STATUTORY INSTRUMENTS

1986 No. 1301 (N.I. 13)

The Housing (Northern Ireland) Order 1986 [F1]

- - - - - - *25th July 1986*

F1 functions transf. SR 1999/481

PART I

Introductory

Title and commencement

1. This Order may be cited as the Housing (Northern Ireland) Order 1986 and shall come into operation on the expiration of 2 months from the day on which it is made.

General interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 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 commencement date" means the date of the coming into operation of 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.

PART II

Housing Defects

Eligibility

Designation of defective dwellings

4.—(1) The Department may designate as a class any buildings each of which consists of or includes one or more dwellings if it appears to the Department that—

(a) buildings in the proposed class are defective by reason of their design or construction; and

(b) by virtue of the circumstances mentioned in sub-paragraph (a) having become generally known, the value of some or all of the dwellings concerned has been substantially reduced.

(2) Any dwelling which a building in a class designated under this Article consists of or includes is referred to in this Part as a "defective dwelling"; and in this Part in relation to such a dwelling—

(a) "the qualifying defect" means that which, in the opinion of the Department, is wrong with the buildings in that class; and

(b) "the cut-off date" means the date by which, in the opinion of the Department, the circumstances mentioned in paragraph (1)(a) became generally known.

(3) A designation under this Article shall describe the qualifying defect and specify—

(a) the date on which the designation is to come into operation;

(b) the cut-off date (not being a date falling after the date specified under sub-paragraph (a)); and

(c) the period within which persons may seek assistance under this Part in respect of the defective dwellings concerned.

(4) The Department may vary or revoke a designation under this Article and may by a variation of the designation extend the period referred to in paragraph (3)(c), whether or not it has expired; but

(a) no variation or revocation shall affect the operation of the provisions of this Part in relation to any dwelling if, before the variation or revocation comes into operation, it is a defective dwelling by virtue of the designation in question and application for assistance in respect of it has been made under Article 6; and

(b) no variation shall alter the cut-off date.

(5) Notice of a designation under this Article and of the variation or revocation of such a designation shall be published in the Belfast Gazette.

(6) Any question arising as to whether a building is or was at any time in a class designated under this Article shall be determined by the Department.

(7) No designation shall describe a designated class by reference to the area in which the buildings concerned are situated.

Eligibility for assistance

5.—(1) Subject to the following provisions of this Part, a person to whom this Article applies is eligible for assistance in respect of a defective dwelling for the purposes of this Part if—

(a) he holds a relevant interest in the dwelling, and

(b) one of the sets of conditions described in paragraphs (2) and (3) is satisfied;

and for the purposes of sub-paragraph (a) a person shall be treated as holding a relevant interest in a dwelling notwithstanding that he has conveyed or assigned that interest to another person by way of mortgage.

(2) The first set of conditions is that—

(a) there was a disposal by a relevant body of a relevant interest in the dwelling before the cut-off date; and

(b) there has been no disposal for value by any person of a relevant interest in the dwelling on or after the cut-off date.

(3) The second set of conditions is that—

(a) a person to whom this Article applies acquired a relevant interest in the dwelling on a disposal for value occurring within the period of twelve months beginning with the cut-off date;

(b) on the date of that disposal that person was unaware of the association of the dwelling with the qualifying defect;

(c) the value by reference to which the price for the disposal was calculated did not take any, or any adequate, account of the qualifying defect; and

(d) if the cut-off date had fallen immediately after the date of the disposal, the first set of conditions would have been satisfied.

(4) No person is eligible for assistance in respect of a defective dwelling if the Executive is of the opinion that—

(a) work to the building that consists of or includes the dwelling has been carried out in order to deal with the qualifying defect, and

(b) on the completion of the work, no further work relating to the dwelling was required to be done to the building in order to deal satisfactorily with the qualifying defect.

(5) In this Part, except in paragraph 2 of Schedule 2, references to a disposal include references to a part disposal; but for the purposes of this Part, a disposal of an interest in a dwelling is a disposal of a relevant interest in the dwelling if, and only if, on the disposal the person to whom it is made acquires a relevant interest in the dwelling.

(6) This Article applies to—

(a) an individual who is not a trustee,

(b) trustees, if all the beneficiaries are individuals, and

(c) personal representatives.

(7) In this Part—

(a) "relevant interest" means an estate in fee simple (including an estate held under a fee farm grant) or a long tenancy unless, in either case, it is subject to a long tenancy;

(b) references to an interest in a dwelling are references to an interest in land which is or includes the dwelling;

(c) in relation to a person holding an interest in a dwelling formed by the conversion of another dwelling, references to a previous disposal of an interest in the dwelling include a reference to a previous disposal on which an interest in land which included that part of the original dwelling in which his interest subsists was acquired; and

(d) references to a disposal of an interest for value are references to a disposal for money or money's worth, whether or not representing full value for the interest disposed of.

(8) Subject to paragraph (9) a tenancy is a long tenancy for the purposes of paragraph (7) if—

(a) it is a tenancy granted for a term certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by a notice given by or to the tenant or by re-entry, forfeiture or otherwise; or

(b) it is a tenancy granted in pursuance of Chapter I of Part II of the Order of 1983 or Part III of this Order.

(9) A tenancy is not a long tenancy for those purposes if it is an interest created by way of security and liable to termination by the exercise of a right of redemption or otherwise.

Entitlement to reinstatement grant or repurchase

6.—(1) A person seeking assistance under this Part in respect of a defective dwelling shall make a written application to the Executive within such period as is specified in the designation in question.

(2) Subject to paragraph (8) and Article 17(3), the Executive, on receiving such an application shall, if the applicant is eligible for assistance in respect of the defective dwelling, determine**[**F2 as soon as reasonably practicable**]**F2 whether he is entitled to assistance by way of reinstatement grant or by way of repurchase.

(3) For the purposes of that determination the applicant is entitled to assistance by way of reinstatement grant if—

(a) the Executive is satisfied that each of the conditions mentioned in paragraph (4) is met, and

(b) paragraph (5) does not apply in his case;

and in any other case he is entitled to assistance by way of repurchase.

(4) The conditions referred to in paragraph (3) are that—

(a) the defective dwelling is a house;

(b) if the work required to reinstate the dwelling (together with any other work which the Executive is satisfied the applicant proposes to carry out) were carried out—

(i) the dwelling would be likely to provide satisfactory housing accommodation for a period of at least 30 years, and

(ii) an individual acquiring a fee simple estate in the dwelling with vacant possession would be likely to be able to arrange a mortgage on satisfactory terms with a lending institution;

(c) giving assistance by way of reinstatement grant is justified having regard, on the one hand, to the amount of reinstatement grant that would be payable in respect of the dwelling in pursuance of this Part and, on the other hand, to the likely value of the fee simple estate in the dwelling with vacant possession after the work required to reinstate it had been carried out; and

Sub#para. (d) rep. by SR 1988/329

(5) This paragraph applies in the case of an applicant where the Executive is satisfied on a claim made by him that it would be unreasonable to expect him to secure or await the carrying out of the work required to reinstate the defective dwelling.

(6) The Department may by order amend paragraph (4) (whether as originally enacted or as previously amended under this paragraph) so as to—

(a) modify or omit any of the conditions mentioned in that paragraph, or

(b) add or substitute for any of those conditions other conditions;

and an order made under this paragraph shall not affect the operation of this Article in relation to applications made under this Article before the order comes into force.

(7) For the purposes of this Part—

(a) the work required to reinstate a defective dwelling is the work relating to the dwelling that is required to be done to the building that consists of or includes the dwelling in order to deal satisfactorily with the qualifying defect, and

(b) where there is work falling within sub-paragraph (a), the work required to reinstate the defective dwelling includes—

(i) any work required, in order to deal satisfactorily with the qualifying defect, to be done to any garage or outhouse designed or constructed as that building is designed or constructed, being a garage or outhouse in which the interest of the person eligible

for assistance subsists and which is occupied with and used for the purposes of the dwelling or any part of it, and

(ii) any other work reasonably required in connection with work falling within sub-paragraph (a) or this sub-paragraph.

[F2(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.**]**

F2(8) The Executive shall not entertain an application under this Article in respect of a defective dwelling if at any time (whether before or after the designation in question comes into operation) application for**[**F3 renovation grant or common parts grant under Chapter II of Part III of the Housing (Northern Ireland) Order 2003**]**F3 has been made in respect of the dwelling and the relevant works include the whole or any part of the work required to reinstate the defective dwelling unless—

(a) the application under that Part has been refused or has been withdrawn under paragraph (9), or

(b) the relevant works have been completed.

(9) A person who has applied for**[**F3 renovation grant or common parts grant under Chapter II of Part III of the Housing (Northern Ireland) Order 2003**]**F3 in respect of any dwelling may, at any time when it is a defective dwelling, withdraw his application, whether or not it has been approved, if the relevant works have not been begun and those works include the whole or any part of the work required to reinstate the defective dwelling.

(10) In paragraphs (8) and (9) "the relevant works" has the same meaning as in**[**F3 Chapter II of Part III of the Housing (Northern Ireland) Order 2003**]**F3.

(11) Where a person who is eligible for assistance in respect of a defective dwelling dies or disposes of his interest in the dwelling to a person to whom Article 5 applies (otherwise than on a disposal for value), this Part shall apply as if anything done or treated by virtue of this paragraph as done by or in relation to the person so eligible had been done by or in relation to his personal representatives or, as the case may be, the person acquiring the interest.

F2 1992 NI 15
F3 2003 NI 2

Notice of determination

7.—(1) Where the Executive receives an application which it is required to entertain under Article 6 it shall, as soon as it is reasonably practicable to do so, give notice in writing to the applicant stating whether or not in its opinion he is eligible for assistance in respect of the defective dwelling, and also—

(a) if it is of the opinion that he is not so eligible, the reasons for its view;

(b) if it is of the opinion that he is so eligible, informing his of his right to make a claim under Article 6(5).