STATUTORY INSTRUMENTS

# 1975 No. 1039 (N.I. 9)

# Defective Premises (Northern Ireland) Order 1975

*- - - - - - [25th June 1975]*

**Title and commencement**

**1.** This Order may be cited as the Defective Premises (Northern Ireland) Order 1975 … *Commencement …*

**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 Department" means the Department of Housing, Local Government and Planning[F1];

"disposal", in relation to premises, includes a letting, a grant in fee farm, and an assignment or surrender of a tenancy, of the premises and the creation by contract of any other right to occupy the premises;

"statutory provision" has the meaning assigned to it by section 1( *f*) of the Interpretation Act (Northern Ireland) 1954;

"tenancy" means—

(a) a tenancy created either immediately or derivatively out of the freehold, whether by a lease or underlease, by an agreement for a lease or underlease or by a tenancy agreement, but not including a mortgage term or any interest arising in favour of a mortgagor by his attorning tenant to his mortgagee; or

(b) a tenancy at will or a tenancy on sufferance; or

(c) a tenancy, whether or not constituting a tenancy at common law, created by or in pursuance of any statutory provision.

(3) Any duty imposed by or enforceable by virtue of any provision of this Order is in addition to any duty a person may owe apart from that provision.

(4) Any term of an agreement which purports to exclude or restrict, or has the effect of excluding or restricting, the operation of any of the provisions of this Order, or any liability arising by virtue of any such provision, shall be void.

**Annotations:**

**F1** functions transf. to D/Env., 1976 NI 6

### Duty to build dwellings properly

**3.**—(1) A person taking on work for or in connection with the provision of a dwelling (whether the dwelling is provided by the erection or by the conversion or enlargement of a building) owes a duty—

(a) if the dwelling is provided to the order of any person, to that person; and

(b) without prejudice to sub-paragraph ( *a*), to every person who acquires an estate in the dwelling;

to see that the work which he takes on is done in a workmanlike or, as the case may be, professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed.

(2) A person who takes on any such work for another on terms that he is to do it in accordance with instructions given by or on behalf of that other shall, to the extent to which he does it properly in accordance with those instructions, be treated for the purposes of this Article as discharging the duty imposed on him by paragraph (1) except where he owes a duty to the other to warn him of any defects in the instructions and fails to discharge that duty.

(3) A person shall not be treated for the purposes of paragraph (2) as having given instructions for the doing of work merely because he has agreed to the work being done in a specified manner, with specified materials or to a specified design.

(4) A person who—

(a) in the course of a business which consists of or includes providing or arranging for the provision of dwellings or installations in dwellings; or

(b) in the exercise of a power of making such provision or arrangements conferred by or by virtue of any statutory provision;

arranges for another to take on work for or in connection with the provision of a dwelling shall be treated for the purposes of this Article as included among the persons who have taken on the work.

(5) Any cause of action in respect of a breach of the duty imposed by this Article shall be deemed, for the purposes of**[**[F2] the Limitation (Northern Ireland) Order 1989**]** to have accrued at the time when the dwelling was completed, but if after that time a person who has done work for or in connection with the provison of the dwelling does further work to rectify the work he has already done, any such cause of action in respect of that further work shall be deemed for those purposes to have accrued at the time when the further work was finished.

**Annotations:**
**F2** 1989 NI 11

### Cases excluded from remedy under Article 3

**4.**—(1) Where—

(a) in connection with the provision of a dwelling or its first sale or letting for habitation any rights in respect of defects in the state of the dwelling are conferred by an approved scheme to which this Article applies on a person having or acquiring an estate in the dwelling; and

(b) it is stated in a document of a type approved for the purposes of this Article that the requirements as to design or construction imposed by or under the scheme have, or appear to have, been substantially complied with in relation to the dwelling;

no action shall be brought by any person having or acquiring an estate in the dwelling for breach of the duty imposed by Article 3 in relation to the dwelling.

(2) A scheme to which this Article applies—