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

determine whether those terms, or some other terms (dealing with the same subject matter as the proposed terms), are such as, in his opinion, might reasonably be expected to be found in a qualifying periodic tenancy of the dwelling-house concerned, being a tenancy—

(i) which begins on the coming to an end of the former tenancy; and

(ii) which is granted by a willing landlord on terms which, except in so far as they relate to the subject matter of the proposed terms, are those of the prescribed periodic tenancy at the time of the arbitrator's consideration;

(*d*) that whether or not a notice under sub-paragraph (*a*) proposes an adjustment of the amount of the rent under the prescribed periodic tenancy, where an arbitrator makes a determination by virtue of sub-paragraph (*c*), the notice shall request him, if he considers it appropriate, to specify such an adjustment to take account of the terms so determined;

(*e*) that in making a determination by virtue of sub-paragraph (*c*), or specifying an adjustment of an amount of rent by virtue of sub-paragraph (*d*), the notice shall request the arbitrator to disregard any effect on the terms or the amount of the rent attributable to the granting of a tenancy to a sitting tenant;

(*f*) that where a notice under sub-paragraph (*a*) is referred to an arbitrator then, unless the landlord and the tenant otherwise agree, with effect from such date as the arbitrator may direct—

(i) the terms determined by the arbitrator shall become terms of the prescribed periodic tenancy in substitution for any of the agreed terms dealing with the same subject matter; and

(ii) the amount of the rent under the prescribed periodic tenancy shall be altered to accord with any adjustment specified by the arbitrator;

but for the purposes of head (ii) it shall be a condition of a qualifying tenancy that the notice shall request the arbitrator to direct a date not earlier than the date specified, in accordance with sub-paragraph (*b*)(ii), in the notice referred to him; and

(*g*) that the arbitrator to whom a notice has been referred under sub-paragraph (*b*)(i) shall be appointed by the landlord and tenant and that, if they fail to agree, either of them may request the chairman for the time being of the Northern Ireland Branch of the Royal Institute of Chartered Surveyors to appoint an arbitrator.

Orders for possession

11. The terms of a qualifying tenancy shall provide—

(*a*) that the landlord shall not seek an order for possession of the dwelling-house except on one or more of the grounds set out in Schedule 2;

(*b*) that if the court is satisfied that any of grounds 1 to 3 in Part I of Schedule 2 is established then the landlord shall be entitled to possession;

(*c*) that where ground 4 in said Part I is established the landlord shall be entitled to possession only if the rent referred to within is unpaid at the date of the hearing of the proceedings for possession;

(*d*) that if the court is satisfied that any of the grounds 5 and 7 to 12 in Part II of Schedule 2 is established then the landlord shall be entitled to possession if the court considers it reasonable;

(*e*) that where ground 6 in said Part II is established the landlord shall be entitled to possession only if the court considers it reasonable and rent due was unpaid on the date on which proceedings for possession were begun;

(*f*) that Part III of Schedule 2 shall have effect for supplementing ground 5 in that Schedule and Part IV of the Schedule shall have effect in relation to a notice given as mentioned in ground 1 of that Schedule;

(*g*) that the landlord shall not seek an order for possession of a dwelling-house at a time it is let on a fixed term tenancy unless the ground for possession is ground 1 or ground 4 in Part I of Schedule 2 or any of the grounds in Part II of that Schedule other than ground 5 or ground 12; and

(*h*) that where a court order is made for possession in relation to a fixed term tenancy which has come to an end any prescribed periodic tenancy which has arisen on the ending of the fixed term tenancy shall end (without any notice and regardless of the period) on the day on which the order takes effect.

Notice of proceedings for possession

12.—(1) The terms of a qualifying tenancy shall provide that before seeking an order for possession the landlord or, in the case of joint landlords, at least one of them, and subject to paragraph (2), shall serve on the tenant a notice stating—

(*a*) that the landlord intends to begin proceedings for possession of the dwelling-house on one or more of the grounds in Schedule 2;

(*b*) the particulars of such grounds;

(*c*) that proceedings for possession will not begin earlier than a date specified in the notice which, without prejudice to any additional limitation under paragraph (3), shall not be earlier than the expiry of the period of 2 weeks from the date of service of the notice; and

(*d*) that proceedings will not begin later than 12 months from the date of service of the notice.

(2) If the court considers it just and equitable it may dispense with the requirement of such a notice unless the ground on which the landlord seeks to recover possession is ground 4 in Schedule 2.

(3) Where the notice states any of grounds 1 to 3, 5 and 12 in Schedule 2 (whether with or without other grounds) the date specified in the notice as mentioned in paragraph (1)(*c*) shall not be earlier than—

(*a*) 2 months from the date of service of the notice; and

(*b*) if the tenancy is a periodic tenancy, the earliest date on which, if regulation 8 did not apply, the tenancy could be brought to an end by a

notice to quit given by the landlord on the same date as the date of service of the notice under this regulation.

(4) The terms of a qualifying tenancy shall provide that where a notice under this regulation—

(*a*) is served at a time when the dwelling-house is let on a fixed term tenancy, or

(*b*) is served after a fixed term tenancy has come to an end but relates (in whole or in part) to events occurring during that tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a prescribed periodic tenancy arising on the coming to an end of the fixed term tenancy.

Payment of removal expenses in certain cases

13. The terms of a qualifying tenancy shall provide—

(*a*) that where a court makes an order for possession of a dwelling-house let on a qualifying tenancy on ground 2 or ground 5 in Schedule 2 (but not on any other ground), the landlord shall pay to the tenant a sum equal to the reasonable expenses likely to be incurred by the tenant in removing from the dwelling-house;

(*b*) that any question as to the amount of the sum referred to in paragraph (*a*) shall be determined by agreement between the landlord and the tenant or, in default of agreement, by the court; and

(*c*) that any sum payable to a tenant by virtue of this regulation shall be recoverable as a civil debt due from the landlord.

Increases of rent under qualifying periodic tenancies

14.—(1) This regulation applies to any periodic tenancy which is a qualifying tenancy other than one in relation to which there is a provision for the time being binding on the tenant under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.

(2) The terms of a tenancy to which this regulation applies shall provide that for the purposes of securing an increase in the rent the landlord may serve on the tenant a notice proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than—

(*a*) the minimum period after the date of the service of the notice; and

(*b*) except in the case of a prescribed periodic tenancy, the first anniversary of the date on which the first period of the tenancy began; and

(*c*) if the rent under the tenancy has previously been increased by virtue of a notice under this paragraph or a determination under paragraph (4)(*b*) the first anniversary of the date on which the increased rent took effect.

(3) The minimum period referred to in paragraph (2) is—

(*a*) in the case of a yearly tenancy, 6 months;

(*b*) in the case of a tenancy where the period is less than a month, 1 month; and

(*c*) in any other case, a period equal to the period of the tenancy.

(4) The terms of a tenancy to which this regulation applies shall provide—

(*a*) that where a notice is served under paragraph (2), a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice—

(i) the tenant notifies the landlord that he does not agree the new rent; or

(ii) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied; and

(*b*) that where pursuant to sub-paragraph (*a*)(i), the tenant notifies the landlord that he does not agree the new rent either party may refer the matter for determination to an arbitrator under the Act of 1937 appointed in accordance with the provisions of regulation 10(2)(*g*).

Determination of rent by arbitrator

15.—(1) Where, under regulation 14(4)(*b*), a tenant refers to an arbitrator a notice under paragraph (2) of that regulation, the terms of the tenancy shall provide that the arbitrator shall determine the rent at which, subject to paragraphs (2) and (4), the arbitrator considers that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under a qualifying tenancy—

(*a*) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;

(*b*) which begins at the beginning of the new period specified in the notice;

(*c*) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and

(*d*) in respect of which the same notice, if any, has been given under ground 1 in Schedule 2 as has been given (or has effect as if given) in relation to the tenancy to which the notice relates.

(2) In making a determination under this regulation, there shall be disregarded—

(*a*) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;

(*b*) any increase in the value of the dwelling-house attributable to a relevant improvement carried out by the tenant, if the improvement—

(i) was carried out otherwise than in pursuance of an obligation to his landlord; or

(ii) was carried out pursuant to an obligation to his landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and

(*c*) any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.

(3) For the purposes of paragraph (2)(*b*), in relation to a notice which is referred as mentioned in paragraph (1), an improvement is a relevant

improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely—

(*a*) that it was carried out not more than 21 years before the date of service of the notice; and

(*b*) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under a qualifying tenancy; and

(*c*) that, on the coming to an end of a qualifying tenancy, at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.

(4) In this regulation "rent" does not include any service charge, but includes any sums payable by the tenant to the landlord on account of the use of furniture.

(5) Where any rates in respect of the dwelling-house concerned are borne by the landlord or a superior landlord, the arbitrator shall make his determination under this regulation as if the rates were not so borne.

(6) In any case where—

(*a*) an arbitrator has before him at the same time the reference of a notice under regulation 10(2) relating to a tenancy (in this paragraph referred to as "the regulation 10 reference") and the reference of a notice under regulation 14(2) relating to the same tenancy (in this paragraph referred to as "the regulation 14 reference"), and

(*b*) the date specified in the notice under regulation 10(2) is not later than the first day of the new period specified in the notice under regulation 14(2), and

(*c*) the arbitrator proposes to hear the two references together,

the arbitrator shall make a determination in relation to the regulation 10 reference before making his determination in relation to the regulation 14 reference and, accordingly, in such a case the reference in paragraph (1)(*c*) to the terms of the tenancy to which the notice relates shall be construed as a reference to those terms as varied by virtue of the determination made in relation to the regulation 10 reference.

(7) Where a notice under regulation 14(2) has been referred to an arbitrator then, unless the landlord and the tenant otherwise agree, the rent determined by the arbitrator (subject, in a case where paragraph (5) applies, to the addition of the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the arbitrator that that would cause undue hardship to the tenant, with effect from such later date (not being later than the date the rent is determined) as the arbitrator may direct.

(8) Nothing in this regulation requires an arbitrator to continue with his determination of a rent for a dwelling-house if the landlord and tenant give notice in writing that they no longer require such a determination or if the tenancy has come to an end.

Prohibition on assignment, etc., without consent

16. The terms of a qualifying tenancy which is a periodic tenancy shall provide that, except with the consent of the landlord, the tenant shall not—

(*a*) assign the tenancy (in whole or in part); or

(*b*) sub-let or part with possession of the whole or any part of the dwelling-house let on the tenancy.

Access for repairs

17. The terms of a qualifying tenancy shall provide that the tenant shall afford to the landlord access to the dwelling-house let on the tenancy and all reasonable facilities for executing to it any repairs which the landlord is entitled to execute.

Sealed with the Official Seal of the Department of the Environment on 31st March 1989.

(L.S.) *Rosemary R. Brown*
Assistant Secretary

SCHEDULE 1 Regulation 4

Tenancies which cannot be Qualifying Tenancies

PART I

THE TENANCIES

Tenancies entered into before commencement

1. A tenancy which is entered into before, or pursuant to a contract made before, these regulations come into operation.

Tenancies of dwelling-houses with high net annual values

2. A tenancy under which the dwelling-house has for the time being a net annual value which exceeds £700.

Tenancies at a low rent

3.—(1) A tenancy under which either no rent is payable or the rent payable calculated on an annual basis is less than two-thirds of the rateable value of the dwelling-house for the time being.

(2) In determining whether the rent under a tenancy falls within sub-paragraph (1), there shall be disregarded such part (if any) of the sums payable by the tenant as is expressed (in whatever terms) to be payable in respect of rates, services, management, repairs, maintenance or insurance, unless it could not have been regarded by the parties to the tenancy as a part so payable.

Business tenancies

4. A tenancy to which Part I of the Business Tenancies Act (Northern Ireland) 1964(**a**) applies.

Licensed premises

5. A tenancy under which the dwelling-house consists of or comprises premises licensed for the sale of intoxicating liquor for consumption on the premises.

Tenancies of agricultural land

6.—(1) A tenancy under which agricultural land, exceeding two acres, is let together with the dwelling-house.

(2) In paragraphs (1) and 7(2) and (3) "agricultural land" has the meaning set out in paragraph 1(*a*) of Schedule 1 to the Rates (Northern Ireland) Order 1977(**b**).

Tenancies of agricultural holdings

7.—(1) A tenancy under which the dwelling-house—

(*a*) is comprised in an agricultural holding; and

(*b*) is occupied by the person responsible for the control (whether as tenant or as servant or agent of the tenant) of the farming of the holding.

(**a**) 1964 c. 36 (N.I.)
(**b**) S.I. 1977/2157 (N.I. 28)

(2) In sub-paragraph (1)—

"agricultural holding" means the aggregate of the land (whether agricultural land or not) comprised in an agricultural tenancy not being a tenancy under which the land is let to the tenant during his continuance in any office, appointment or employment held under the landlord;

(3) In sub-paragraph (2)—

"agricultural tenancy" means a tenancy of land under which having regard to—

(*a*) its terms;

(*b*) the actual or contemplated use of the land and the time of the commencement of the tenancy and subsequently; and

(*c*) any other relevant circumstances

the whole of the land comprised in the tenancy subject to such exceptions only as do not substantially affect the character of the tenancy, is let for use as agricultural land and is so used for the purpose of a trade or business.

Holiday lettings

8. A tenancy the purpose of which is to confer on the tenant the right to occupy the dwelling-house for a holiday.

Resident landlords

9.—(1) A tenancy which complies with the following conditions—

(*a*) that the dwelling-house forms part only of a building and, except in a case where the dwelling-house also forms part of a flat, the building is not a purpose-built block of flats; and

(*b*) that the tenancy was granted by an individual who, at the time when the tenancy was granted, occupied as his only or principal home another dwelling-house which—

(i) in the case mentioned in sub-paragraph (*a*) also forms part of the flat; or

(ii) in any other case, also forms part of the building.

(2) If a tenancy was granted by two or more persons jointly paragraph 1(*b*) shall apply as if the reference to an individual were a reference to any one of those persons.

(3) For the purposes of sub-paragraph (1) a building is a purpose built block of flats if as constructed it contained, and it contains, 2 or more flats; and for this purpose "flat" means a dwelling-house which—

(*a*) forms part only of a building; and

(*b*) is separated horizontally from another dwelling-house which forms part of the same building.

PART II

Net Annual Values

10.—(1) The net annual value of a dwelling-house at any time shall be ascertained for the purposes of Part I as follows—

(*a*) if the dwelling-house is a hereditament for which a net annual value is then shown in the valuation list, it shall be that net annual value;

(*b*) if the dwelling-house forms part only of such a hereditament or consists of or forms part of more than one such hereditament, its net annual value shall be taken to be such value as is found by a proper apportionment or aggregation of the net annual value or values so shown.

11. Where, after the time at which the net annual value of a dwelling-house is material for the purposes of any provision of Part I, the valuation list is altered so as to vary the net annual value of the hereditament of which the dwelling-house consists (in whole or in part) or forms part and the alteration has effect from that time or from an earlier time, the net annual value of the dwelling-house at the material time shall be ascertained as if the value shown in the valuation list at the material time had been the value shown in the list as altered.

12. Paragraphs 10 and 11 apply in relation to any other land which, under regulation 5 is treated as part of a dwelling-house as they apply in relation to the dwelling-house itself.

SCHEDULE 2 Regulation 11

GROUNDS FOR POSSESSION OF DWELLING-HOUSES LET ON QUALIFYING TENANCIES

PART I

GROUNDS ON WHICH (SUBJECT TO REGULATION 11(*g*)) LANDLORD SHALL BE ENTITLED TO POSSESSION

Ground 1

1. The dwelling-house is subject to a mortgage granted before the beginning of the tenancy and not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered in the following circumstances—

(*a*) the mortgagee is entitled to exercise a power of sale conferred on him by the mortgage or by section 19 of the Conveyancing and Law of Property Act 1881(**a**); and

(*b*) the mortgagee requires possession of the dwelling-house for the purpose of disposing of it with vacant possession in exercise of that power.

2. The court may dispense with the requirement of notice if it is satisfied that it is just and equitable to do so.

Ground 2

The landlord intends to demolish or reconstruct the whole or a substantial part of the dwelling-house or to carry out substantial works on the dwelling-house or any part of it or any building of which it forms part and the intended work cannot reasonably be carried out without the tenant giving up possession of the dwelling-house because—

(*a*) the tenant is not willing to agree to such a variation of the terms of the tenancy as would give such access and other facilities as would permit the intended work to be carried out; or

(*b*) the nature of the intended work is such that no such variation is practicable; or

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(**a**) 1881 c. 41

(*c*) the tenant is not willing to accept a tenancy of such part only of the dwelling-house (in this sub-paragraph referred to as "the reduced part") as would leave in the possession of his landlord so much of the dwelling-house as would be reasonable to enable the intended work to be carried out and, where appropriate, as would give such access and other facilities over the reduced part as would permit the intended work to be carried out; or

(*d*) the nature of the intended work is such that such a tenancy is not practicable.

Ground 3

The tenancy is a periodic tenancy (including a prescribed periodic tenancy) which has devolved under the will or intestacy of the former tenant and the proceedings for the recovery of possession are begun not later than twelve months after the death of the former tenant or, if the court so directs, after the date on which, in the opinion of the court, the landlord or, in the case of joint landlords, any one of them, became aware of the former tenant's death.

For the purposes of this ground, the acceptance by the landlord of rent from a new tenant after the death of the former tenant shall not be regarded as creating a new periodic tenancy, unless the landlord agrees in writing to a change (as compared with the tenancy before the death) in the amount of the rent, the period of the tenancy, the premises which are let or any other term of the tenancy.

Ground 4

Subject to regulation 11(*c*) at the date of the service of a notice served under regulation 12—

(*a*) if rent is payable weekly or fortnightly, at least 13 weeks' rent is unpaid;

(*b*) if rent is payable monthly, at least 3 months' rent is unpaid;

(*c*) if rent is payable quarterly, at least 1 quarter's rent is more than 3 months in arrears; and

(*d*) if rent is payable yearly, at least 3 months' rent is more than 3 months in arrears.

PART II

GROUNDS ON WHICH (SUBJECT TO REGULATION 11(*g*)) LANDLORD SHALL BE ENTITLED TO POSSESSION IF COURT CONSIDERS IT REASONABLE

Ground 5

Suitable alternative accommodation is available for the tenant or will be available for him when the order for possession takes effect.

Ground 6

Rent due from the tenant is in arrears at the date of the service of the notice under regulation 12.

Ground 7

Whether or not any rent is in arrears on the date on which notice for re-possession is served, the tenant has persistently delayed paying rent which has become due.

Ground 8

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 9

The condition of the dwelling-house or any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house and, in the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

For the purposes of this ground, "common parts" means any part of a building comprising the dwelling-house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other dwelling-houses in which the landlord has an estate.

Ground 10

The tenant or any other person residing in the dwelling-house has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the dwelling-house or allowing the dwelling-house to be used for immoral or illegal purposes.

Ground 11

The condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwelling-house and, in the case of ill-treatment by a person lodging with the tenant or by a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 12

The dwelling-house was let to the tenant in consequence of his employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in that employment.

PART III

SUITABLE ALTERNATIVE ACCOMMODATION

1. For the purposes of ground 5, a certificate of the Northern Ireland Housing Executive certifying that the Executive will provide suitable alternative accommodation for the tenant by a date specified in the certificate, shall be conclusive evidence that suitable alternative accommodation will be available for him by that date.

2. Where no such certificate is produced accommodation shall be deemed to be suitable if—

(*a*) it consists of premises to be let as a separate dwelling on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by a tenancy under these regulations other than a tenancy in which notice is given not later than the beginning of the tenancy that possession might be recovered on ground 1; and

(*b*) the accommodation fulfils the conditions specified in paragraph 3.

3.—(1) For the purposes of paragraph 2 the relevant conditions are that the accommodation is reasonably suitable to the needs of the tenant and his family as regards proximity to place of work and either—

(*a*) similar as regards rental and extent to the accommodation afforded by dwelling-houses provided in the neighbourhood by the Northern Ireland Housing Executive for persons whose needs as regards extent are similar to those of the tenant and of his family; or

(*b*) reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent and character; and

that if any furniture was provided for use under the qualifying tenancy in question, furniture is provided for use in the accommodation which is either similar to that so provided or is reasonably suitable to the needs of the tenant and his family.

(2) For the purposes of sub-paragraph (1)(*a*) a certificate of the Northern Ireland Housing Executive stating—

(*a*) the extent of the accommodation afforded by dwelling-houses provided by the Executive to meet the needs of tenants with families of such number as may be specified in the certificate; and

(*b*) the amount of the rent charged by the Executive for dwelling-houses affording accommodation of that extent,

shall be conclusive evidence of the facts so stated.

PART IV

NOTICES RELATING TO RECOVERY OF POSSESSION

4. Any reference in ground 1 in Part I or in the following provisions to the landlord giving a notice in writing to the tenant is, in the case of joint landlords, a reference to at least one of the joint landlords giving such a notice.

5.—(1) If not later than the beginning of a tenancy (in this paragraph referred to as "the earlier tenancy") the landlord gives such a notice in writing to the tenant as is mentioned in ground 1 in Part I then, for the purposes of the ground in question and any further application of this paragraph, that notice shall also have effect as if it had been given immediately before the beginning of any later tenancy falling with sub-paragraph (2).

(2) Subject to sub-paragraph (3), sub-paragraph (1) applies to a later tenancy—

(*a*) which takes effect immediately on the coming to an end of the earlier tenancy; and

(*b*) which is granted to the person who was the tenant under the earlier tenancy immediately before it came to an end; and

(*c*) which is of substantially the same dwelling-house as the earlier tenancy.

(3) Sub-paragraph (1) does not apply in relation to a later tenancy if, not later than the beginning of the tenancy, the landlord gave notice in writing to the tenant that the tenancy is not one in respect of which possession can be recovered on the ground in question.

6. Any references in ground 1 in Part I to a notice being given not later than the beginning of the tenancy is a reference to its being given not later than the day on which the tenancy is entered into.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

Section 50 of the Finance Act 1988 extends the business expansion scheme (Chapter III of Part VII of the Income and Corporation Taxes Act 1988) to private rented housing. Under the scheme as so extended, relief from income tax will be afforded to an individual who subscribes for shares in a company carrying on qualifying activities, that is to say, activities which consist of or are connected with the provision and maintenance of dwelling-houses for letting on qualifying tenancies.

These regulations prescribe the requirements or conditions with which a tenancy of a dwelling-house in Northern Ireland must comply if it is to be a "qualifying tenancy" within the meaning of section 50(3)(*b*) of the Finance Act 1988.

A qualifying tenancy must provide that it cannot be terminated by the landlord except by an order of the court (regulation 8(1)).

A qualifying periodic tenancy must provide—

(*a*) that the landlord shall not seek an order for possession except on one or more of the grounds set out in Schedule 2; and

(*b*) that if the landlord establishes any of grounds 1 to 3 in Part I of that Schedule then he is entitled to possession; and

(*c*) that if ground 4 in Part I (rent unpaid for a specified period) is established the landlord shall be entitled to possession only if the rent is unpaid at the date of the hearing of the proceedings; and

(*d*) that if he establishes any of grounds 5 and 7 to 12 in Part II he is entitled to possession only if the court considers it reasonable; and

(*e*) that if ground 6 in Part II (any rent in arrears) is established the landlord shall be entitled to possession only if the court considers it reasonable and rent due was unpaid on the date on which proceedings were begun (regulation 11(*a*) to (*e*)).

The provision in a fixed term tenancy for a landlord to seek possession is limited to fewer of the grounds in the Schedule (regulation 11(*g*)).

A qualifying fixed term tenancy must provide that if it comes to an end otherwise than by a court order or action by the tenant, the tenant shall be entitled to remain in possession by virtue of a periodic tenancy arising at the end of the fixed term tenancy (regulation 9(1) and (2)).

Regulation 10 provides for the fixing of terms of such periodic tenancies and for referral of disputes to an independent arbitrator.

Regulation 14 provides for increases of rent under qualifying periodic tenancies.

A qualifying periodic tenancy must provide that, except with the consent of the landlord, the tenant shall not assign, sub-let or part with possession of the dwelling-house (regulation 16).

Schedule 1 sets out the types of tenancies which cannot be qualifying tenancies.