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STATUTORY INSTRUMENTS

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1975 No. 1039 (N.I. 9)

NORTHERN IRELAND

**The Defective Premises (Northern Ireland) Order 1975**

*Laid before Parliament in draft*

*Made* 25th June 1975

*Coming into operation* 1st January 1976

At the Court at Buckingham Palace, the 25th day of June 1975

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 (a), 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:—

*Title and commencement*

1. This Order may be cited as the Defective Premises (Northern Ireland) Order 1975 and shall come into operation on 1st January 1976.

*Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954 (b) 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;

“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;

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(a) 1974 c. 28.

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

“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.

*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 the Limitation Acts (Northern Ireland) 1958 (a) and 1964 (b) to have accrued at the time when the dwelling

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(a) 1958 c. 10 (N.I.).

(b) 1964 c. 1 (N.I.).

was completed, but if after that time a person who has done work for or in connection with the provision 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.

*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--

- (a) may consist of any number of documents and any number of agreements or other transactions between any number of persons; but
- (b) must confer, by virtue of agreements entered into with persons having or acquiring an estate in the dwellings to which the scheme applies, rights on such persons in respect of defects in the state of the dwellings.

(3) In this Article "approved" means approved by the Department, and the power of the Department to approve a scheme or document for the purposes of this Article shall be exercisable by order, except that any requirements as to construction or design imposed under a scheme to which this Article applies may be approved without making any order or, if the Department thinks fit, by order.

(4) The Department—

- (a) may approve a scheme or document for the purposes of this Article with or without limiting the duration of the approval; and
- (b) without prejudice to any power to revoke or vary a previous order under this Article, may revoke or vary a previous approval under this Article given otherwise than by order.

(5) An order under this Article shall be subject to negative resolution.

(6) Where an estate in a dwelling is compulsorily acquired—

- (a) no action shall be brought by the acquiring authority for breach of the duty imposed by Article 3 in respect of the dwelling; and
- (b) if any work for or in connection with the provision of the dwelling was done otherwise than in the course of a business by the person in occupation of the dwelling at the time of the compulsory acquisition, the acquiring authority and not that person shall be treated as the person who took on the work and accordingly as owing that duty.

*Duty of care with respect to work done on premises not abated by disposal of premises*

5.—(1) Where work of construction, repair, maintenance or demolition or any other work is done on or in relation to premises, any duty of care owed,

because of the doing of the work, to persons who might reasonably be expected to be affected by defects in the state of the premises created by the doing of the work shall not be abated by the subsequent disposal of the premises by the person who owed the duty.

- (2) This Article does not apply—
- (a) in the case of premises which are let, where the relevant tenancy of the premises commenced, or the relevant tenancy agreement of the premises was entered into, before the commencement of this Order;
  - (b) in the case of premises disposed of in any other way, where the disposal of the premises was completed, or a contract for their disposal was entered into, before the commencement of this Order; or
  - (c) in either case, where the relevant transaction disposing of the premises is entered into in pursuance of an enforceable option by which the consideration for the disposal was fixed before the commencement of this Order.

*Application to Crown*

6. This Order shall bind the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland, but as regards the Crown's liability in tort shall not bind the Crown further than the Crown is made liable in tort by the Crown Proceedings Act 1947 (a).

*N. E. Leigh*

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EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order puts a duty on those concerned in the provision of dwellings to do their work properly and to use proper materials. The remedy is excluded where rights in respect of any defect in the state of dwellings have been conferred under a scheme approved by the Department of Housing, Local Government and Planning. There is also provision to abolish the common law rule that the duty of care owed by vendors and lessors in respect of work done on premises abates on the disposal of those premises.

The Order corresponds to certain provisions of the Defective Premises Act 1972 (c. 35).

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(a) 1947 c. 44