STATUTORY RULES OF NORTHERN IRELAND

2010 No. 63

RATES

The Rates (Deferment) Regulations (Northern Ireland) 2010

Laid before the Assembly in draft

Made - - - -	*4th March 2010*
Coming into operation	*1st April 2010*

The Department of Finance and Personnel makes the following Regulations in exercise of the powers conferred by Article 29A of the Rates (Northern Ireland) Order 1977(**1**).

Citation and commencement

1. These Regulations may be cited as the Rates (Deferment) Regulations (Northern Ireland) 2010 and shall come into operation on 1st April 2010.

Interpretation

2.—(1) In these Regulations—

"the 1977 Order" means the Rates (Northern Ireland) Order 1977;

"the 2003 Order" means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(**2**);

"agreement" means an agreement under regulation 3(1);

"agreement holder", in relation to an agreement, means the person with whom the Department has entered into the agreement or, in the case of the death of an agreement holder, that person's personal representatives;

"authorised person" means a person authorised by the Department in writing for the purposes of these Regulations;

"eligible person", in relation to a qualifying hereditament, has the meaning assigned by regulation 3(2);

"hospital" has the same meaning as in Article 2 of the 2003 Order;

(**1**) S.I. 1977/2157 (N.I. 28); Article 29A was inserted by Article 10 of the Rates (Amendment) (Northern Ireland) Order 2006 (S.I. 2006/2954 (N.I. 18)) and substituted by section 5 of the Rates (Amendment) Act (Northern Ireland) 2009 (c. 8 (N.I.))

(**2**) S.I. 2003/431 (N.I. 9)

"market value", in relation to a hereditament, means the amount which that hereditament might reasonably expect to realise if it were sold with vacant possession on the open market by a willing seller free from any mortgage or charge;

"nursing home" has the same meaning as in Article 11 of the 2003 Order;

"qualifying hereditament" means, subject to paragraph (3), a hereditament which is a dwelling-house or, though not a dwelling-house, is used partly for the purposes of a private dwelling; and

"residential care home" has the same meaning as in Article 10 of the 2003 Order.

(2) For the purposes of Article 29A of the 1977 Order and these Regulations—

(a) "occupier" has the meaning it has for the purposes of the 1977 Order;

(b) "owner" means any person for the time being receiving or entitled to receive, on his own account, the rack rent of the hereditament in connection with which the word is used or who, if the hereditament were let at a rack rent, would so receive or be entitled to receive that rent;

(c) a person is of pensionable age if he has attained the qualifying age for state pension credit as determined under section 1(2)(b) and (6) of the State Pension Credit Act (Northern Ireland) 2002(**3**).

(3) For the purposes of these Regulations a hereditament—

(a) which is not in use; and

(b) which the Department considers will, when next in use, be used wholly or partly for the purposes of a private dwelling,

shall be deemed to be a qualifying hereditament.

(4) In determining whether a person occupies a qualifying hereditament as his only or principal residence for the purposes of these Regulations, regard shall be had to any residence occupied by that person whether or not the residence is in Northern Ireland.

Deferment agreement

3.—(1) Subject to the conditions set out in Schedule 1 being satisfied, the Department may enter into an agreement with an eligible person for the payment of rates in respect of the capital value of a qualifying hereditament to be deferred.

(2) A person is an eligible person in relation to a qualifying hereditament if—

(a) he is both the occupier and owner of that hereditament; and

(b) a person to whom paragraph (3) applies.

(3) This paragraph applies to a person if the person is—

(a) of pensionable age on 1st April in the year in which the agreement is entered into;

(b) the partner of a person who is eligible to make an agreement under these Regulations in respect of the same hereditament by virtue of sub-paragraph (a); or

(c) the surviving partner of a person who had made an agreement under these Regulations in respect of the same hereditament.

(4) In deciding whether to enter into an agreement with an eligible person, the Department shall consider whether the value of that person's beneficial interest in the qualifying hereditament is, at any time, likely to be less than 30 per cent. of the market value of that hereditament.

(5) Paragraph (4)—

(**3**) 2002 c.14 (N.I.)

(a) is without prejudice to the power of the Department to consider other matters before deciding whether to enter into an agreement with an eligible person;

(b) shall not apply in the case of an eligible person who is the surviving partner of a person who had made an agreement under these Regulations in respect of the same hereditament, but such a person will not be entitled to defer the payment of rates for a particular year if condition 4(a) or (b) of Schedule 2 applies.

(6) Where an agreement ("the second agreement") is made with an eligible person who is the surviving partner of a person who had made an agreement under these Regulations in respect of the same hereditament ("the first agreement"), the second agreement may provide for the transfer of the amount outstanding under the first agreement to the surviving partner.

(7) An agreement shall apply to the payment of the rates for the whole of the commencement year and where an amount in respect of such rates has already been paid by the agreement holder, the Department shall repay that amount.

(8) An agreement shall be in writing.

Conditions of an agreement

4.—(1) An agreement shall contain the conditions set out in Schedule 2 and may contain such other conditions as the Department thinks fit.

(2) In Schedule 2 "hereditament" means the hereditament which is the subject of the agreement.

Amount outstanding under an agreement to be a statutory charge

5.—(1) The amount outstanding under an agreement shall be a charge on and payable out of the estate of the agreement holder in the land constituting the hereditament.

(2) The charge created by paragraph (1) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Department by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the Department may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881(**4**) on mortgagees by deed accordingly.

(3) In this regulation "hereditament" means the hereditament which is the subject of the agreement.

Modifications of the 1977 Order

6.—(1) Articles 9(4) and (5) and 32 of the 1977 Order (apart from paragraph (7) of Article 32) shall not apply where the payment of a rate has been deferred by virtue of an agreement.

(2) Paragraph (1) is without prejudice to the jurisdiction of the High Court or the county court to enforce an agreement.

(3) Article 30 of the 1977 Order shall not apply to a payment made pursuant to an agreement.

(**4**) 1881 c. 41

Sealed with the Official Seal of the Department of Finance and Personnel on 4th March 2010

L.S.

Brian McClure
A senior officer of the Department of Finance and Personnel

SCHEDULE 1

Regulation 3(1)

Conditions to be satisfied before the Department can enter an agreement with an eligible person

1. The capital value of the qualifying hereditament shall not be less than £50,000.

2.—(1) Subject to sub-paragraph (2), the qualifying hereditament must be the only or principal residence of an eligible person, who is of pensionable age on 1st April in the year in which the agreement is entered into.

(2) The condition as to pensionable age in sub-paragraph (1) shall not apply in the case of an eligible person who is the surviving partner of a person who had made an agreement under these Regulations in respect of the qualifying hereditament.

3.—(1) An eligible person has made an application to the Department and has furnished the Department with such information as the Department may reasonably require.

(2) An eligible person shall have informed the Department of any change of circumstances affecting the application made or the information furnished under sub-paragraph (1).

4.—(1) Subject to sub-paragraph (2), there shall be no rates due and payable by an eligible person for a year earlier than that in which the agreement is entered into.

(2) Sub-paragraph (1) shall not apply in the case of rates due and payable in respect of the qualifying hereditament by an eligible person who is the surviving partner of a person who had made an agreement under these Regulations in respect of that hereditament.

5. Where an eligible person owns an estate in any of the land constituting the qualifying hereditament as a joint tenant or as a tenant in common, the other joint tenants or tenants in common must be eligible persons and enter into the agreement.

6.—(1) The value of the beneficial interest of an eligible person in the qualifying hereditament, as ascertained by the Department, shall not be less than 40 per cent. of an authorised person's estimate of the market value of the qualifying hereditament.

(2) Sub-paragraph (1) shall not apply in a case of an eligible person who is the surviving partner of a person who had made an agreement under these Regulations in respect of the qualifying hereditament, but such a person will not be entitled to defer the payment of rates for a particular year if condition 4(a) or (b) of Schedule 2 applies.

7. Any person, other than an eligible person, with an estate in any of the land constituting the qualifying hereditament shall have consented in writing to the agreement.

8. Any person who is in, or may go into, occupation of the qualifying hereditament (other than an eligible person) and who has attained the age of 17 years shall have—

(a) consented in writing to the agreement; and

(b) agreed in writing to postpone any rights or interest which he has, or may acquire in the future, in the qualifying hereditament to the rights and interest of the Department in that hereditament,

and an eligible person shall have warranted that all such persons have done so.

9. The eligible person shall have acknowledged in writing that—

(a) he is aware that, on termination of the agreement, the qualifying hereditament may have to be sold in order to pay the amount outstanding under the agreement; and

(b) he has been advised by the Department to seek independent legal and financial advice before entering into the agreement.