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## STATUTORY INSTRUMENTS

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# 1981 No. 156

## Housing (Northern Ireland) Order 1981

### PART V

#### LAND ACQUISITION AND COMPENSATION

##### CHAPTER I

##### ACQUISITION AND DISPOSAL OF LAND

#### Acquisition of land by the Executive

**87.**—(1) The Executive may, for the purposes of its functions<sup>F1</sup> . . . , acquire land by agreement or compulsorily.

(2) Where the Executive desires to acquire land compulsorily it may apply to the Department for an order (in this Order referred to as a “vesting order”) vesting the land in the Executive and the Department may make a vesting order.

(3) Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall, subject to the modifications specified in Schedule 6, apply for the purposes of the acquisition of land by means of a vesting order made under this Article in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act.

(4) The power to make a vesting order in respect of land—

- (a) which is the property of any public body which has power under any transferred provision to acquire land compulsorily; or
- (b) which is declared by or under any transferred provision to be inalienable;

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Northern Ireland Assembly. In this paragraph “public body” has the same meaning as in section 148 of the Local Government Act (Northern Ireland) 1972.

**F1** 1992 NI 15

#### Disposal of land by the Executive

**88.**—(1) The Executive may, in accordance with this Article, dispose of any land held by it.

(2) The Executive shall not dispose of any land at a consideration other than the best consideration that can reasonably be obtained, having regard to any covenants and conditions imposed by the Executive in relation to that land, except with the consent of the Department.

<sup>F2</sup>(2A) The Executive may recover from any person the administrative expenses (including legal and other professional expenses) incurred by it in connection with the disposal of land.

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(2B) The power under paragraph (2A) is subject to a duty to secure that, taking one financial year with another, the income from charges under that paragraph does not exceed the costs of provision.]

(3) Sections 128 to 132 of the Land Clauses Consolidation Act 1845 (sale of superfluous land) shall not apply in relation to any land disposed of by the Executive.

**F2** Art. 88(2A)(2B) inserted (29.4.2014) by [Financial Provisions Act \(Northern Ireland\) 2014 \(c. 6\), ss. 9, 13\(1\)](#)

### [<sup>F3</sup>Transfer of mortgages by the Executive

**88A.**—(1) The Executive shall not dispose of its interest as mortgagee of land without the prior written consent of the mortgagor (or, if there is more than one mortgagor, of all of them) specifying the name of the person to whom the interest is to be transferred.

(2) Consent given for the purposes of this Article—

- (a) may be withdrawn by notice in writing to the Executive at any time before the instrument effecting the disposal is made, and
- (b) ceases to have effect if the instrument effecting the disposal is not made within six months after it is given;

and if consent is withdrawn or ceases to have effect, the Executive shall return to the mortgagor any document in its possession by which he gave his consent.

(3) A disposal made without the consent required by this Article is void, subject to paragraph (4).

(4) If consent has been given and the Executive certifies in the instrument effecting the disposal that it has not been withdrawn or ceased to have effect, the disposal is valid notwithstanding that consent has been withdrawn or ceased to have effect.

(5) In such a case any person interested in the equity of redemption may, within six months of the disposal, by notice in writing served on the Executive, require the Executive, the transferee and any person claiming under the transferee to undo the disposal, on such terms as may be agreed between them or determined by the county court, and execute any documents and take any other steps necessary to vest back in the Executive the interest disposed of by it to the transferee.

(6) Without prejudice to Article 10, the Department may direct the Executive—

- (a) to give to a mortgagor whose consent is sought such information as the Department may direct;
- (b) as to the form of the document by which a mortgagor's consent is to be obtained;
- (c) to secure that notice of the fact that the disposal has been made is given to the mortgagor, and
- (d) as to the form of that notice and the period (being a period of not less than 28 days from the date of the disposal) within which that notice must be given.

(7) Paragraph 2 of Part II of Schedule 5 to the Land Registration Act (Northern Ireland) 1970 (Registrar of Titles to note certain restrictive provisions) shall not apply in relation to this Article or Article 88B.]

**F3** [1988 NI 23](#)

### Certain transfers to require Department's approval

**88B.**—(1) The Executive shall not, in the following circumstances, dispose of its interest as mortgagee of land, without the approval of the Department.

(2) The circumstances are that, under the terms of the disposal or of any arrangement entered into in connection with the disposal—

- (a) any benefits or burdens of the mortgagee are retained by, or transferred to, the Executive, or
- (b) the transferee can call on the Executive to re#acquire any interest transferred or to redeem the mortgage, or
- (c) the consideration for the transfer is other than a cash sum determined at the date of the transfer, or
- (d) the transfer is carried out in consideration of some other transaction or the Executive may be required to enter into an agreement with a third party.

(3) The Department may by regulations amend paragraph (2) or provide for other circumstances in which the disposal by the Executive of its interest as mortgagee of land requires the approval of the Department.

#### [<sup>F4</sup>Disposal of houses let by the Executive to secure tenants

**88C.**—(1) Subject to the following provisions of this Article, the Executive may, with the consent of the Department, dispose of its interest as landlord of any house occupied by a secure tenant.

(2) The Department's consent may be given—

- (a) either generally in relation to all houses or in relation to any particular house or description of house; and
- (b) subject to conditions.

(3) The Department shall not entertain an application for its consent under paragraph (2) unless it is satisfied that the Executive—

- (a) has, in accordance with the requirements of paragraphs (4) and (5), consulted—
  - (i) every tenant of a house to which the application relates, or
  - (ii) every such tenant other than one expected to have vacated the house in question before the disposal;<sup>F5</sup> . . .

*Sub.#para. (b) rep. by 2003 NI 2*

(4) For the purposes of paragraph (3) the requirements as to consultation are that the Executive shall serve notice in writing on the tenant informing him of—

- (a) such details of its proposal as the Executive considers appropriate, but including the identity of the person to whom the disposal is to be made,
- (b) the likely consequences of the disposal for the tenant, and
- (c) the effect of the provisions of this Article,

and informing him that he may, within such reasonable period as may be specified in the notice, make representations to the Executive.

(5) The Executive shall consider any representations made to it within that period and shall serve a further written notice on the tenant informing him—

- (a) of any significant changes in its proposal, and
- (b) that he may within such period as is specified (which must be at least 28 days after the service of the notice) communicate to the Executive his objection to the proposal,

and informing him of the effect of [<sup>F5</sup> paragraphs (5A) and (5B)].

[<sup>F5</sup>(5A) The Department shall not give its consent if it appears to the Department that a majority of the tenants of the houses to which the application relates do not wish the disposal to proceed; but this

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does not affect the Department's general discretion to refuse consent on grounds relating to whether a disposal has the support of the tenants or on any other ground.

(5B) In making its decision the Department may have regard to any information available to it; and the Executive shall give the Department such information as to the representations made to it by tenants and others, and other relevant matters, as the Department may require.]

*Para. (6) rep. by 2003 NI 2*

(7) For the purposes of this Article the grant of an option which if exercised would result in a secure tenant of the Executive becoming the tenant of another landlord shall be treated as a disposal of the interest which is the subject of the option.

(8) Where a disposal of land by the Executive is in part a disposal to which this Article applies, the provisions of this Article apply to that part as to a separate disposal.

(9) The Department's consent to a disposal is not invalidated by a failure on its part or that of the Executive to comply with the requirements of this Article.]

**F4** [1992 NI 15](#)

**F5** [2003 NI 2](#)

**Modifications etc. (not altering text)**

**C1** [Art. 88C applied \(2.5.2011\) by Introductory Tenancies \(Disposal of Houses\) Order \(Northern Ireland\) 2011 \(S.R. 2011/54\), art. 2](#)

**Extinguishment of public rights of way**

**88D.**—(1) Where the Executive considers it necessary or expedient to do so, the Executive may submit to the Department an order (an “extinguishment order”) to extinguish any public right of way existing over land which the Executive has acquired or proposes to acquire.

(2) An extinguishment order shall not have effect until approved by the Department; and Article 88E shall apply with respect to that approval.

(3) An extinguishment order may—

- (a) provide for the retention or removal of any cables, wires, mains, pipes or other apparatus placed along, across, over or under the land over which the right of way exists; and
- (b) provide for the extinction, modification or preservation of any rights as to the use or maintenance of such cables, wires, mains, pipes or apparatus;

and may contain such consequential, incidental and supplementary provisions as appear to the Executive to be necessary or expedient for the purposes of the order.

(4) Where the Department approves an extinguishment order, the Executive shall—

- (a) meet the costs of any works which by any provision of the order any person is required to carry out; and
- (b) pay compensation in respect of the extinction or modification by the order of any right of any person.

(5) Any question of disputed compensation arising under this Article shall be referred to and determined by the Lands Tribunal.

(6) An extinguishment order approved in advance of the acquisition of land by the Executive shall not have effect earlier than the date on which the land is acquired.

## Procedures for approving extinguishment orders

**88E.**—(1) On submitting an extinguishment order to the Department, the Executive shall publish in at least one newspaper circulating in the relevant area a notice—

- (a) stating the general effect of the order;
- (b) specifying a place in the relevant area where a copy of the order and of any relevant map or plan may be inspected by any person at all reasonable hours during a period of 28 days from the date of publication of the notice; and
- (c) stating that, within that period, any person may by notice to the Department object to the making of the order.

(2) Not later than the date on which that notice is so published, the Executive shall serve a copy of the notice, together with a copy of the extinguishment order and of any relevant map or plan, on—

- (a) every district council in whose area any land to which the order relates is situated;
- (b) any gas [<sup>F6</sup>electricity, water or sewerage] undertaker having any cables, mains, pipes, or wires laid along, across, under or over any land over which a right of way is to be extinguished, under the order; and
- (c) the operator of any telecommunications code system for the purposes of which any telecommunication apparatus is kept installed along, across, under or over any such land.

(3) The Department may cause a public local inquiry to be held to hear objections to the extinguishment order.

(4) After considering any objections to the extinguishment order which are not withdrawn and, where a public local inquiry is held, the report of the person who held the inquiry, the Department may approve the order either without modification or subject to such modifications as it thinks fit.

(5) Where the Department approves an extinguishment order the Executive shall publish, in the manner specified in paragraph (1), a notice stating that the order has been approved, and naming a place where a copy of the order may be seen at all reasonable hours; and paragraph (2) shall have effect in relation to any such notice as it has effect in relation to a notice under paragraph (1).

(6) In this Article—

- (a) “electricity undertaker” means a holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992; and
- (b) “the relevant area”, in relation to an extinguishment order, means the area in which any land to which the order relates is situated.

**F6** Words in art. 88E(2)(b) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 16** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

## CHAPTER II

### LAND COMPENSATION MATTERS

#### Interpretation

**89.**—(1) For the purposes of this Chapter, a house which might have been the subject of a demolition order but which has, without the making of such an order, been vacated and demolished in pursuance of an undertaking for its demolition accepted by the Executive, shall be deemed to have been vacated in pursuance of a demolition order made and served at the date when the undertaking was accepted.

(2) For the purposes of this Chapter<sup>F7</sup> . . .

“compulsory purchase value”, in relation to any estate in a house, means the compensation payable in respect of the compulsory purchase of that estate if that compensation fell to be assessed solely by reference to the rules set out in<sup>[F8]</sup> Article 6(1) of the Land Compensation (Northern Ireland) Order 1982] and, in the case of a house subject to a clearance order, demolition order or closing order, if that order were a vesting order and that compensation fell to be so assessed;

“demolition order” means an order under Article 35, but does not include such an order made in respect of a house already subject to a closing order, so far as it affects any part of the house in relation to which a payment under this Chapter<sup>F7</sup> . . . has fallen to be made in respect of the closing order;

“estate”, in a house, does not include the estate of a tenant for a year or any period less than a year, or of a tenant whose sole right to possession is under the Rent (Northern Ireland) Order 1978 ;

*Definition rep. by 1992 NI 15*

**F7** 1992 NI 15

**F8** 1982 NI 9

#### **[F9] Land acquired compulsorily in re-development areas and housing action areas**

**90.**—(1) Where the Department makes or has made a vesting order to which this paragraph applies, compensation shall be assessed in accordance with the provisions of the Land Compensation (Northern Ireland) Order 1982.

(2) Paragraph (1) applies to any vesting order made on or after 1st April 1990 to vest in the Executive land comprising a house, for the purpose of any of the functions of the Executive under Chapter III or IV of Part III.]

**F9** 1992 NI 15

#### **Compensation payable in case of clearance orders, demolition orders and closing orders**

**91.**—(1) Subject to paragraph (4), where, after the coming into operation of Part V of the Housing (Northern Ireland) Order 1992, a clearance order, demolition order or closing order is made in respect of any premises, the Executive shall pay to every owner of the premises an amount determined in accordance with paragraph (2).

(2) The amount referred to in paragraph (1) is the diminution in the compulsory purchase value of the owner's estate in the premises as a result of the making of the clearance order, demolition order or closing order, as the case may be; and that amount—

- (a) shall be determined as at the date of the making of the order in question; and
- (b) shall be determined (in default of agreement) as if it were compensation payable in respect of the acquisition compulsorily of the estate in question and shall be dealt with accordingly.

(3) Subject to paragraph (4), where, on or after 1st April 1990 and before the coming into operation of Part V of the Housing (Northern Ireland) Order 1992, a clearance order, demolition order or closing order has been made in respect of any premises, the Executive shall pay to every owner of the premises—

- (a) an amount determined in accordance with paragraph (2); or
- (b) an amount determined in accordance with Chapter II of Part V, as that Chapter had effect before the coming into operation of Part V of the Housing (Northern Ireland) Order 1992,

whichever amount is the greater.

(4) In any case where—

- (a) a closing order has been made in respect of any premises, and
- (b) by virtue of Article 38(7) (substitution of demolition order for closing order) the closing order is revoked and a demolition order is made in its place,

the amount payable to the owner under paragraph (1) or (3) in connection with the demolition order shall be reduced by the amount (if any) paid, in connection with the closing order, to the owner or a previous owner under that paragraph or, as the case may be, under Chapter II of Part V as that Chapter had effect before the coming into operation of Part V of the Housing (Northern Ireland) Order 1992.

(5) For the purposes of this Article “premises” means the house, building or part of a building in respect of which the clearance order, demolition order or closing order is made.

### **Repayment on revocation of clearance order, demolition order or closing order**

**92.**—(1) Where a payment in respect of any premises has been made by the Executive under Article 91(1) in connection with a clearance order, demolition order or closing order and—

- (a) an exclusion order is made in respect of those premises under Article 34,
- (b) the demolition order is determined under Article 37, or
- (c) the closing order is determined under Article 39,

then, if at that time the person to whom the payment was made has the same estate in the premises as he had at the time the payment was made, he shall on demand repay to the Executive the amount of the payment.

(2) In any case where—

- (a) a payment in respect of any premises has been made by the Executive under Article 91(1) in connection with a closing order, and
- (b) by virtue of Article 39, the order is determined as respects part of the premises, and
- (c) the person to whom the payment was made (in this Article referred to as “the recipient”) had, at the time the payment was made, an owner's estate in the part of the premises concerned (whether or not he had such an estate in the rest of the premises),

then, if at the time of the determination of the closing order the recipient has the same estate in the premises as he had at the time the payment was made, he shall on demand pay to the Executive an amount determined in accordance with paragraphs (3), (4) and (5).

(3) The amount referred to in paragraph (2) is whichever is the less of—

- (a) the amount by which the value of the estate of the recipient in the premises increases as a result of the determination of the closing order; and
- (b) the amount paid to the recipient under Article 91(1) in respect of his estate in the premises;

and the amount referred to in sub-paragraph (a) shall be determined as at the date of the determination of the closing order.

(4) For the purposes of assessing the amount referred to in paragraph (3)(a) the rules set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 shall, so far as applicable and subject to the necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an estate in land.

(5) Any dispute as to the amount of compensation referred to in paragraph (3)(a) shall be referred to and determined by the Lands Tribunal.

*Arts. 93#97 rep. with saving by 1992 NI 15*

### **Allowances to retail shopkeepers**

**98.** Where, as a result of action taken by the Executive in relation to clearance areas or re-development areas, the population of the locality concerned is materially decreased, the Executive may pay to any person carrying on a retail shop in that locality such reasonable allowance as it considers fit towards any loss involving personal hardship which in its opinion he will thereby sustain, but, in estimating any such loss, it shall have regard to the probable future development of that locality.

*Arts. 99, 100 rep. with saving by 1992 NI 15*

### **Interest**

**101.**—(1) Where—

- (a) a house is acquired in pursuance of a vesting order or is vacated in pursuance of a clearance order, demolition order or closing order; and
- (b) any person is, in respect of an estate in that house, entitled to a payment under this Chapter;

the Executive shall pay interest at the prescribed rate to that person in accordance with paragraph (2).

(2) Interest under paragraph (1) shall be paid—

- (a) where the house is acquired in pursuance of a vesting order, from the date on which the order comes into operation;
- (b) where the house is vacated in pursuance of any other order, from the later of the following dates—
  - (i) the date on which the order comes into operation;
  - (ii) the date on which the house is vacated.

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art.155 revoked by [1997 c. 32 s.46\(2\)Sch.9](#)
- art.155 revoked by [1997 c. 32 s.46\(2\)Sch.9](#)