comply with it or furnishes a statement which to his knowledge is false in any material particular, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(12) Any person who knowingly fails to comply with a direction given under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(13) The powers conferred by this Article shall be exercisable whether or not a notice has been given under Article 80 and shall be without prejudice to the powers conferred by Article 76.

### **Supplemental provisions**

**86.**—(1) If, on an application made by a person required by a notice under this Part to execute any works, it appears to a court of summary jurisdiction that any other person having an estate in the premises has unreasonably refused to give any consent required to enable the works to be executed, the court may give the necessary consent in place of that other person.

(2) Article 13 of the Order of 1981 (powers of entry) shall apply to entry for the purposes of exercising any functions conferred on the Executive by or under this Part, and, without prejudice to the generality of the foregoing, shall apply in particular to entry for the purposes of—

- (a) ascertaining whether any function conferred on the Executive by or under this Part should be exercised;
- (b) ascertaining whether there has been any contravention of any notice, regulation or direction given, made or applied under this Part;

but so much of that Article as requires notice to be given of the intended entry shall not apply to entry for the purposes mentioned in sub-paragraph (b).

(3) Article 160 of the Order of 1981 (penalty for obstruction) shall apply for the purposes of this Part in the same manner, as it applies for the purposes of that Order.

(4) There shall be included among the matters which are required to be registered in the Statutory Charges Register—

- (a) any notice served under Article 76(1), 79(1), 80(1) or 84(4);
- (b) any charge created under Article 84(8).

### **Penalty for failure to execute works**

**87.**—(1) A person on whom a notice has been served under Article 79, 80 or 81, or paragraph 2 of Schedule 4 (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;
- (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 84(6) 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 84 to carry out the works itself.

## PART V

### AMENDMENTS OF THE ORDERS OF 1981, 1983 AND 1986

#### CHAPTER I

##### AMENDMENTS OF THE ORDER OF 1981

#### **Power of Executive to make housing management scheme**

**88.** After Article 8 of the Order of 1981 (delegation of functions by the Executive) there shall be inserted the following Article—

#### **“Housing management scheme**

**8A.—**(1) The Executive may submit to the Department a scheme making provision for the Executive to delegate to other persons such of the Executive’s management functions as may be specified in the scheme.

(2) A scheme submitted under paragraph (1) may contain such provision as the Executive considers appropriate.

(3) Without prejudice to the generality of paragraph (2), a scheme submitted under paragraph (1) shall, in particular—

- (a) specify—
  - (i) the category and range of management functions to be delegated by the Executive,
  - (ii) the form of management agreements by means of which management functions are to be delegated, and
  - (iii) the procedure for consulting tenants of houses to which a management agreement would apply; and
- (b) provide—
  - (i) that a management agreement is not to be implemented unless it is approved by a majority of the tenants consulted in relation to it in pursuance of subparagraph (a)(iii);
  - (ii) that the Department’s approval (which may be given either unconditionally or subject to conditions) is required both for the terms of a management agreement and the identity of a manager.

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

(5) The Executive shall comply with a scheme approved by the Department under paragraph (4).

(6) The Executive may at any time, and if so directed by the Department shall, submit proposals for amending a scheme approved under paragraph (4) or a scheme replacing any such scheme; and paragraphs (2) to (4) shall have effect in relation to those proposals or a scheme replacing an existing scheme as they have effect in relation to a scheme.

(7) In this Article “management agreement” and “manager”, in relation to such an agreement, mean an agreement under this Article and the person with whom the agreement is made.

(8) References in this Article to the management functions of the Executive in relation to houses or land include—

- (a) functions conferred by any statutory provision, and
- (b) the powers and duties of the Executive as holder of an estate in the houses or land in question.”

### **Resettlement of undertakings**

**89.** After Article 31 of the Order of 1981 (development of housing) there shall be inserted the following Article—

#### **“Acquisition and development of land for resettlement of certain undertakings**

**31A.**—(1) The Executive’s power to acquire land under Article 87 shall be exercisable for the purpose of resettling a relevant undertaking.

(2) The Executive shall not acquire compulsorily for the purpose mentioned in paragraph (1) any land of an undertaking which is in use for the purposes of the undertaking, if the undertaking provides employment which is significant having regard to the extent of the land and the nature of the undertaking.

(3) The Executive may, for the purpose mentioned in paragraph (1)—

- (a) appropriate any land vested in it;
- (b) develop any land to which this sub-paragraph applies, whether by the erection or extension of buildings, the carrying out of works, the provision or facilitation of the provision of means of access, services or other facilities, or otherwise;
- (c) enter into an agreement with any person for the development in any manner described in sub-paragraph (b) of any land to which this sub-paragraph applies.

(4) Sub-paragraphs (b) and (c) of paragraph (3) apply to—

- (a) any land appropriated by the Executive under sub-paragraph (a) of that paragraph; and
- (b) any land acquired by the Executive for the purpose mentioned in paragraph (1).

(5) For the purpose of enabling a person carrying on a relevant undertaking to purchase or take on lease any land or to erect any buildings, the Executive may advance money by way of mortgage to that person.

(6) In this Article—

“relevant undertaking” means an undertaking which is being carried on on land which is being or has been acquired by the Executive under Article 87;

“undertaking” means any trade or business or other activity providing employment.”

**Clearance areas, etc.**

**90.** For Chapter II of Part III of the Order of 1981 (clearance areas and clearance, demolition and closing orders) there shall be substituted the Chapter set out in Schedule 5.

**Continuance of certain powers to deal with unoccupied premises**

**91.**—(1) The provisions of Chapter V of Part III of the Order of 1981 (unoccupied premises) which are in force immediately before the day of the coming into operation of this Article, shall continue in force for the time being.

(2) Article 64 of the Order of 1981 (which provides as to the duration of that Chapter) shall cease to have effect.

**Further powers of the Executive in connection with acquisition and disposal of land**

**92.** After Article 88B of the Order of 1981 (disposal of Executive’s interest as mortgagee of land) there shall be inserted the following Articles—

**“Disposal of houses let by the Executive to secure tenants**

**88C.**—(1) Subject to the following provisions of this Article, the Executive may, with the consent of the Department, dispose of its interest as landlord of any house occupied by a secure tenant.

(2) The Department’s consent may be given—

- (a) either generally in relation to all houses or in relation to any particular house or description of house; and
- (b) subject to conditions.

(3) The Department shall not entertain an application for its consent under paragraph (2) unless it is satisfied that the Executive—

- (a) has, in accordance with the requirements of paragraphs (4) and (5), consulted—
  - (i) every tenant of a house to which the application relates, or
  - (ii) every such tenant other than one expected to have vacated the house in question before the disposal; and
- (b) has in relation to each house to which the application relates, obtained the appropriate agreement (within the meaning of paragraph (6)) to its disposal.

(4) For the purposes of paragraph (3) the requirements as to consultation are that the Executive shall serve notice in writing on the tenant informing him of—

- (a) such details of its proposal as the Executive considers appropriate, but including the identity of the person to whom the disposal is to be made,
- (b) the likely consequences of the disposal for the tenant, and
- (c) the effect of the provisions of this Article,

and informing him that he may, within such reasonable period as may be specified in the notice, make representations to the Executive.

(5) The Executive shall consider any representations made to it within that period and shall serve a further written notice on the tenant informing him—

- (a) of any significant changes in its proposal, and

- (b) that he may within such period as is specified (which must be at least 28 days after the service of the notice) communicate to the Executive his objection to the proposal,
- and informing him of the effect of paragraph (3)(b).
- (6) In paragraph (3) “the appropriate agreement” means—
- (a) in the case of an application for the disposal to a registered housing association of—
- (i) a building (including a house) which is divided into flats, or
- (ii) a group of houses which is provided with special facilities to assist the tenants (for example, a common room in close proximity to the houses),
- the agreement of the majority of the tenants of the flats within the building or of the houses within the group, as the case may be;
- (b) in any other case, the agreement of the tenant of the house to which the application relates.
- (7) For the purposes of this Article the grant of an option which if exercised would result in a secure tenant of the Executive becoming the tenant of another landlord shall be treated as a disposal of the interest which is the subject of the option.
- (8) Where a disposal of land by the Executive is in part a disposal to which this Article applies, the provisions of this Article apply to that part as to a separate disposal.
- (9) The Department’s consent to a disposal is not invalidated by a failure on its part or that of the Executive to comply with the requirements of this Article.

### **Extinguishment of public rights of way**

- 88D.—**(1) Where the Executive considers it necessary or expedient to do so, the Executive may submit to the Department an order (an “extinguishment order”) to extinguish any public right of way existing over land which the Executive has acquired or proposes to acquire.
- (2) An extinguishment order shall not have effect until approved by the Department; and Article 88E shall apply with respect to that approval.
- (3) An extinguishment order may—
- (a) provide for the retention or removal of any cables, wires, mains, pipes or other apparatus placed along, across, over or under the land over which the right of way exists; and
- (b) provide for the extinction, modification or preservation of any rights as to the use or maintenance of such cables, wires, mains, pipes or apparatus;
- and may contain such consequential, incidental and supplementary provisions as appear to the Executive to be necessary or expedient for the purposes of the order.
- (4) Where the Department approves an extinguishment order, the Executive shall—
- (a) meet the costs of any works which by any provision of the order any person is required to carry out; and
- (b) pay compensation in respect of the extinction or modification by the order of any right of any person.
- (5) Any question of disputed compensation arising under this Article shall be referred to and determined by the Lands Tribunal.



(6) An extinguishment order approved in advance of the acquisition of land by the Executive shall not have effect earlier than the date on which the land is acquired.

### **Procedures for approving extinguishment orders**

**88E.**—(1) On submitting an extinguishment order to the Department, the Executive shall publish in at least one newspaper circulating in the relevant area a notice—

- (a) stating the general effect of the order;
- (b) specifying a place in the relevant area where a copy of the order and of any relevant map or plan may be inspected by any person at all reasonable hours during a period of 28 days from the date of publication of the notice; and
- (c) stating that, within that period, any person may by notice to the Department object to the making of the order.

(2) Not later than the date on which that notice is so published, the Executive shall serve a copy of the notice, together with a copy of the extinguishment order and of any relevant map or plan, on—

- (a) every district council in whose area any land to which the order relates is situated;
- (b) any gas or electricity undertaker having any cables, mains, pipes, or wires laid along, across, under or over any land over which a right of way is to be extinguished, under the order; and
- (c) the operator of any telecommunications code system for the purposes of which any telecommunication apparatus is kept installed along, across, under or over any such land.

(3) The Department may cause a public local inquiry to be held to hear objections to the extinguishment order.

(4) After considering any objections to the extinguishment order which are not withdrawn and, where a public local inquiry is held, the report of the person who held the inquiry, the Department may approve the order either without modification or subject to such modifications as it thinks fit.

(5) Where the Department approves an extinguishment order the Executive shall publish, in the manner specified in paragraph (1), a notice stating that the order has been approved, and naming a place where a copy of the order may be seen at all reasonable hours; and paragraph (2) shall have effect in relation to any such notice as it has effect in relation to a notice under paragraph (1).

(6) In this Article—

- (a) “electricity undertaker” means a holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992<sup>(35)</sup>; and
- (b) “the relevant area”, in relation to an extinguishment order, means the area in which any land to which the order relates is situated.”

### **Compensation in respect of vesting orders, clearance orders, demolition orders and closing orders**

**93.**—(1) Subject to paragraph (2), in Chapter II of Part V of the Order of 1981 (land compensation matters), the following provisions shall cease to have effect—

- (a) in Article 89(2)—

- (i) the words “and Schedule 7”;
  - (ii) in the definition of “demolition order” the words “or Schedule 7”;
  - (iii) the definition of “site value”;
  - (b) Articles 90 to 97, 99 and 100; and
  - (c) Schedule 7.
- (2) The provisions mentioned in paragraph (1) shall continue to apply to any of the following orders, namely—
- (a) a vesting order made under the Order of 1981 to vest in the Executive land comprising a house, for the purposes of any of the Executive’s functions under Chapter III or IV of Part III of that Order;
  - (b) a clearance order made under Article 33 of that Order;
  - (c) a demolition order made under Article 35 of that Order;
  - (d) a closing order made under Article 38 of that Order;
- if the order was made before 1st April 1990.
- (3) The following Articles shall be inserted in Chapter II of Part V of the Order of 1981 as Articles 90 to 92—

**“Land acquired compulsorily in re-development areas and housing action areas**

**90.**—(1) Where the Department makes or has made a vesting order to which this paragraph applies, compensation shall be assessed in accordance with the provisions of the Land Compensation (Northern Ireland) Order 1982.

(2) Paragraph (1) applies to any vesting order made on or after 1st April 1990 to vest in the Executive land comprising a house, for the purpose of any of the functions of the Executive under Chapter III or IV of Part III.

**Compensation payable in case of clearance orders, demolition orders and closing orders**

**91.**—(1) Subject to paragraph (4), where, after the coming into operation of Part V of the Housing (Northern Ireland) Order 1992, a clearance order, demolition order or closing order is made in respect of any premises, the Executive shall pay to every owner of the premises an amount determined in accordance with paragraph (2).

(2) The amount referred to in paragraph (1) is the diminution in the compulsory purchase value of the owner’s estate in the premises as a result of the making of the clearance order, demolition order or closing order, as the case may be; and that amount—

- (a) shall be determined as at the date of the making of the order in question; and
- (b) shall be determined (in default of agreement) as if it were compensation payable in respect of the acquisition compulsorily of the estate in question and shall be dealt with accordingly.

(3) Subject to paragraph (4), where, on or after 1st April 1990 and before the coming into operation of Part V of the Housing (Northern Ireland) Order 1992, a clearance order, demolition order or closing order has been made in respect of any premises, the Executive shall pay to every owner of the premises—

- (a) an amount determined in accordance with paragraph (2); or

- (b) an amount determined in accordance with Chapter II of Part V, as that Chapter had effect before the coming into operation of Part V of the Housing (Northern Ireland) Order 1992,

whichever amount is the greater.

(4) In any case where—

- (a) a closing order has been made in respect of any premises, and
- (b) by virtue of Article 38(7) (substitution of demolition order for closing order) the closing order is revoked and a demolition order is made in its place,

the amount payable to the owner under paragraph (1) or (3) in connection with the demolition order shall be reduced by the amount (if any) paid, in connection with the closing order, to the owner or a previous owner under that paragraph or, as the case may be, under Chapter II of Part V as that Chapter had effect before the coming into operation of Part V of the Housing (Northern Ireland) Order 1992.

(5) For the purposes of this Article “premises” means the house, building or part of a building in respect of which the clearance order, demolition order or closing order is made.

#### **Repayment on revocation of clearance order, demolition order or closing order**

**92.**—(1) Where a payment in respect of any premises has been made by the Executive under Article 91(1) in connection with a clearance order, demolition order or closing order and—

- (a) an exclusion order is made in respect of those premises under Article 34,
- (b) the demolition order is determined under Article 37, or
- (c) the closing order is determined under Article 39,

then, if at that time the person to whom the payment was made has the same estate in the premises as he had at the time the payment was made, he shall on demand repay to the Executive the amount of the payment.

(2) In any case where—

- (a) a payment in respect of any premises has been made by the Executive under Article 91(1) in connection with a closing order, and
- (b) by virtue of Article 39, the order is determined as respects part of the premises, and
- (c) the person to whom the payment was made (in this Article referred to as “the recipient”) had, at the time the payment was made, an owner’s estate in the part of the premises concerned (whether or not he had such an estate in the rest of the premises),

then, if at the time of the determination of the closing order the recipient has the same estate in the premises as he had at the time the payment was made, he shall on demand pay to the Executive an amount determined in accordance with paragraphs (3), (4) and (5).

(3) The amount referred to in paragraph (2) is whichever is the less of—

- (a) the amount by which the value of the estate of the recipient in the premises increases as a result of the determination of the closing order; and
- (b) the amount paid to the recipient under Article 91(1) in respect of his estate in the premises;

and the amount referred to in sub-paragraph (a) shall be determined as at the date of the determination of the closing order.

(4) For the purposes of assessing the amount referred to in paragraph (3)(a) the rules set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 shall, so far as

applicable and subject to the necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an estate in land.

(5) Any dispute as to the amount of compensation referred to in paragraph (3)(a) shall be referred to and determined by the Lands Tribunal.”

### **Winding up of home purchase assistance scheme**

**94.**—(1) The Department may by order make provision for the purpose of bringing to an end the scheme for assistance for first-time buyers which is contained in the assistance legislation.

(2) Without prejudice to the generality of the power conferred by paragraph (1), an order under that paragraph—

- (a) may specify a date or dates with effect from which account will no longer be taken under the assistance legislation of matters specified in the order;
- (b) may vary the terms of advances to lending institutions so as to commute what would otherwise be a number of payments or repayments to or by such an institution into a single payment or a smaller number or payments of such amount and payable at such time or times as may be determined in accordance with the order; and
- (c) may provide for the amendment or repeal, in whole or in part, of the assistance legislation with effect from such date or dates and subject to such transitional provisions as may be specified in the order.

(3) The following powers, namely—

- (a) the power conferred on the Department under Article 153(3) of the Order of 1981 to relax or modify the conditions in that paragraph; and
- (b) any power to make an order under any provision of the assistance legislation,

may be exercised so as to make provision for the purpose referred to in paragraph (1).

(4) In this Article “the assistance legislation” means Part IX of, and Schedule 10 to, the Order of 1981.

### **Miscellaneous amendments of the Order of 1981**

**95.** Schedule 6, which sets out other amendments of the Order of 1981, shall have effect.

## **CHAPTER II**

### **AMENDMENTS OF THE ORDER OF 1983**

#### **House sales scheme**

**96.**—(1) In Part II of the Order of 1983 (secure tenancies), for Chapter I there shall be substituted the following Chapter—

## **“CHAPTER I**

### **SALE OF DWELLING-HOUSES BY THE EXECUTIVE**

#### **House sales scheme**

**3.**—(1) The Executive shall prepare and submit to the Department a scheme to offer for sale or lease to its secure tenants, the dwelling-houses occupied by those tenants.

(2) A scheme submitted under paragraph (1) may contain such provision as the Executive considers appropriate and, without prejudice to the generality of the foregoing, shall include provision with respect to—

- (a) the classes of dwelling-houses to which the scheme applies;
- (b) the manner in which the purchase price of a dwelling-house is to be determined;
- (c) the circumstances in which a purchaser is entitled to a discount of part of the purchase price and the basis upon which that discount is to be calculated;
- (d) the circumstances in which discount may be repayable;
- (e) the condition and covenants to be included in the conveyance or lease of the dwelling-house;
- (f) the terms on which land used for the purposes of a dwelling-house is to be treated as included in the dwelling-house.

(3) A scheme submitted under paragraph (1) shall, if the Department so directs, include provision for the Executive to offer, in such circumstances as the Department may direct, to grant equity-sharing leases in relation to dwelling-houses to which the scheme applies.

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

(5) The Executive shall comply with a scheme approved by the Department under paragraph (4).

(6) The Executive may at any time, and if the Department so directs shall, submit to the Department proposals amending a scheme approved under paragraph (4) or a scheme replacing any such scheme; and paragraphs (3) to (5) shall have effect in relation to those proposals or a scheme replacing an existing scheme as they have effect in relation to a scheme.

#### **House sales scheme: supplemental provision**

4.—(1) In this Chapter—

“equity-sharing lease” has the meaning given in Article 31(6)(a) of the principal Order;

“purchase price” includes the consideration for the grant of a lease;

“sale” includes sale in consideration of a fee farm rent, rent charge or similar periodic payment; and

“secure tenant” has the meaning given in Article 24(1).”

(2) Chapter I of Part I of, and Schedules 1 and 1A to, the Order of 1983, as that Chapter and those Schedules had effect immediately before the day of the coming into operation of Article 96 of the Housing (Northern Ireland) Order 1992 shall, notwithstanding anything in this Article or Part I of Schedule 9 continue to apply where, before that day, a secure tenant has served on the Executive a written notice under Article 7 of the Order of 1983 claiming to exercise the right to buy.

(3) In Article 106(2) of the Order of 1983 (regulations and orders subject to negative resolution) for the words “Article 21, 28(2)(a) or 92(3)” there shall be substituted “Article 28(2)(a) or 92(3)”.

### CHAPTER III

#### AMENDMENTS OF THE ORDER OF 1986

##### **Amendments relating to defective housing**

97.—(1) Part II of the Order of 1986 shall be amended in accordance with the following provisions of this Article.

(2) In paragraph (2) of Article 6 of that Order (determination of form of assistance to which applicant is entitled), after the word “determine” there shall be inserted “as soon as reasonably practicable”.

(3) After paragraph (7) of that Article (meaning of “work required for reinstatement, etc.”) there shall be inserted the following paragraph—

“(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.”

(4) In Article 17 of the Order of 1986 (modification of Part II of that Order in relation to equity-sharing leases) for paragraphs (1) to (3) there shall be substituted the following paragraphs—

“(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.”

(5) Any power of the Department to make regulations under paragraph (4) of Article 17 of the Order of 1986 shall cease to have effect; and in sub-paragraph (c) of that paragraph after the word “class” there shall be inserted “or description”.

## PART VI

### PRIVATE SECTOR TENANTS

#### **Regulated tenancy standards**

**98.**—(1) In Article 8 of the Rent (Northern Ireland) Order 1978(**36**) (restricted and regulated rent certificates), for paragraph (7) there shall be substituted the following paragraphs—

“(7) A dwelling-house satisfies the regulated tenancy standards if it is fit for human habitation.

(7A) Article 46 of the Housing (Northern Ireland) Order 1981 (standard of fitness for human habitation) shall apply for the purposes of paragraph (7) as if for any reference in that Article to the Executive there were substituted a reference to a district council.”

(2) Nothing in this Article shall affect the validity of a regulated rent certificate issued under Article 8 of the Rent (Northern Ireland) Order 1978(**37**) before the day of the coming into operation of this Article.

(36) 1978 NI 20

(37) 1978 NI 20

### **Department's power to remove tenancies from register of rents**

**99.** After Article 25 of the Rent (Northern Ireland) Order 1978 (register of rents) there shall be inserted the following Article—

#### **“Removal of tenancies from the register**

**25A.—**(1) Subject to the following provisions of this Article, where the rent payable for the tenancy of a dwelling-house is registered in the register of rents, the Department may, if it is satisfied that the dwelling-house has ceased to be let under a regulated or a restricted tenancy, remove any entry relating to the tenancy or the dwelling-house from the register.

(2) The Department shall give to any person appearing to it to have an interest in the dwelling-house, 14 days' notice of its intention to remove the entry from the register.

(3) For the purposes of paragraph (1) the Department may make such enquiries as it considers appropriate.”

### **Reduction of rent on failure to comply with certificate of disrepair**

**100.** In Article 31 of the Rent (Northern Ireland) Order 1978 (application for determination of appropriate rent following change in condition of dwelling-houses, etc.), after paragraph (2) there shall be inserted the following paragraph—

“(2A) Where, by virtue of paragraph (2), there is a change of circumstances relating to a dwelling-house or tenancy, the appropriate rent for that dwelling-house shall be such amount as a rent assessment committee may determine, being an amount which is no less than the rent payable under the tenancy immediately before 1st October 1978.”

### **Service of documents under Rent (Northern Ireland) Order 1978**

**101.** After Article 73 (service of notices on landlord's agents) of the Rent (Northern Ireland) Order 1978(38) there shall be inserted the following Article—

#### **“Method of serving certain documents**

**73A.—**(1) Any document to be served under any of the following provisions of this Order, namely Articles 8, 9, 10, 25(6), 25A(2), 26(4), 46 and 73(2) and paragraph 2(1) of Schedule 6 may be served by being sent by ordinary post.

(2) In section 24(1) of the Interpretation Act (Northern Ireland) 1954 (service of documents), as it applies to the service by post of such a document, the word “registering” shall be omitted.”

### **Other amendments of Rent (Northern Ireland) Order 1978**

**102.** The amendments to the Rent (Northern Ireland) Order 1978, which are set out in Schedule 7 shall have effect.

## PART VII

## MISCELLANEOUS AND SUPPLEMENTARY

*Miscellaneous***Powers of Executive and Department as respects provision of services and assistance for owners and occupiers of houses**

**103.**—(1) The Executive shall have power to provide professional, technical and administrative services for owners or occupiers of dwellings in connection with their arranging or carrying out relevant works or to encourage or facilitate the carrying out of such works, whether or not on payment of such charges as the Executive may determine.

(2) Works are relevant works in relation to a dwelling or, as the case may be, a dwelling in any area, if they are works of any of the following descriptions, that is to say—

- (a) works to cause the dwelling to be fit for human habitation,
- (b) where the occupant is disabled, works for any of the purposes specified in Article 52(3) or (4),
- (c) works for any of the purposes specified in Article 53(3), and
- (d) works for any of the purposes specified in or under Article 69(1).

(3) It shall be the duty of the Executive when exercising any power conferred by paragraph (1)—

- (a) to consider whether or not to make a charge for exercising it; and
- (b) to take such measures as are reasonably available to the Executive to secure contributions from other persons towards the cost of exercising it.

(4) The Executive shall have power to give financial assistance in any form to—

- (a) any housing association,
- (b) any charity, or
- (c) any body, or body of any description, approved by the Department,

towards the cost of the provision by that association, charity or body of services of any description for owners or occupiers of dwellings in arranging works of maintenance, repair or improvement or the encouraging or facilitating the carrying out of such works.

(5) It shall be the duty of the Executive—

- (a) in deciding whether to exercise any power conferred by paragraph (4) in relation to any association, charity or body, to have regard to the existence and extent of any financial assistance available from other persons to that association, charity or body; and
- (b) in exercising any power conferred by paragraph (4) in relation to any association, charity or body—
  - (i) to have regard to whether that association, charity or body has made or will make charges and their amount; and
  - (ii) to encourage the association, charity or body to take such measures as are reasonably available to them to secure contributions from other persons.

(6) The Department may, with the consent of the Department of Finance and Personnel, give financial assistance in any form to any person in respect of expenditure incurred or to be incurred by that person in connection with the provision, whether or not by that person, of services of any description for owners or occupiers of dwellings in arranging or carrying out works of maintenance,



repair or improvement, or in connection with the encouraging or facilitating, whether or not by that person, the carrying out of such works.

(7) The giving of financial assistance under paragraph (6) shall be on such terms (which may include terms as to repayment) as the Department, with the consent of the Department of Finance and Personnel, considers appropriate.

(8) The person receiving assistance shall comply with the terms on which it is given and compliance may be enforced by the Department.

(9) In this Article—

“charity” means any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in the exercise of the Court’s jurisdiction with respect to charities;

“housing association” means a housing association within the meaning of Article 3(1) or a body established by such a housing association for the purpose of, or having among its purposes or objects, those mentioned in Article 15(3)(c) (providing services of any description for owners or occupiers of houses in arranging or carrying out works of maintenance, repair or improvement, or encouraging or facilitating the carrying out of such works).

### **Service of certain documents**

**104.**—(1) The following documents, that is to say—

- (a) a notice under Article 25 of the Order of 1981 (notice substituting or varying tenancy agreement);
- (b) a notice under Article 26 of that Order (notice increasing Executive rent);
- (c) any document to be provided under Chapter II of Part II of the Order of 1983 by the Executive as landlord of a secure tenancy;

may be served by being sent by the Executive by ordinary post.

(2) A process under Part VI of the Magistrates’ Courts (Northern Ireland) Order 1981<sup>(39)</sup> for the recovery of any sum due to the Executive on foot of a tenancy agreement may be served—

- (a) by being sent by the Executive by ordinary post; or
- (b) by any mode of service permitted by magistrates’ courts rules.

(3) In section 24(1) of the Interpretation Act (Northern Ireland) 1954<sup>(40)</sup> (service of documents), as it applies to the service by post of any document or process mentioned in paragraph (1) or (2), the word “registering” shall be omitted.

### **Repeal of Small Dwellings Acquisition Acts**

**105.**—(1) Subject to regulations made under paragraph (2), the Small Dwellings Acquisition Acts (Northern Ireland) 1899 to 1948 shall cease to have effect.

(2) Without prejudice to Article 108(2), the Department may by regulations make such saving provision as it considers appropriate with respect to advances made under the Small Dwellings Acquisition Acts (Northern Ireland) 1899 to 1948 before the repeal of those Acts.

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<sup>(39)</sup> 1981 NI 26

<sup>(40)</sup> 1954 c. 33 (N.I.)

*Supplementary*

**Orders and regulations**

**106.** Any order (other than a vesting order or an order under Article 1(3) or 25) or regulations made by the Department under this Order shall be subject to negative resolution.

**Minor and consequential amendments**

**107.** The statutory provisions mentioned in Schedule 8 shall have effect subject to the amendments set out there.

**Repeals, transitional provisions and savings**

**108.**—(1) The statutory provisions mentioned in Part I and Part II of Schedule 9 are repealed to the extent shown in the third column of that Schedule.

(2) The Department may by order make such transitional provisions and savings (whether or not involving the modification of any statutory provision) as it considers necessary or expedient in consequence of the provision made by this Order.

*G. I. de Deney*  
Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 12(3).

#### MODIFICATIONS OF SCHEDULE 6 TO THE LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972 FOR THE PURPOSES OF ARTICLE 12(3)

1. References to the Department or to the council shall be construed as references to the Department within the meaning of this Order.
2. References to Schedule 6 to the Local Government Act (Northern Ireland) 1972(41) shall be construed as references to that Schedule as modified by this Schedule.
3. Omit paragraph 1 of that Schedule.
4. In paragraph 2 of that Schedule—
  - (a) for the words “notice of application” substitute “notice of the Department’s intention to acquire the land compulsorily”;
  - (b) omit the words “in such form and manner as the Department directs”;
  - (c) in sub-paragraph (c) for the words “as may be prescribed” substitute the words “as the Department considers fit”.
5. In paragraph 3(1)(b) for the words in brackets substitute “if the Department thinks it necessary to do so”.
6. In paragraph 4 omit the words from “and may provide” onwards.
7. In paragraph 5—
  - (a) in sub-paragraph (1)(a) omit the words “in the prescribed form and manner”;
  - (b) in sub-paragraph (1)(b) the two references to the said Act of 1972 shall be construed as references to this Order;
  - (c) in sub-paragraph (1)(d) omit the words “in the prescribed form”;
  - (d) in sub-paragraph (2) for the words “as may be prescribed” substitute the words “as the Department considers fit”.
8. In paragraph 6(2) for the words “fund out of which the expenses of the council in acquiring the land are to be defrayed” substitute the words “Consolidated Fund” and for the words “out of the Compensation Fund” there shall be substituted the words “made by the Department”.
9. In paragraph 11(3) omit the words “in the prescribed form”.
10. In paragraph 12—
  - (a) in sub-paragraph (1) omit the words “such” and “as may be prescribed”;
  - (b) in sub-paragraph (2) for the words from “clerk” to “directs” substitute the words “Department as correct, and publish”.
11. In paragraph 14(1) omit the words “in the prescribed form”.

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(41) 1972 c. 9 (N.I.)

*Status: This is the original version (as it was originally made).*

12. In paragraph 15(1) for the words “in the prescribed form” substitute the words “in such form as may be approved by the Department”.

13. Omit paragraph 19.

14. Omit paragraph 20(2).

## SCHEDULE 2

Article 13(2).

### GRANT-AIDED LAND

1. For the purposes of Article 13 “grant-aided land” means land—
  - (a) in respect of which such payment as is specified in paragraph 2 falls to be made in respect of a period ending after 10th November 1976; or
  - (b) on which is or has been secured a loan which is of a description specified in paragraph 3 and in respect of which any repayment (whether by way of principal or interest or both) falls to be made after that date.
2. The payments referred to in paragraph 1(a) are contributions which became payable before 10th November 1976—
  - (a) by way of exchequer contributions under section 1 of the Housing Act (Northern Ireland) 1945<sup>(42)</sup> as applied to housing associations by virtue of section 12 of the Housing and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1946<sup>(43)</sup>;
  - (b) by way of exchequer contributions under section 15 of the Housing Act (Northern Ireland) 1963<sup>(44)</sup> (contributions for hostels).
3. The loans referred to in paragraph 1(b) are—
  - (a) loans under section 14 of the Housing (Ireland) Act 1919<sup>(45)</sup>, as applied to the Executive by virtue of section 3(1) of the Housing Executive Act (Northern Ireland) 1971<sup>(46)</sup> (powers of promoting and assisting public utility societies); and
  - (b) loans under section 44 of the Housing Act (Northern Ireland) 1956<sup>(47)</sup> (power to make loans to certain associations).

## SCHEDULE 3

Article 74(3).

### PROVISIONS WITH RESPECT TO REPAIRS GRANTS UNDER ARTICLE 74

- 1.—(1) No repairs grant shall be paid by the Executive unless an application is made to it in accordance with this Schedule by the person to whom the grant is payable.
- (2) An application for a repairs grant shall—
  - (a) specify the premises to which the application relates;
  - (b) contain particulars of the works in respect of which the grant is sought (in this Schedule referred to as “the relevant works”) and an estimate of their cost; and

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<sup>(42)</sup> 1945 c. 2 (N.I.)

<sup>(43)</sup> 1946 c. 4 (N.I.)

<sup>(44)</sup> 1963 c. 26 (N.I.)

<sup>(45)</sup> 1919 c. 45

<sup>(46)</sup> 1971 c. 5 (N.I.)

<sup>(47)</sup> 1956 c. 10 (N.I.)

- (c) contain such other particulars as may for the time being be specified to the Executive by the Department.

2.—(1) Subject to paragraphs (2) to (4), the Executive shall not approve an application for a repairs grant unless the Executive is satisfied that on completion of the relevant works the dwelling-house will attain the relevant standard of repair.

(2) Without prejudice to the discretion of the Executive to approve or decline to approve an application for a repairs grant, if, in the opinion of the Executive, the relevant works are more extensive than is necessary for the purpose of securing that the dwelling-house will attain the relevant standard of repair, the Executive may, with the consent of the applicant, treat the application as varied so that the relevant works include only such works as seem to the Executive to be necessary for that purpose, and may approve the application as so varied.

(3) Where the Executive is of the opinion—

- (a) that the dwelling-house may be demolished within the period of 5 years from the date on which it received the application for the repairs grant; or
- (b) that, notwithstanding that the relevant works are completed, the dwelling-house will, within that period become unfit for human habitation and will, at the expiration of that period, be incapable of being rendered fit at reasonable expense,

the Executive may dispense with the condition in paragraph (1).

(4) In determining for the purposes of this paragraph whether a dwelling-house meets the relevant standard of repair, regard shall be had to the repairing conditions (within the meaning of Article 46 of the Rent (Northern Ireland) Order 1978<sup>(48)</sup>) or, as the case may be, to the requirements of the notice served under section 110 of the Public Health (Ireland) Act 1878<sup>(49)</sup> in relation to the dwelling-house.

3.—(1) Where the Executive approves an application for a repairs grant, it shall determine the amount of the expense (in this Schedule referred to as “the eligible expense”) which in its opinion is proper to be incurred for the execution of the relevant works and shall notify the applicant of that amount.

(2) If the applicant satisfies the Executive that the relevant works cannot be or could not have been carried out without the carrying out of additional works and that this could not have been reasonably foreseen at the time the application was made, the Executive may determine a higher amount under paragraph (1).

(3) Except in a case or description of case in respect of which the Department approves a higher eligible expense, the eligible expense for the purposes of a repairs grant shall be so much of the amount determined under paragraph (1) as does not exceed £5,500 or such other amount as the Department may by order specify.

(4) The amount of a repairs grant shall be such as may be fixed by the Executive when it approves the application for the grant but, subject to paragraph (5), shall not exceed the appropriate percentage of the eligible expense and, together with the notification under paragraph (1), the Executive shall send to the applicant a notification of the amount of the grant.

(5) In any case where, after the amount of a repairs grant has been notified to the applicant under paragraph (4), the Executive, in exercise of its powers under paragraph (2), determines a higher amount under paragraph (1), the eligible expense shall be re-calculated under paragraph (3), and if, on that re-calculation, the amount of the eligible expense is greater than it was at the time when the application was approved—

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<sup>(48)</sup> 1978 NI 20

<sup>(49)</sup> 1878 c. 52

*Status: This is the original version (as it was originally made).*

- (a) the amount of the repairs grant shall be increased accordingly; and
- (b) the Executive shall notify the applicant of the increased amount of the grant.

4.—(1) In this Schedule “the appropriate percentage” (which is relevant for determining the grant or the maximum amount of grant) shall, in relation to an application for a repairs grant, be the percentage applicable to that application in accordance with the following provisions of this paragraph.

- (2) The appropriate percentage shall be—
  - (a) where the application is in respect of a dwelling-house which is subject to a protected or statutory tenancy under the Rent (Northern Ireland) Order 1978(50), 90%;
  - (b) where it appears to the Executive that the applicant would not without undue hardship be able to finance so much of the cost of relevant works as is not met by the grant, 90%;
  - (c) where the net annual value of the house to which the application relates, other than a house in respect of which a district council has issued a regulated rent certificate under Article 9 of the Rent (Northern Ireland) Order 1978, is less than £60, 100%;
  - (d) in any other case, 75%.
- (3) The Department may by order, made with the approval of the Department of Finance and Personnel, modify paragraph (2) in such manner as it thinks fit.

5. If the Executive—

- (a) does not approve an application for a repairs grant, or
  - (b) fixes the amount of the grant at less than the appropriate percentage of the eligible expense,
- it shall state in writing to the applicant its reasons for doing so.

#### SCHEDULE 4

Article 82.

### HOUSES IN MULTIPLE OCCUPATION: MEANS OF ESCAPE FROM FIRE

#### *Exercise of powers of Executive*

1. Subject to Article 80, if it appears to the Executive that a house in multiple occupation is not provided with such means of escape from fire as the Executive considers necessary the Executive may exercise such of its powers under this Schedule as appear to it most appropriate; and it shall do so if the house is of such description or occupied in such manner as the Department may by order specify.

#### *Powers available to Executive*

2.—(1) The Executive may serve a notice on any person on whom a notice may be served under Article 80(3) specifying the works which in the opinion of the Executive are required to provide the necessary means of escape from fire.

(2) Paragraphs (5) and (6) of Article 80 shall apply in relation to a notice under sub-paragraph (1) in the same manner as they apply to a notice under that Article.

3. If it appears to the Executive that the means of escape from fire would be adequate if part of the house were not used for human habitation, the Executive may secure that that part is not so used.

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(50) 1978 NI 20

4. The Executive may secure that part of the house is not used for human habitation and serve a notice under paragraph 2 specifying such works only as in the opinion of the Executive are required to provide the means of escape from fire which will be necessary if that part is not so used.

5. For the purpose of securing that a part of the house is not used for human habitation the Executive may, if after consultation with any person appearing to it to be an owner of the house, accept an undertaking from him that that part will not be used for human habitation without the permission of the Executive.

6. If the Executive does not accept an undertaking under paragraph 5 with respect to a part of the house, or if, in a case where it has accepted such an undertaking, that part of the house is at any time used in contravention of the undertaking, the Executive may make a closing order with respect to that part of the house.

#### *Enforcement*

7. Any person who, knowing that an undertaking has been accepted under paragraph 5, uses the part of the house to which the undertaking relates in contravention of the undertaking, or permits that part of the house to be so used, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale and to a further fine of one tenth of the amount corresponding to that level for every day, or part of a day, on which he so uses it or permits it to be so used, after conviction.

#### *Consultation with Fire Authority*

8. The Executive shall, before serving a notice, accepting an undertaking or making a closing order under this Schedule, consult with the Fire Authority for Northern Ireland.

#### *Exclusion of protection under Rent (Northern Ireland) Order 1978*

9. Nothing in the Rent (Northern Ireland) Order 1978 shall prevent possession being obtained of any part of a house which, in accordance with any undertaking in pursuance of this Schedule, cannot for the time being be used for human habitation.

#### *Application of Chapter II of Part III of the Order of 1981*

10. Chapter II of Part III of the Order of 1981 shall apply to a closing order made under this Schedule as it applies to a closing order under Article 38(1) of that Order, but the ground on which, under Article 39(1) of that Order, the Executive is required to determine the order shall be that it is satisfied that the means of escape from fire with which the house is provided is adequate (owing to a change of circumstances) and will remain adequate if the part of the house with respect to which the order was made is again used for human habitation.

#### *Matters requiring to be registered in the Statutory Charges Register*

11. There shall be included in the matters which are required to be registered in the Statutory Charges Register—

- (a) any notice served under paragraph 2,
- (b) any undertaking accepted under paragraph 5, and
- (c) any closing order made under paragraph 6.

SCHEDULE 5

Article 90.

CHAPTER TO BE SUBSTITUTED FOR CHAPTER II OF PART III OF THE ORDER OF 1981

“CHAPTER II

CLEARANCE AREAS AND CLEARANCE, DEMOLITION AND CLOSING ORDERS

**Declaration of clearance areas**

**32.**—(1) Where the Executive is satisfied as respects any area—

- (a) that the houses in that area are unfit for human habitation, or are by reason of their bad arrangement, or the narrowness or bad arrangement of the streets, dangerous or injurious to the health of the inhabitants of the area, and that the other buildings (if any) in the area are for a like reason dangerous or injurious to the health of the said inhabitants; and
- (b) that, having regard to Article 46A, the most satisfactory course of action is the demolition of all the buildings in the area;

the Executive shall define that area on a map so as to exclude from the area any building which is not unfit for human habitation or dangerous or injurious to health, and shall declare the area so defined to be a clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of this Chapter.

(2) The Executive shall send notification of any declaration under this Article to—

- (a) the Department; and
- (b) the district council for the local government district in which the clearance area lies;

together with a statement of the number of persons who, on a day to be specified in the statement, occupied the buildings comprised in the clearance area.

(3) So soon as may be after the Executive declares an area to be a clearance area, it shall proceed to secure the clearance thereof by ordering the demolition of the buildings in the area.

(4) Where the Executive is of the opinion that an area should cease to be a clearance area, it may, with the consent of the Department, make a declaration to that effect and the area shall cease to be a clearance area from the date of that declaration.

**Clearance orders**

**33.**—(1) Where, as respects any clearance area, the Executive determines to order any buildings to be demolished, it shall make and submit to the Department, for confirmation by it, a clearance order ordering the demolition of each of those buildings.

(2) Part I of Schedule 4 shall have effect with respect to clearance orders.

**Exclusion orders**

**34.**—(1) Where the Executive is satisfied that a house comprised in a clearance order, which has been confirmed by the Department—

- (a) has been made fit for human habitation, or
- (b) will be made fit for human habitation if excluded from the clearance area,

the Executive may make and submit for confirmation by the Department an exclusion order excluding the house from the clearance area and modifying or revoking the clearance order accordingly.



(2) If it appears to the Executive that any house or other building, which has not been included in a clearance order, would not have been included in the clearance area but for the inclusion in the clearance area of the house to be excluded under paragraph (1), the exclusion order shall provide that that building shall also be excluded from the clearance area.

(3) An exclusion order may be made notwithstanding that the effect of the order in excluding any building from the clearance area is to sever that area into 2 or more separate and distinct areas, and in any such case Part I of Schedule 4 shall apply as if those areas formed one clearance area.

(4) For the purposes of this Article the Executive may accept an undertaking from an owner of the building, or any other person who has or will have an estate in the building and in particular undertakings concerning—

- (a) the works to be carried out to make the building fit for human habitation, and the time within which the works are to be carried out, and
- (b) the repayment of any sums paid by the Executive under—
  - (i) Chapter II of Part V,
  - (ii) section 36 or 37 of the Housing Act (Northern Ireland) 1971, or
  - (iii) section 2 of the Housing Act (Northern Ireland) 1961 .

(5) Part II of Schedule 4 shall have effect in relation to exclusion orders.

### **Demolition orders**

**35.**—(1) Where the Executive is satisfied that a house, which is not a flat, is unfit for human habitation and that, in accordance with Article 46A, taking action under this paragraph is the most satisfactory course of action, the Executive shall make a demolition order with respect to the house concerned.

(2) Where the Executive is satisfied that, in a building containing one or more flats, some or all of the flats are unfit for human habitation and that in accordance with Article 46A, taking action under this paragraph is the most satisfactory course of action, the Executive shall make a demolition order with respect to the building.

- (3) Where the Executive has made a demolition order, it shall serve a copy of the order on—
- (a) any owner of the premises, and
  - (b) so far as it is reasonably practicable to ascertain such persons, every mortgagee of the premises.

(4) Where the premises in respect of which a demolition order is made are a building containing flats, any reference in sub-paragraph (a) or (b) of paragraph (3) to “the premises” includes a reference to the flats in the building concerned.

(5) Subject to Article 43, where the Executive makes a demolition order the order shall require—

- (a) that the premises be vacated within a period, not being less than 28 days from the date on which the order becomes operative, and
- (b) that the premises be taken down and removed—
  - (i) within 6 weeks after the expiration of the period specified in sub-paragraph (a), or
  - (ii) if the premises are not vacated within that period, within 6 weeks after the date on which it is vacated, or
  - (iii) within such longer period as the Executive may specify in the circumstances.

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(6) Where, in accordance with Article 44, a demolition order becomes operative, the owner of the premises to which it applies shall take down and remove the premises within the time specified in the order; and, if the premises are not taken down and removed within that time, the Executive shall enter and take down and remove the premises and sell the materials thereof.

(7) Paragraphs 10 and 11 of Schedule 4 shall apply to any expenses incurred by the Executive under paragraph (6) and to any surplus remaining in the hands of the Executive.

### **Recovery of possession of buildings subject to clearance or demolition order**

**36.**—(1) Where, in accordance with paragraph 7 of Schedule 4 or, as the case may be, Article 44, a clearance order or demolition order becomes operative, the Executive shall serve upon the occupier of any building to which the order relates a notice—

- (a) stating the effect of the order,
- (b) specifying the date by which the building is to be vacated, and
- (c) requiring him to quit the building before the said date or before the expiration of 28 days from the service of the notice, whichever may be the later.

(2) If, at any time after the date on which a notice under paragraph (1) requires a building to be vacated, any person is in occupation of the building, the Executive or any owner of the building may bring proceedings in the same manner as ejectment proceedings under Part VI of the Magistrates' Courts (Northern Ireland) Order 1981 and the court shall, on proof of the service of the notice and of such occupation, order vacant possession of the building to be given to the Executive or owner, but, in doing so, shall stay the issue of the decree for possession for a period of not less than 2 weeks or more than 4 weeks from the date of the order.

(3) Any person who, knowing that a clearance or demolition order is in operation in relation to any building, enters into occupation of that building or of any part thereof after the date by which the order requires that building to be vacated or after the date on which the building is in fact vacated, whichever is the earlier, or permits any other person to enter into such occupation after that date, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale and to a further fine not exceeding £10 for every day or part of a day on which the occupation continues after conviction.

### **Determination of demolition orders**

**37.**—(1) Where—

- (a) the Executive has made a demolition order in respect of premises and the premises have not yet been taken down and removed;
- (b) the owner of the premises, or any other person who in the opinion of the Executive is, or will be, in a position to put his proposals into effect, submits proposals to the Executive for the reconstruction, enlargement or improvement of the premises; and
- (c) the Executive is satisfied that the result of the work will be the provision of one or more houses fit for human habitation,

the Executive may, in order that the proposed works may be carried out, by notice served on the owner or occupier extend for such period as it may specify the time within which the premises are required by the demolition order to be taken down and removed and such time may be further extended by the Executive as occasion may require.

(2) Where the Executive is satisfied that premises in respect of which a demolition order has been made have been rendered fit for human habitation or have been replaced, the Executive may make an order determining the demolition order.

(3) Where the Executive—

- (a) extends or further extends the time mentioned in paragraph (1), or
- (b) makes an order under paragraph (2),

it shall serve a copy of the notice or order upon every person upon whom it was required to serve a copy of the demolition order.

(4) Where the Executive makes an order under paragraph (2), any payments made under Chapter II of Part V or under Part I of the Housing Act (Northern Ireland) 1961 by the Executive shall, unless the Department otherwise directs, be repayable to the Executive and shall be recoverable as a civil debt due to it.

### **Demolition orders: substitution of closing orders to permit use otherwise than for human occupation**

**37A.**—(1) If an owner of any premises in respect of which a demolition order has become operative or any other person who has an interest in the premises, submits proposals to the Executive for the use of the premises for a purpose other than human habitation, the Executive may if it thinks fit to do so determine the demolition order and make a closing order in respect of the premises.

(2) The Executive shall serve notice that the demolition order has been determined, and a copy of the closing order, on every person upon whom it would be required by paragraph (3) of Article 35 to serve notice of a demolition order.

### **Closing orders**

**38.**—(1) Where the Executive is satisfied that a house is unfit for human habitation and that, in accordance with Article 46A, taking action under this paragraph is the most satisfactory course of action, the Executive shall make a closing order with respect to the house.

(2) Where the Executive is satisfied that, in a building containing one or more flats, some or all of the flats are unfit for human habitation and that, in accordance with Article 46A, taking action under this paragraph is the most satisfactory course of action, the Executive shall make a closing order with respect to the whole or part of the building.

(3) In deciding for the purposes of paragraph (2)—

- (a) whether to make a closing order with respect to the whole or part of the building; or
- (b) in respect of which part of the building to make a closing order;

the Executive shall have regard to such guidance as may from time to time be given by the Department under Article 46A.

(4) Where the Executive would but for this Article make a demolition order in respect of a house or building—

- (a) it may, if it considers it inexpedient to do so having regard to the effect of the demolition of that house or building upon any other building, and
- (b) it shall, if the house or building in respect of which it proposes to make the demolition order is a listed building or a building within a conservation area;

in lieu of making such an order, make a closing order prohibiting the use of the house or building for any purpose other than one approved by the Executive.

(5) In paragraph (4) “building”, “listed building” and “conservation area” have the meaning assigned to them in the Planning (Northern Ireland) Order 1991.

(6) The Executive shall serve a copy of the closing order upon every person upon whom it would have to serve such a copy if the order were a demolition order.

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(7) Where a closing order has been made in respect of a house or the whole or part of a building, the Executive may—

- (a) in a case where paragraph (4)(b) applies, after consultation with the Department, or
- (b) in any other case, at any time,

revoke that order and make a demolition order in respect of that house or as the case may be, the whole of that building.

#### **Determination of closing orders**

**39.**—(1) Where the Executive is satisfied that a house or the whole or part of a building in respect of which a closing order has been made, has been rendered fit for human habitation or replaced, the Executive may make an order determining the closing order.

(2) Where an order is made under paragraph (1), the Executive shall serve a copy of that order upon every person upon whom it was required to serve a copy of the closing order.

(3) Article 37(4) shall have effect in relation to the determination of a closing order in the same manner as it applies where a demolition order is determined.

#### **Use of premises in contravention of closing order**

**40.** Any person who, knowing that a closing order has become operative and applies to any premises, uses those premises in contravention of that order or permits them to be so used, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale and to a further fine not exceeding £10 for every day on which he so uses them, or permits them to be so used, after conviction.

#### **Repair notices**

**41.**—(1) Subject to paragraph (2), where the Executive is satisfied that, having regard to Article 46A, any house or part of a house is unfit for human habitation and that serving a notice under this paragraph is the most satisfactory course of action, it shall serve upon the owner of the house a notice requiring him, within such reasonable time, not being less than 21 days, as may be specified in the notice, to execute the works specified in the notice and stating that, in the opinion of the Executive, those works will render the house or, as the case may be, that part thereof, fit for human habitation.

(2) Where the Executive is satisfied that, having regard to Article 46A, a house which is a flat is unfit for human habitation by reason of the defective condition of a part of the building outside the flat, it shall serve a repair notice upon the owner of the building, if it is satisfied that serving such a notice is the most satisfactory course of action.

(3) In addition to serving a notice on the owner of the house, the Executive may also serve a copy of the notice upon any other person having an estate in the house.

(4) In this Article “house” includes a house in multiple occupation, and in the case of such a house a repair notice may be served upon the person managing the house instead of upon the owner.

#### **Effect on Article 41 of proposal to include premises in group repair scheme**

**41A.**—(1) The Executive shall not be under a duty to serve a repair notice under paragraph (1) or, as the case may be, paragraph (2) of Article 41, if, at the same time as it satisfies itself as mentioned in the paragraph in question, it determines—

- (a) that the premises concerned form part of a building which would be a qualifying building in relation to a group repair scheme; and
- (b) that, within the period of 12 months beginning at that time, it expects to prepare a group repair scheme in respect of the qualifying building (in this Article referred to as a “relevant scheme”);

but where, having so determined, the Executive does serve such a notice, it may do so with respect only to those works which, in its opinion, will not be carried out to the premises concerned in pursuance of the relevant scheme.

(2) Subject to paragraph (3), paragraph (1) shall apply in relation to the premises concerned from the time referred to in paragraph (1) until the date on which the works specified in a relevant scheme are completed to the Executive’s satisfaction (as certified under Article 68 of the Housing (Northern Ireland) Order 1992).

(3) Paragraph (1) shall cease to have effect in relation to the premises concerned on the day when the first of the following events occurs, that is to say,—

- (a) the Executive determines not to submit a relevant scheme to the Department for approval; or
- (b) the expiry of the period referred to in paragraph (1)(b) without either the approval of a relevant scheme within that period or the submission of a relevant scheme to the Department within that period; or
- (c) the Department notifies the Executive that it does not approve a relevant scheme; or
- (d) the Executive ascertains that a relevant scheme, as submitted or approved, will not, for whatever reason, involve the carrying out of any works to the premises concerned.

(4) In any case where, in accordance with paragraph (1), the Executive serves a repair notice under paragraph (1) or, as the case may be, paragraph (2) of Article 41 with respect only to certain of the works which would otherwise be specified in the notice, paragraph (1) of that Article shall have effect with respect to the notice as if after the word “notice” there were inserted the words “when taken together with works proposed to be carried out under a group repair scheme”.

(5) In this Article “group repair scheme” and “qualifying building” have the same meaning as in Part III of the Housing (Northern Ireland) Order 1992.

#### **Offence of failing to comply with a repair notice**

**41B.**—(1) Where the person upon whom a repair notice in respect of a house has been served intentionally fails to comply with the notice, he 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 completion of the works has expired.

(3) Article 42(1) shall have effect to determine whether a person has failed to comply with a notice and what is the period for completion of the works.

(4) The provisions of this Article are without prejudice to the exercise by the Executive of the powers conferred by Article 42.

#### **Enforcement of repair notices**

**42.**—(1) If a notice under Article 41 is not complied with, then, after the expiration of the time specified in the notice, or, if an appeal has been made against the notice and upon that appeal the notice has been confirmed with or without variation, after the expiration of 21 days

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from the final determination of the appeal, or of such longer period as the court in determining the appeal may fix, the Executive may itself do the work required to be done by the notice or, as the case may be, by the notice as varied by the court.

(2) Where the Executive is about to enter a house under paragraph (1) for the purpose of doing any work it shall give to the owner and to the occupier of the house notice in writing of its intention to do so.

(3) Subject to paragraph (4), any expenses incurred by the Executive under this Article, together with interest at the prescribed rate from the date when a demand for the expenses is served until payment, may be recovered by the Executive summarily as a civil debt from the owner of the house.

(4) Where the Executive claims to recover any expenses from a person as being the owner of the house and that person proves that he—

- (a) is receiving the rent merely as agent or trustee for some other person; and
- (b) has not, and since the date of the service on him of the demand has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the Executive;

his liability shall be limited to the total amount of the money which he has, or has had, in his hands.

(5) Any expenses and interest due to the Executive under this Article shall, until recovered, be deemed to be charged on and payable out of the estate in the land, in relation to which they have been incurred, of the owner of the land and of any person deriving title from him.

(6) The charge created by paragraph (5) 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 the Executive may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgages by deed accordingly.

### **Appeals against demolition orders, closing orders, etc.**

**43.**—(1) Any person aggrieved by—

- (a) a demolition order or refusal to determine such an order;
- (b) a notice or refusal to issue a notice under Article 37(1) extending or further extending the time within which premises are to be taken down or removed;
- (c) a closing order or refusal to determine such an order; or
- (d) a repair notice;

may, within 21 days from the date of the service of the notice or copy of the order or, as the case may be, from the service of notification of the refusal, appeal to the county court; and no steps shall be taken by the Executive to enforce any notice or order against which an appeal is brought before the appeal has been finally determined.

(2) An appeal shall not lie under paragraph (1)(a) or (c) at the instance of a person who is in occupation of the premises to which the order relates under a lease or agreement of which the unexpired term does not exceed one year.

(3) Without prejudice to the generality of paragraph (1), it shall be a ground of appeal—

- (a) in the case of a demolition order, that making a closing order or serving a repair notice is the most satisfactory course of action;
- (b) in the case of a closing order, that making a demolition order or serving a repair notice is the most satisfactory course of action;

- (c) in the case of a repair notice, that making a demolition order or closing order is the most satisfactory course of action;

and, where the grounds on which an appeal is brought are or include that specified in subparagraph (a), (b) or (c), the court, on hearing the appeal, shall have regard to any guidance given to the Executive under Article 46A.

(4) On an appeal under this Article, the county court may confirm or quash or vary the notice, order or decision appealed against as the court considers fit.

(5) Where an appeal is allowed against a demolition order, a closing order or repair notice and the reason or one of the reasons for allowing the appeal is that specified in subparagraph (a), (b) or as the case may be, (c) of paragraph (3), the judge shall, if requested to do so by the appellant or the Executive, include in his judgment a finding to that effect.

### **Operative date of demolition orders, closing orders and repair notices**

**44.**—(1) Any notice or order against which an appeal may be brought under Article 43 shall, if no such appeal is brought, become operative on the expiration of the period of 21 days mentioned in Article 43(1) and shall be final and conclusive as to any matters which could have been raised on such an appeal, and any such notice or order against which such an appeal is brought shall, if and so far as it is confirmed by the county court or the Court of Appeal, become operative as from the date of the final determination of the appeal.

(2) For the purposes of Article 43 and this Article, the abandonment of an appeal shall be deemed to be a final determination thereof, having the like effect as a decision confirming the notice, order or decision appealed against, and an appeal shall be deemed to be finally determined on the date on which the decision of the Court of Appeal is given, or, in a case where an appeal from the county court is not brought to the Court of Appeal, upon the expiration of the period within which such an appeal might have been brought.

### **Effect of Rent (Northern Ireland) Order 1978**

**45.** Nothing in the Rent (Northern Ireland) Order 1978<sup>(51)</sup> shall be deemed to affect the provisions of this Chapter relating to obtaining possession of a house with respect to which a clearance or demolition order has been made, or to prevent possession being obtained of any house which is required for the purpose of enabling the Executive to exercise its powers under this Chapter.

### **Standard of fitness for human habitation**

**46.**—(1) Subject to paragraph (2), a house is fit for human habitation for the purposes of this Order unless, in the opinion of the Executive, it fails to meet one or more of the requirements in sub-paragraphs (a) to (i) and, by reason of that failure, is not reasonably suitable for occupation

- (a) it is structurally stable;
- (b) it is free from serious disrepair;
- (c) it is free from dampness prejudicial to the health of the occupants (if any);
- (d) it has adequate provision for lighting, heating and ventilation;
- (e) it has an adequate piped supply of wholesome water;
- (f) there are satisfactory facilities in the house for the preparation and cooking of food, including a sink with a satisfactory supply of hot and cold water;

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- (g) it has a suitably located water-closet for the exclusive use of the occupants (if any);
- (h) it has, for the exclusive use of the occupants (if any), a suitably located fixed bath or shower and wash-hand basin each of which is provided with a satisfactory supply of hot and cold water; and
- (i) it has an effective system for the draining of foul, waste and surface water;

and any reference to a house being unfit for human habitation shall be construed accordingly.

(2) Whether or not a house which is a flat satisfies the requirements in paragraph (1), it is unfit for human habitation for the purposes of this Order if, in the opinion of the Executive, the building or a part of the building outside the flat fails to meet one or more of the requirements in sub-paragraphs (a) to (e) and, by reason of that failure, the flat is not reasonably suitable for occupation—

- (a) the building or part is structurally stable;
- (b) it is free from serious disrepair;
- (c) it is free from dampness;
- (d) it has adequate provision for ventilation; and
- (e) it has an effective system for the draining of foul, waste and surface water.

(3) The Department may by order amend the provisions of paragraph (1) or paragraph (2) in such manner and to such extent as it considers appropriate; and any such order—

- (a) may contain such transitional and supplementary provisions as the Department considers expedient; and
- (b) shall be made subject to negative resolution.

**Executive to consider guidance given by Department in deciding whether to take action under Article 32, 35, 38, 41 or 47**

**46A.**—(1) In deciding for the purposes of Articles 32, 35, 38, 41 or 47 whether the most satisfactory course of action, in respect of any house or building, is, if applicable—

- (a) serving notice under paragraph (1) of Article 41; or
- (b) serving notice under paragraph (2) of that Article; or
- (c) making a closing order under paragraph (1) of Article 38; or
- (d) making a closing order under paragraph (2) of that Article with respect to the whole or a part of the building concerned; or
- (e) making a demolition order under paragraph (1) of Article 35; or
- (f) making a demolition order under paragraph (2) of that Article; or
- (g) declaring the area in which the house or building is situated to be a clearance area in accordance with Article 32; or
- (h) declaring the area in which the house or building is situated to be a re-development area in accordance with Article 47;

the Executive shall have regard to such guidance as may be given by the Department.

(2) Without prejudice to the matters in respect of which the Department may give guidance generally, it may, in particular, give guidance in respect of financial and social considerations to be taken into account by the Executive.

(3) Where the Department proposes to give guidance under paragraph (1), or to revise guidance already given, it shall lay a draft of the proposed guidance or alterations before the Northern Ireland Assembly and—



- (a) the Department shall not give the guidance or revise the guidance until after the expiration of the statutory period; and
- (b) if within that period the Assembly resolves that the guidance or alterations be withdrawn the Department shall not proceed with the proposed alterations (but without prejudice to the laying of a further draft).”

## SCHEDULE 6

Article 95.

### MISCELLANEOUS AMENDMENTS OF THE ORDER OF 1981

#### *Interpretation*

1. In Article 2(2) (general interpretation) for the definition of “house in multiple occupation” there shall be substituted—

““house in multiple occupation” has the meaning given in Article 75 of the Housing (Northern Ireland) Order 1992;”.

#### *Housing management*

2. In Article 22 (house allocation scheme) after paragraph (4) add the following paragraphs—

“(5) An applicant for a tenancy or licence of a house under a scheme shall, for the purpose of satisfying the Executive as to his identity, furnish such certificates, documents, information and evidence as the Executive may require.

(6) Nothing in a scheme or in any statutory provision shall oblige the Executive to entertain an application for housing accommodation until the applicant has complied with the requirements of paragraph (5).”

#### *Provision of housing accommodation*

3. In Article 31 (provision of houses for sale)—

(a) for the heading and paragraph (1) substitute—

#### **“Housing development**

**31.—(1)** The Executive may construct houses for sale.

(1A) The Executive may, under Article 87, acquire land for the purposes of—

(a) paragraph (1); or

(b) disposing of the land to a person who intends—

(i) to construct houses on it,

(ii) to provide housing accommodation by the conversion, improvement, rehabilitation or repair of buildings on it, or

(iii) to use it for purposes which, in the opinion of the Executive are necessary or desirable for, or incidental to, the development of the land for housing purposes.”;

(b) in paragraphs (2) and (5) for the words “paragraph (1)(b)” substitute “paragraph (1A)(b)”.

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*Re-development areas*

4. In Article 47 (re-development areas), in paragraph (1) for sub-paragraph (c) substitute—  
“(c) having regard to Article 46A, the most satisfactory course of action is to re-develop the area as a whole;”.

*Housing action areas*

5. In Article 57 (provision, improvement, etc., of housing accommodation by the Executive in housing action areas), in paragraph (2) for the words from “registered” to “the association” substitute “registered under Part II of the Housing (Northern Ireland) Order 1992 or other person whereby the association or that person”.

6. In Article 58 (assistance for carrying out environmental works)—  
(a) in paragraph (1)(a) after the word “approved” insert “or for which assistance is being or has been provided under Part III of the Housing (Northern Ireland) Order 1992”; and  
(b) after paragraph (3) insert the following paragraph—  
“(3A) The Executive may, with the approval of the Department, make and carry into effect an agreement with any housing association registered under Part II of the Housing (Northern Ireland) Order 1992 or other person whereby the association or that person may act as agent for the Executive in giving assistance towards the carrying out of environmental works under paragraph (1).”

*Land acquisition*

7. In Article 87 (acquisition of land by the Executive), in paragraph (1) omit the words “under this Order”.

8. In Article 161 (registration of certain matters as statutory charges), in paragraph (1), after sub-paragraph (b) insert—

“(bb) any closing order made under Article 38;”.

*Orders excluding buildings from a clearance area*

9. In Part II of Schedule 4, in paragraph 15 (suspension of right to payment after making of exclusion order) for the words “Article 93 or 95” substitute “Article 91”.

SCHEDULE 7

Article 102.

AMENDMENTS OF [THE RENT \(NORTHERN IRELAND\) ORDER 1978 \(NI 20\)](#)

1.—(1) In Article 3(2A) (definition of “unregistered housing association”) for the words from “Article 114” onwards substitute “Article 3 of the Housing (Northern Ireland) Order 1992 which is not registered under Article 14 of that Order”.

(2) In Article 9 (conversion of restricted tenancies)—

- (a) in paragraph (1) for the words from “under” to “subsists” substitute  
“of a dwelling-house—  
(a) which at the date of the application is let under a restricted tenancy, or  
(b) which is not let at that date but was so let before it,

- cause the dwelling-house”;
- (b) in paragraph (3) after the words “paragraph (2)” insert “in relation to a dwelling-house described in paragraph (1)(a)”;
- (c) after paragraph (3) insert the following paragraph—
- “(3A) Where a regulated rent certificate is issued under paragraph (2) in relation to a dwelling-house described in paragraph (1)(b), the dwelling-house shall, if let under a tenancy to which this Order applies, be let under a regulated tenancy.”
- (3) In Article 10 (ancillary provisions as to applications under Articles 8 and 9), after paragraph (3) add the following paragraph—
- “(4) Nothing in this Article applies in relation to a dwelling-house described in Article 9(1)(b).”
2. In Article 25 (the register of rents) in paragraph (8) omit the words “on payment of the prescribed fee”.
3. In Article 54 (unlawful eviction and harassment of occupier) after paragraph (3) insert the following paragraph—
- “(3A) Proceedings for an offence under this Article may be instituted by the district council in whose district the dwelling-house is situated.”
4. Schedule 3 shall be omitted.
5. In Part I of Schedule 4 (cases in which court may order possession of dwelling-houses let on or subject to protected or statutory tenancies), in Case 1 there shall be added the following—
- “In paragraphs (a) and (b) above any reference to an obligation of a tenancy does not include an obligation to repair, maintain or carry out works to the dwelling-house comprised in the tenancy, other than an obligation arising by virtue of Article 42.”

## SCHEDULE 8

Article 107.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.))*

- 1.—(1) In Schedule 11 (matters requiring to be registered in the Statutory Charges Register), in paragraph 37, after sub-paragraph (b) insert—
- “(bb) any closing order made under Article 38 of that Order;”.
- (2) At the end of that Schedule, add the following paragraph—
- “**41.** Any of the following matters under the Housing (Northern Ireland) Order 1992—
- (a) the statutory condition attached by virtue of Article 13 to land acquired by a registered housing association;
- (b) any grant condition registrable by virtue of Articles 57(5), 58(3), 59(3), 60(7) or 61(3);
- (c) the statutory condition of participation in a group repair scheme as an assisted participant, registrable under Article 68(3);
- (d) any grant condition registrable by virtue of regulations made under Article 73(3);
- (e) any notice served under Article 76(1), 79(1), 80(1) or 84(4);

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- (f) any charge under Article 84(8);
- (g) any notice served under paragraph 2 of Schedule 4, any undertaking accepted under paragraph 5 of that Schedule or any closing order made under paragraph 6 of that Schedule.”

*The Income and Corporation Taxes Act 1970 (c. 10)*

2. In section 342B (disposals by Northern Ireland housing associations)—
  - (a) in paragraph (b) of subsection (1) for the words from “Chapter” to “1981” substitute “Chapter II of Part II of the Housing (Northern Ireland) Order 1992”;
  - (b) in subsection (2) for “Part VII” substitute “Part II”.

*The Land Acquisition and Compensation (Northern Ireland) Order 1973 (NI 21)*

3. In Article 30(9) for the definition of “undertaking” substitute—
 

““undertaking” means an undertaking accepted under paragraph 5 of Schedule 4 to the Housing (Northern Ireland) Order 1992;”.

*The Housing (Northern Ireland) Order 1983 (NI 15)*

4. In Schedule 10 (amendments), in the amendments to the principal Order, for the words “In Articles 14(2), 36(3) and 40, in each provision” substitute “In Article 14(2)”.

*The Income and Corporation Taxes Act 1988 (c. 1)*

5. In section 488 (co-operative housing associations) in subsection (6) for the words from “Article” to “1981” substitute “Article 3 of the Housing (Northern Ireland) Order 1992”.

*The Social Security Administration (Northern Ireland) Act 1992 (c. 8)*

6. In section 126(6) (arrangements for housing benefit), in the definition of “registered housing association”, for “Part VII of the Housing (Northern Ireland) Order 1981” substitute “Part II of the Housing (Northern Ireland) Order 1992”.

SCHEDULE 9

Article 108(1).

PART I

REPEALS COMING INTO OPERATION UNDER ARTICLE 1(2)

Chapter or Number	Title	Extent of repeal
1899 c. 44.	The Small Dwellings Acquisition Act 1899.	The whole Act.
1921 c. 19.	The Housing Act 1921.	Section 5.
1923 c. 30 (N.I.).	The Housing Act (Northern Ireland) 1923.	Sections 5 and 7.

Chapter or Number	Title	Extent of repeal
1929 c. 18 (N.I.).	The Housing Act (Northern Ireland) 1929.	Section 7.
1947 c. 8 (N.I.).	The Small Dwellings Acquisition Act (Northern Ireland) 1947.	The whole Act.
1948 c. 6 (N.I.).	The Small Dwellings Acquisition Act (Northern Ireland) 1948.	The whole Act.
1956 c. 10 (N.I.).	The Housing Act (Northern Ireland) 1956.	Section 25.
1966 c. 21 (N.I.).	The Finance Act (Northern Ireland) 1966.	Section 15.
1968 c. 30 (N.I.).	The Local Government and Roads Act (Northern Ireland) 1968.	Part I, so far as it applies to the Northern Ireland Housing Executive.
1970 c. 18 (N.I.).	The Land Registration Act (Northern Ireland) 1970.	In Schedule 11, paragraphs 5 to 7, 13, 17, 23, 33, 34, 37(f) and (g).
1973 NI 21.	The Land Acquisition and Compensation (Northern Ireland) Order 1973.	In Article 30(3B)(a) the words from “and is” to “fit”.  In Article 37— (a) in paragraph (2)— (i) in sub-paragraph (b) the word “either”, paragraph (ii) and the word “or” immediately preceding it; (ii) sub-paragraph (c); (iii) the words from “and in this paragraph” onwards; (b) in paragraph (6A), in sub-paragraph (a), the words from “and is” to “so fit”.
1978 NI 20.	The Rent (Northern Ireland) Order 1978.	In Article 25(8) the words “on payment of the prescribed fee”.  Schedule 3.
1981 NI 3.	The Housing (Northern Ireland) Order 1981.	In Article 2(2), the definition of “reasonable expense”.  Article 6(6) and (7).

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Chapter or Number	Title	Extent of repeal
		Articles 51 and 64.
		In Article 87(1), the words “under this Order”.
		Parts VI and VII.
		In Article 161(1), sub-paragraphs (f) and (g).
		Schedules 7A, 8 and 9.
1981 NI 26.	The Magistrates' Courts (Northern Ireland) Order 1981.	In Schedule 6, paragraphs 1 and 178.
1983 NI 15.	The Housing (Northern Ireland) Order 1983.	In Article 46— (a) in paragraph (1) the words “subject to Article 12” and “I or”; (b) in paragraph (2) the words from “any question” (first time) to “Part and”.
		In Part IV, Chapters I and II.
		Article 86.
		Schedules 1, 1A and 5 to 8.
		In Schedule 10, in the amendments relating to the principal Order, the words from “In Article 104(1)(a)” to the end of the Schedule.
1986 NI 9.	The Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986.	In Part I of Schedule 1, the entries relating to Articles 114, 131 and 133 of the Housing (Northern Ireland) Order 1981.
1986 NI 13.	The Housing (Northern Ireland) Order 1986.	In Article 14, paragraph (6) and in paragraph (7) the words from “(where” to “paragraph (6))”.
		In Part III, Article 20 and Chapter I.
		Article 40.
		In Schedule 4, paragraphs 1 to 3.

Chapter or Number	Title	Extent of repeal
		Schedules 5 and 6.
1988 NI 23.	The Housing (Northern Ireland) Order 1988.	In Schedule 8, paragraphs 3(1), 4 to 15, 18(2), 19 and 20(1). Articles 18 to 24 and 28.
1989 NI 19.	The Insolvency (Northern Ireland) Order 1989.	In Schedule 2, paragraphs 1 to 4, 6 and 7. In Schedule 9, paragraph 92.

## PART II

### REPEALS COMING INTO OPERATION ON A DAY TO BE APPOINTED UNDER ARTICLE 1(3)

Chapter or Number	Title	Extent of repeal
1970 c. 18 (N.I.).	The Land Registration Act (Northern Ireland) 1970.	In Schedule 11, paragraph 37A.
1983 NI 15.	The Housing (Northern Ireland) Order 1983.	Part III. In Article 106— (a) in paragraph (3) the words “Part III”; and (b) paragraph (4). Schedule 4.

## EXPLANATORY NOTE

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

This Order makes further provision with respect to housing in Northern Ireland.

Part I is introductory. Part II re-states with amendments the law relating to housing associations and Part III provides for the payment of grants towards the cost of improvement and repair of housing accommodation, the carrying out of works of maintenance, repair and improvement and the replacement of dwellings. Part IV is concerned with houses in multiple occupation.

Part V makes miscellaneous amendments to the Housing (Northern Ireland) Orders of 1981, 1983 and 1986. Article 90 introduces Schedule 5 which amends and restates the provisions of the Order of 1981 relating to clearance areas and clearance, demolition and closing orders. Article 94 provides for the winding up of the home purchase assistance scheme constituted under Part IX of the Order

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of 1981. Article 96 substitutes for the “right to buy” provisions of the Order of 1983 a house sales scheme to be administered by the Northern Ireland Housing Executive.

Part VI amends the Rent (Northern Ireland) Order 1978. Article 98 relates regulated tenancy standards to the standard of fitness for human habitation under Article 46 of the Order of 1981. Article 100 provides for the reduction of the rent of a dwelling-house let under a regulated tenancy where the landlord has failed to comply with a certificate of disrepair.

Part VII contains miscellaneous and supplementary provisions. Under Article 103 the Executive is empowered to provide professional, technical and administrative services to owners or occupiers of certain dwellings. Article 105 repeals the Small Dwellings Acquisition Acts 1899 to 1948.