1989 No. 126

LANDLORD AND TENANT

Business Expansion Scheme (Qualifying Tenancies) Regulations (Northern Ireland) 1989

Made . . . . . *31st March 1989*

Coming into operation . . *5th May 1989*

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The Department of the Environment, in exercise of the powers conferred on it by section 50(3) of the Finance Act 1988(**a**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation and commencement

1. These regulations may be cited as the Business Expansion Scheme (Qualifying Tenancies) Regulations (Northern Ireland) 1989 and shall come into operation on 5th May 1989.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**b**) shall apply to regulation 1 and the following provisions of these regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"the Act of 1937" means the Arbitration Act (Northern Ireland) 1937(**c**).

"let as a separate dwelling" shall be construed in like manner as that expression is to be construed for the purposes of the Rent (Northern Ireland) Order 1978(**d**).

Qualifying tenancies

3.—(1) The following provisions of these regulations are prescribed as requirements or conditions for the purposes of section 50(3)(*b*)(iii) of the Finance Act 1988 (meaning of "qualifying tenancy").

(2) A tenancy under which a dwelling-house (which may be a house or part of a house) is let as a separate dwelling is a qualifying tenancy if and so long as—

(*a*) the tenant or, as the case may be, each of the joint tenants is an individual; and

(*b*) the tenant or, as the case may be, at least one of the joint tenants occupies the dwelling-house as his only or principal home; and

(*c*) the tenancy is not one which, by virtue of regulation 4, cannot be a qualifying tenancy; and

(*d*) the tenancy complies with the requirements and conditions specified in regulations 4 to 17.

(**a**) 1988 c. 39
(**b**) 1954 c. 33 (N.I.)
(**c**) 1937 c. 8 (N.I.)
(**d**) S.I. 1978/1050 (N.I. 20)

Tenancies which cannot be qualifying tenancies

4. If and so long as a tenancy falls within any paragraph in Part I of Schedule 1, it cannot be a qualifying tenancy; and in that Schedule—

(*a*) "tenancy" means a tenancy under which a dwelling-house is let as a separate dwelling; and

(*b*) Part II has effect for determining the net annual value of a dwelling-house for the purposes of Part I.

Letting of a dwelling-house together with other land

5.—(1) If, under a tenancy, a dwelling-house is let together with other land, then, for the purposes of these regulations—

(*a*) if and so long as the main purpose of the letting is the provision of a home for the tenant or, where there are joint tenants, at least one of them, the other land shall be treated as part of the dwelling-house; and

(*b*) if and so long as the main purpose of the letting is not as mentioned in sub-paragraph (*a*), the tenancy shall be treated as not being one under which a dwelling-house is let as a separate dwelling.

(2) Nothing in paragraph (1) affects any question whether a tenancy is precluded from being a qualifying tenancy by virtue of any provision of Schedule 1.

Tenant sharing accommodation with persons other than the landlord

6.—(1) Where a tenant has the exclusive occupation of any accommodation (in this regulation referred to as "the separate accommodation") and—

(*a*) the terms as between the tenant and his landlord on which he holds the separate accommodation include the use of other accommodation (in this sub-paragraph referred to as "the shared accommodation") in common with another person or other persons, not being or including the landlord, and

(*b*) by reason only of the circumstances mentioned in sub-paragraph (*a*), the separate accommodation would not, apart from this paragraph, be a dwelling-house let on a qualifying tenancy,

the separate accommodation shall, subject to paragraphs (2) to (5), be deemed to be a dwelling-house let on a qualifying tenancy.

(2) For the avoidance of doubt it is hereby declared that where, for the purpose of determining the net annual value of the separate accommodation, it is necessary to make an apportionment under Part II of Schedule 1 regard shall be had to the circumstances mentioned in paragraph (1)(*a*).

(3) While the tenant is in possession of the separate accommodation, any action by the landlord under any term of the tenancy terminating or modifying, or providing for the termination or modification of, the tenants right to the use of any of the shared accommodation which is living accommodation shall, subject to paragraph (4), cause the tenancy to cease being a qualifying tenancy.

(4) Where the terms of the tenancy provide that during the tenancy the landlord may vary the persons in common with whom the tenant is entitled to

use the shared accommodation or increase their number any such variation or increase shall not cause the tenancy to cease to be a qualifying tenancy.

(5) In paragraph (3) "living accommodation" means accommodation of such a nature that the fact that it constitutes or is included in the shared accommodation is sufficient, apart from this regulation, to prevent the tenancy from constituting a qualifying tenancy of a dwelling-house.

Certain sub-lettings not to exclude any part of the sub-lessor's premises from being a qualifying tenancy

7.—(1) Where the tenant of a dwelling-house has sub-let a part but not the whole of the dwelling-house, then, as against his landlord or any superior landlord, no part of the dwelling-house shall be treated as excluded from being a dwelling-house let on a qualifying tenancy by reason only that the terms on which any person claiming under the tenant holds any part of the dwelling-house include the use of accommodation in common with other persons.

(2) Nothing in this regulation affects the rights against, and liabilities to, each other of the tenant and any person claiming under him.

Termination of a qualifying tenancy by the landlord

8.—(1) The terms of a qualifying tenancy shall provide that it cannot be brought to an end by the landlord except by an order of the court pursuant to regulation 11.

(2) The terms of a qualifying tenancy shall provide that if, on or before the date on which the tenancy arises, the person who is to be the tenant under that tenancy—

(*a*) enters into an obligation to do any act which will cause the tenancy to come to an end at a time when it is a qualifying tenancy, or

(*b*) executes, signs or gives any surrender, notice to quit or other document which has the effect of bringing the tenancy to an end at a time when it is a qualifying tenancy,

the obligation referred to in sub-paragraph (*a*) shall not be enforceable or, as the case may be, the surrender, notice to quit or other document referred to in sub-paragraph (*b*) shall be of no effect.

Prescribed periodic tenancy to arise on ending of fixed term tenancy

9.—(1) The terms of a qualifying tenancy shall provide that if a qualifying tenancy which is a fixed term tenancy comes to an end otherwise than by virtue of—

(*a*) an order of the court, or

(*b*) a surrender or other action by the tenant under the terms of the tenancy,

then unless a further tenancy in respect of the same or substantially the same dwelling-house has been entered into by the landlord and tenant to commence on the coming to the end of the fixed term tenancy the tenant shall, subject to the provisions of regulation 11, be entitled to remain in possession of the dwelling-house by virtue of a periodic tenancy as described in paragraph (2).

(2) The periodic tenancy referred to in paragraph (1) is one—

(*a*) taking effect in possession immediately on the coming to an end of the fixed term tenancy;

(*b*) granted by the person who was the landlord under the fixed term tenancy immediately before it came to an end to the person who was then the tenant under that tenancy;

(*c*) under which the premises which are let are the same dwelling-house as was let under the fixed term tenancy;

(*d*) under which the periods of the tenancy are the same as those for which rent was last payable under the fixed term tenancy; and

(*e*) under which the other terms are the same as those of the fixed term tenancy immediately before it came to an end, except that there shall not be included—

(i) any term which provides for determination by the landlord; or

(ii) without prejudice to regulation 11(*a*), the term specified in regulation 11(*g*).

(3) Any reference in these regulations to a prescribed periodic tenancy is a reference to a periodic tenancy arising by virtue of this regulation.

Fixing of terms of prescribed periodic tenancy

10.—(1) In this regulation, in relation to a prescribed periodic tenancy,—

(*a*) "the former tenancy" means the fixed term tenancy on the coming to an end of which a prescribed periodic tenancy arises; and

(*b*) "the agreed terms" means the terms of the tenancy which have been created by virtue of regulation 9(2)(*e*) other than terms as to the amount of the rent.

(2) The terms of a qualifying tenancy shall provide—

(*a*) that not later than the first anniversary of the day on which the former tenancy came to an end, the landlord may serve on the tenant, or the tenant may serve on the landlord, a notice proposing terms of the prescribed periodic tenancy different from the agreed terms and, if the landlord or the tenant considers it appropriate, proposing an adjustment of the amount of the rent to take account of the proposed terms;

(*b*) that where a notice has been served under sub-paragraph (*a*)—

(i) within the period of 3 months from the date on which the notice was served on him, the landlord or the tenant, as the case may be, may, in accordance with sub-paragraph (*c*), refer the notice to an arbitrator under the Act of 1937;

(ii) if the notice is not so referred, then, with effect from such date, not falling within the period referred to in head (i), as may be specified in the notice, the terms proposed in the notice shall become terms of the tenancy in substitution for any of the agreed terms dealing with the same subject matter and the amount of the rent shall be varied in accordance with any adjustment so proposed;

(*c*) that a notice under sub-paragraph (*a*) referred to an arbitrator shall request him to consider the terms proposed in the notice and to