



**Isle of Man
Government**

Reiltys Ellan Vannin



Shared Equity Scheme Consultation

March 2014

Department of Social Care
Rhyenn Kiarail y Theay

CONTENTS

| SECTION | PAGE NO |
|---|-----------------------|
| 1. Executive Summary | P.3 |
| 2. Background | P.4 - 6 |
| 2. Overview of the Schemes | P.7 - 12 |
| 4. Items to Consider | p. 13 |
| 5. Consultation Process | P. 14 -16 |
| Appendix 1 – Shared Equity Purchase Assistance (First Home Fixed) Scheme 2014 | (separately numbered) |
| Appendix 2 – Shared Equity Purchase Assistance (First Home Choice) Scheme 2014 | (separately numbered) |
| Appendix 3 – Housing (Miscellaneous Provisions) Act 2011 | (separately numbered) |

The contents of this document are the property of the Department of Social Care.

1. EXECUTIVE SUMMARY

The Isle of Man Government, through the Department of Social Care (DSC), currently operates a House Purchase Assistance Scheme (HPAS) which provides financial assistance to First Time Buyers to enable them to purchase their own home, either in the open market or a Government 'approved' new build property, subject to income and eligibility criteria.

The David Tolson Partnership was appointed by the Isle of Man Government in 2012 to carry out a fundamental review of affordable housing and provide options. Consultation was undertaken in March 2012 to enable the public to express their views on the options suggested. Responses to the Housing Review public consultation strongly supported the development of other forms of affordable housing provision, namely:

- 76.8% (627) said that Government should continue to support First Time Buyers.
- 85.4% (697) said that Government should support the development of other forms of affordable housing which make less demand on public funds.
- Shared equity and Rent to Buy were the most strongly supported options at 56.6% (462) and 63.0% (514) respectively. Proposals for Rent to Buy will be progressed at a later date as a separate initiative.

The DSC is proposing to replace the current HPAS when it expires in July 2014 with two Shared Equity Schemes. The first Scheme, called First Home Choice, aims to assist First Time Buyers to purchase a property on the open market, whilst the other Scheme, called First Home Fixed, will have stricter qualifying criteria and aims to assist First Time Buyers on lower incomes to purchase a Government Approved property.

As the current HPAS expires in July 2014, the DSC intends that the introduction of the new Shared Equity Schemes from July 2014 to ensure continuity in the provision of assistance.

Schemes for assistance for house purchase are provided under the Housing (Miscellaneous Provisions) Act 2011. This consultation document provides copies of the two draft Shared Equity Schemes for review and comment on the provisions contained therein.

All responses should be returned by **5pm on Friday 2nd May 2014**.

2. BACKGROUND

2.1. Current House Purchase Assistance Scheme (HPAS)

The House Purchase Assistance Schemes have assisted over 1350 First Time Buyers since 1999 to date. However, the current format of the Scheme confers a significant amount of benefit on a relatively small number of applicants overall, particularly those purchasing the subsidised new build Government approved properties.

The David Tolson Partnership was appointed by the Isle of Man Government in 2012 to carry out a fundamental review of housing to include the review of affordable housing provision and options. The report concluded that whilst the existing HPAS is very popular, it is over generous to some and not well targeted on need.

For reference a brief summary of current provision is set out in Table 1 below:

Table 1 – Summary of HPAS Provisions

| Summary of HPAS provisions | OPEN MARKET | FIRST TIME BUYER 'APPROVED' |
|--|--|--|
| Residency Requirement | 5 years consecutive to date of purchase or 15 years aggregated | 5 years consecutive to date of purchase or 15 years aggregated |
| Max. Purchase Price | £150,000 | £150,000 |
| Max. Income (<i>calculated as 'approved income' – for joint application this is all of highest income plus one third of the lower income</i>) | £35,000 | £35,000 |
| Type of Assistance | GRANT (<i>depreciates by 20% of original sum every 5 years unless property is disposed of when remaining balance is repayable</i>) | GRANT (<i>as OM</i>) plus TOP UP LOAN (<i>no requirement to repay capital sum until expiry of 25 year term – interest is payable after 5 year 'payment holiday' at 1% below Bank of England base rate</i>) |
| Max. Assistance (<i>level of assistance is subject to income assessment</i>) | GRANT Max. £25,000 | GRANT Max. £25,000 TOP UP LOAN – up to 30% of purchase price, plus discounted property purchase price |
| Deposit Requirements | No deposit required by DSC | No deposit required by DSC |

The Open Market provision of the current HPAS has also been highlighted, as providing very limited opportunities for purchase given that the ceiling purchase price is currently fixed at £150,000 and maximum income at £35,000.

Concerns have also been raised that with very limited incentives to reduce their loan and interest debt many existing 'approved' purchasers may still have a substantial lump sum to find at the end of the 25 year term to repay outstanding loan assistance.

Financial modelling has suggested that Shared Equity delivered a better return over time to Government without adversely affecting affordability for First Time Buyers.

2.2 Housing Review

2.2.1 Initial Housing Review

In December 2010 the DSC commissioned a review of housing provision which looked at identifying and appraising options for the future provision of assistance to First Time Buyers.

The full initial housing review report by David Tolson Partnership was published in March 2012. In relation to assistance for First Time Buyers the review found that the First Time Buyers Scheme assists about 100 households per annum to buy new or existing properties but it is suggested that some households could have bought property without assistance. The First Time Buyers Scheme confers a large benefit on some households and it assists some to obtain a better property than they would otherwise need.

2.2.2 Housing Review Consultation

In March 2012 the DSC launched a public consultation on the initial Housing Review work which included questions about the future provision of assistance for First Time Buyers. The purpose of the consultation was to invite comments and suggestions for potential options identified from the Housing Review and was open to all those interested. Outcomes of this Housing review consultation can be accessed on the IOM Government Website, or by following this link:

<http://www.gov.im/ConsultationDetail.gov?id=311>

Responses to the consultation found 77% of respondents said Government should continue to support First Time Buyers but 85% of respondents said that Government should support the development of alternative affordable housing which make less demand on public funds. 57% of respondents agreed Government should support a Shared Equity Scheme. Furthermore, when consulted on eligibility criteria; 82% of respondents agreed there should be eligibility criteria for assistance and 77% agreed this should include a minimum period of residence on the Island with 39% responding this should be for a minimum of 10 years. Additionally, 69% felt that that income should also be an eligibility criterion.

2.2.3 Housing Review Follow-on Projects

The Housing Review identified a number of key work streams which required further detailed work to aid the development of new strategic policies within the sector. This work was commissioned in November 2012 and was undertaken by David Tolson Partnership.

The Affordable Housing Options project reviewed models for affordable housing provision and gathered information on the financial viability of these approaches, including implications for public spending. It also identified a number of potential models which could be considered in the context of the Isle of Man including shared equity and mid rent housing.

2.2.4 Tynwald Approval for Recommendations

In November 2013, Tynwald Court approved a set of recommendations put forward by the DSC based upon the five David Tolson Partnership Reports and Consultation with Local Housing Authorities.

One of the recommendations was for Government to “replace HPAS with a Shared Equity Scheme”.

To view the David Tolson Partnership reports on findings and the recommendations taken forward to Tynwald by the DSC, please visit the IOM Government Website, alternatively, follow this link:

www.gov.im/about-the-government/departments/social-care/housing-division/housing-policy-review/

3. Overview of the Schemes

3.1 What is Shared Equity?

Shared Equity offers the option of home ownership to people who wish to buy their own home but cannot afford to pay the full price, by providing financial assistance to allow them to buy less than a 100% stake in their home (with an option to increase their stake up to 100% at a later date).

Shared Equity Schemes can have the effect of substantially reducing the deposit which a buyer is required to provide by market lenders.

3.2 What will the Schemes do?

There will be two distinct Shared Equity Schemes targeted at different First Time Buyers which will provide Government Assistance up to 30% of the property purchase price:

- Open Market (**First Home Choice**) has broader eligibility criteria than the current HPAS with a higher maximum purchase price to provide wider purchase choice within the current housing market.
- 'Approved Properties' (**First Home Fixed**) have a discounted purchase price with stricter eligibility criteria targeting assistance on those on lower incomes who have less options to purchase in the open market.

Both Shared Equity Schemes are underpinned by some general principles, many of which form part of the existing HPAS:

- Assistance is not a Right. Regardless of eligibility criteria assistance will not be given where applicant has the means or will shortly have the means to purchase a property suitable for their needs without assistance*.
- Applicants must obtain the highest level of mortgage available to them*.
- The dwelling is to be used as the place of ordinary residence of the assisted person/s*.
- Applicants must have a deposit of at least 5% of purchase price before being considered for purchase assistance.
- DSC equity share holding is 'lifetime' and remains in place for the entire term of ownership (unless bought out by purchaser during term – see below).
- Assisted persons can buy out in total or in part DSC equity share (at current market values at time of equity purchase). Equity purchase value must not be less than £5,000. Equity purchase can be made at any time during ownership (Open Market – **FIRST HOME CHOICE**) or any time after 5 years ('Approved' – **FIRST HOME FIXED**) but only one equity purchase permitted per year and administration fee applicable to cover DSC processing and legal costs.

- Assistance will be provided to a maximum of 30% of purchase price (* subject to applicant obtaining maximum mortgage and contributing 90% of any other monies/savings available to them in excess of £5,000).
- Assistance available will be subject to annual budget* .
- Residency of 5 years applies* .

The main elements of the Schemes are detailed in Table 2 below:

Table 2 –Comparative provisions of the proposed Shared Equity Schemes

| OPEN MARKET (FIRST HOME CHOICE) | APPROVED DWELLINGS (FIRST HOME FIXED) |
|--|---|
| Broader eligibility criteria and higher maximum purchase price than HPAS to provide wider purchase choice and stimulate market | Discounted purchase price (therefore with 'hidden' equity) with more restricted eligibility than HPAS targeting lower income groups and housing need |
| DSC will contribute up to 30% equity share of market value subject to certain terms and conditions/ eligibility criteria | DSC will contribute an equity share of between 20-30% of the approved purchase value subject to certain terms and conditions/ eligibility criteria. |
| Applicant is required to provide a deposit equivalent to 5% of the purchase price | Applicant is required to provide a deposit equivalent to 5% of discounted purchase price |
| The open market property can be disposed of at any time with DSC recovering their full equity share at the prevailing market value. | The value of the approved property is fixed at original purchase price for the first 5 years with pre-emption right for DSC to buyback or for property to be sold on to another assisted person nominated within the terms of the Scheme (i.e. discounted value). The DSC share cannot be bought out during this period. After 5 years the property can be sold on the open market with the DSC recovering it's full equity share at point of sale plus 50% of the 'hidden equity' provided by the original discounted purchase value. |
| Interest will become payable on DSC equity share after two years at: 1% on the equity, the charge rising by 1% each subsequent year to a maximum equivalent to Bank of England Base Rate plus 5%, annual repayment due, capital and interest compounded each year on default. | Interest will become payable on DSC equity share after two years at: 1% on the equity, the charge rising by 1% each subsequent year to a maximum equivalent to Bank of England Base Rate plus 5%, annual repayment due, capital and interest compounded each year on default. |
| The assisted person can buy out the DSC equity share at any time in part or in whole at the prevailing market value subject to any payment being a <u>minimum</u> of £5,000 and no more than once per annum. | After the 5 year pre-emption period the assisted person can buy out the DSC equity share at any time in part or in whole at the prevailing market value subject to any payment being a <u>minimum</u> of £5,000 and no more than once per annum. |

*As existing HPAS.

3.3 Details of the Schemes

3.3.1 First Home (Choice)

i. Division 1 – Introduction

Division 1 introduces the Scheme and its extent.

Paragraph 4 provides for the purpose of the scheme, which is to enable financial assistance to be given by the DSC in purchasing an equity share of an open market dwelling.

Paragraph 5 provides for the extent of the assistance, which may be up to 30% of the market value of the property in exchange for a corresponding equity share in the property.

Paragraph 6 outlines out applications for assistance will be made and the circumstances in which applications will be rejected.

Paragraph 7 provides for fees which will be applied to applications and equity buy backs under the Scheme. Fees are £100 for the initial application and £50 where the assisted person wishes to purchase some, or the DSC's entire share.

ii. Division 2 – Qualifications for Assistance

Division 2 outlines the qualifications for assistance.

Paragraph 8 provides for who will be eligible for assistance under the Scheme, including income and residency criteria. Residency criteria remains the same as provided under the current HPAS with a minimum continual residence period of 5 years or, an aggregated period or periods of 15 years before the date of application.

Paragraph 9 introduces the table in the Schedule to this Scheme, shown below, which outlines the eligibility criteria for assistance under this Scheme. It also provides details of how an assisted person's income will be assessed for the purposes of this Scheme.

| <i>Column 1</i> | <i>Column 2</i> | <i>Column 3</i> | <i>Column 4</i> |
|--|------------------------------|---------------------------------------|-------------------------------|
| Eligible persons | Maximum annual income | Dwelling type | Maximum purchase price |
| Single persons | £35,000 | Apartments; 2 bedroom house | up to £165,000 |
| Couples – no children | £55,000 | Apartments; 2 and 3 bedroom houses | up to £175,000 |
| Single or couple with 1 or more children | £60,000 | 2, 3 and 4 bedroom houses | up to £190,000 |

Paragraph 10 of this Scheme requires that applicants must provide a deposit equivalent to 5% of the purchase price. There is no requirement for a deposit under the current HPAS.

iii. Division 3 – Conditions of Assistance

Division 3 outlines the conditions of assistance.

Paragraph 13 provides for the restrictions on assistance and also outlines the assisted person's responsibilities whilst assistance is being provided.

Paragraph 14 provides details of what the DSC can do if the assisted person fails to meet the conditions for assistance.

Paragraph 15 provides for the circumstances whereby assistance may be provided under this Scheme to a person previously assisted under an earlier HPAS.

Paragraph 16 provides for the calculation of interest that will be charged on the DSC's equity share in a dwelling after 2 years and will be 1% per annum increasing 1% each year subject to a maximum of the Bank of England's Base Rate plus 5%.

Interest under the current HPAS is charged at 1% below the Bank of England Base Rate, which currently yields no return.

Paragraph 17 provides for the priority of any equity buy back under the Scheme.

Paragraph 18 provides for the conditions where an assisted person can buy out all or part of the Department's equity share in a dwelling.

Paragraph 19 provides for the circumstances in which a sole assisted person can purchase the property jointly with another person.

Paragraph 20 provides that where the property is jointly owned, it can be transferred to one of the assisted persons subject to certain criteria.

Paragraph 21 deals with the disposal of a property when an assisted person dies, and that the Department's full equity share is repaid at the current market value.

3.3.2 First Home (Fixed)

i. Division 1 – Introduction

Division 1 introduces the Scheme and its extent.

Paragraph 4 provides for the purpose of the Scheme which is to enable financial assistance to be given by the DSC in purchasing an equity share of an approved dwelling.

Paragraph 5 provides for the extent of the assistance which is not less than 20% and not more than 30% of the market value of the subsidised property in exchange for a corresponding equity share. In addition to this equity share in the property, the DSC's interest in the property will also be for 50% of the discount provided by the reduced market price.

Paragraph 6 outlines how applications for assistance will be made and the circumstances in which applications will be rejected.

Paragraph 7 provides for fees to apply to applications and purchasing the DSC's equity share under the Scheme. Fees are £100 for the initial application and £50 where the assisted person wishes to purchase some, or the DSC's entire, equity share.

ii. Division 2 – Qualifications for Assistance

Division 2 outlines the qualifications for assistance.

Paragraph 8 provides for who will be eligible for assistance under the Scheme, including income and residency criteria.

Paragraph 9 introduces the table in the Schedule to this Scheme, shown below, which outlines the eligibility criteria for assistance under this Scheme. It also provides details of how an assisted person's income will be assessed for the purposes of this Scheme.

| <i>Column 1</i> | <i>Column 2</i> | <i>Column 3</i> | <i>Column 4</i> |
|--|------------------------------|--------------------------------|--|
| Eligible persons | Maximum annual income | Approved dwelling type | Maximum purchase price (discounted) |
| Single persons | £25,000 | Apartments; 2 bedroom house | up to £140,000 |
| Couples – no children | £35,000 | Apartments; 2 bedroom house | up to £140,000; up to £150,000 |
| Single or couple with 1 or more children | £45,000 | 2 or 3 bedroom house | up to £160,000 |

Residency criteria remains the same as provided under the current HPAS with a minimum continual residence period of 5 years or, an aggregated period or periods of 15 years before the date of application.

iii. Division 3 – Conditions of Assistance

Division 3 outlines the conditions of assistance.

Paragraph 13 provides for the restrictions on assistance and also outlines the assisted person's responsibilities whilst assistance is being provided.

Paragraph 14 provides details of what the DSC can do if the assisted person fails to meet the conditions for assistance.

Paragraph 15 provides for the calculation of interest that will be charged on the DSC's equity share in a dwelling after 2 years and will be 1% per annum increasing 1% each year subject to a maximum of the Bank of England's Base Rate plus 5%.

Interest under the current HPAS is charged at 1% below the Bank of England Base Rate, which currently yields no return.

Paragraph 16 provides for the order of priority for any equity buy back under the Scheme.

Paragraph 17 provides for the conditions where an assisted person can buy out all or part of the Department's equity share after 5 years at the prevailing market rate.

Paragraph 18 provides for the circumstances in which a sole assisted person can purchase the dwelling jointly with another person.

Paragraph 19 provides that where the property is jointly owned, it can be transferred to one of the assisted persons subject to certain criteria.

Paragraph 20 provides that if the assisted person wishes to sell the property in the first five years it has to be offered for sale to the Department in the first instance, or sold to another assisted person at the original purchase price.

Paragraph 21 provides that after 5 years, the assisted person can dispose of the property as they wish, but on doing so the Department's equity share is repaid at the prevailing market rate.

iv. Division 4 – Closing Provisions

Paragraph 22 revokes the previous HPAS, but provides for saving provision in respect of assistance already provided for, or agreed to be provided for, before this Scheme comes into operation.

4. ITEMS TO CONSIDER

The following questions are to provide a guide for feedback, but are not an exhaustive list; please feel free to submit any additional comments or feedback.

4.1 General Principles

- Question 1. Do you think it is reasonable to charge a small fee to cover the costs of administration?
- Question 2. Do you think it is reasonable that to be eligible for assistance, an applicant must satisfy the specified residency criteria?
- Question 3. Do you think the maximum annual income and maximum purchase prices are reasonable?
- Question 4. Do you think it is reasonable for those assisted to provide a 5% deposit?
- Question 5. Do you think it is reasonable to charge interest on the equity share held by Government?

4.2 First Home (Choice)

- Question 6. Do you think the maximum annual income and maximum purchase prices are reasonable?

4.3 First Home (Fixed)

- Question 7. Do you think it is reasonable for the value of an approved dwelling to be fixed for the first 5 years following the date of purchase?

5. CONSULTATION PROCESS

The purpose of this consultation exercise is to invite comments on the intended Shared Equity Schemes. The consultation is open to all those who are interested and we would welcome and appreciate your views.

Please be aware though that this is not a referendum – it is to provide you with information; seek your views and give all interested parties opportunity to comment. The consultation will allow the DSC to take an informed decision on the final options for drafting the Shared Equity Scheme Legislation. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

3.1 Responses

Comments should be submitted by **5pm on Friday 2nd May 2014** in writing, by post or email to:

Shared Equity Scheme Consultation
Department of Social Care
2nd Floor,
Markwell House,
Market Street,
Douglas
IM1 2RZ
Telephone: (01624) 685955
Email: lauren.staniford@gov.im

3.2 Copies of consultation document

Copies of this document are available at:
<http://www.gov.im/consultations.gov?menuid=16916&type=current>

Paper copies of the consultation document are available at:

- Department of Social Care, Public Counters, Ground Floor Markwell House, Market Street, Douglas.
- Tynwald Library, Legislative Buildings, Finch Road, Douglas

3.3 List of statutory persons and organisations to be consulted

- Tynwald Members
- Attorney General
- Chief Officers of Government Departments Statutory Boards and Offices
- Local Authorities
- Isle of Man Chamber of Commerce
- Isle of Man Trade Union Council
- Isle of Man Law Society
- Isle of Man Construction Forum
- Council of Voluntary Organisations
- Isle of Man Bankers Association
- IOM Association of Estate Agents

3.4 Important points to remember

- When submitting your views please indicate whether you are responding as an individual or on behalf of an organisation or a group of people.
- Where appropriate you should provide evidence to support your response.
- To ensure that the process is open, transparent, and in line with the Isle of Man Government's Code of Conduct on Consultation, submissions will only be considered where the name of the individual(s) or organisation responding is provided.
- Unless you specifically request otherwise, any responses received may be published either in part or in their entirety, including your name.
- Please mark your response clearly if you wish your response and name to be kept confidential.
- Confidential responses will be included in any statistical summary and numbers of comments received.
- Any anonymous, abusive, or offensive responses will be discounted.

3.5 Steps which will be taken following consultation

Following consultation, the next steps in the process will be as follows:

- The DSC will review comments received from consultees.
- A summary of the responses received will be published within 3 months of the closing date for this consultation, and will be made available on the Government website.
- The DSC will prepare the final Schemes.

The Schemes will then be submitted to Tynwald for approval.

3.6 Code of Practice of Consultation

It is the intention of the Department to carry out this consultation in accordance with the Isle of Man Government's Code of Practice on Consultation which is available at www.gov.im or upon request.

The Code sets out the following six criteria:

- 1) Consult widely throughout the process, allowing a minimum of six weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
- 2) Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- 3) Ensure your consultation is clear, concise and widely accessible.
- 4) Give feedback regarding the responses received and how the consultation process influenced the policy.
- 5) Monitor your Department's effectiveness at consultation.
- 6) Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

The consultation period ends at 5pm on Friday 2nd May 2014.



Isle of Man
Government

Reiltys Ellan Vannin



This document can be provided in large print on request

Department of Social Care
2nd Floor
Markwell House
Market Street
Douglas
IM1 2RZ

Email: lauren.staniford@gov.im
Telephone: (01624) 685955



SHARED EQUITY PURCHASE ASSISTANCE (FIRST HOME FIXED) SCHEME 2014

Index

| Regulation | Page |
|---|-----------|
| DIVISION 1 - INTRODUCTION | 2 |
| 1 Title | 2 |
| 2 Commencement | 2 |
| 3 Interpretation..... | 2 |
| 4 Purpose of Scheme..... | 3 |
| 5 Assistance under this Scheme..... | 3 |
| 6 Applications..... | 4 |
| 7 Fees | 5 |
| DIVISION 2 – QUALIFICATIONS FOR ASSISTANCE | 5 |
| 8 Eligibility..... | 5 |
| 9 Income..... | 6 |
| 10 Deposit | 6 |
| 11 Mortgage..... | 6 |
| 12 Maximum purchase price..... | 7 |
| DIVISION 3 – CONDITIONS OF ASSISTANCE | 7 |
| 13 Restrictions on assistance | 7 |
| 14 Failure to comply with conditions of assistance | 8 |
| 15 Interest..... | 8 |
| 16 Order of priority for repayment | 9 |
| 17 Purchasing equity share..... | 9 |
| 18 Transfer of equity share | 9 |
| 19 Disposal of the dwelling to a remaining assisted person..... | 10 |
| 20 Disposal of the dwelling in the first five years..... | 10 |
| 21 Disposal of the dwelling after five years..... | 11 |
| DIVISION 4 – CLOSING PROVISIONS | 11 |
| 22 Revocation and savings | 11 |
| SCHEDULE | 13 |
| ELIGIBILITY CRITERIA | 13 |

Statutory Document No. XX/20XX



Housing (Miscellaneous Provisions) Act 2011

SHARED EQUITY PURCHASE ASSISTANCE (FIRST HOME FIXED) SCHEME 2014

Approved by Tynwald:

Coming into Operation:

July 2014

The Department of Social Care makes the following Regulations under sections 4(1) and 7 of the Housing (Miscellaneous Provisions) Act 2011¹.

DIVISION 1 - INTRODUCTION

1 Title

This Scheme is the Shared Equity Purchase Assistance (First Home Fixed) Scheme 2014.

2 Commencement

If approved by Tynwald, this Scheme comes into operation on ****.

3 Interpretation

(1) In this Scheme –

“**approved mortgage provider**” means a bank or building society carrying on business in the Island which is approved for the purposes of this Scheme by the Department after consultation with Treasury;

“**approved development**” means a development which contains a proportion of approved dwellings;

“**approved dwelling**” means a dwelling built to the Department’s special and technical standards as part of an approved development;

“**assistance**” means financial assistance under this Scheme;

¹ AT 19 of 2011.



“**assisted person**” means a person to whom assistance is given (or if assistance is given to 2 or more persons, both or all those persons with joint or severally liability) and includes, where the context so admits, an applicant for assistance;

“**the Department**” means the Department of Social Care;

“**discount**” means the amount determined by the Department as the difference between the market value price and the purchase price of the approved dwelling notified to the applicant or applicant’s in the written offer;

“**dwelling**” includes a dwelling to be constructed or in the course of construction, and any land forming the curtilage of a dwelling or otherwise occupied with it, and “**the dwelling**” means the dwelling in relation to which assistance is given;

“**equity share**” has the meaning given by paragraph 5(2) (assistance under this Scheme);

“**purchase price**” means the aggregate of all sums required to be paid by an applicant or assisted person to acquire the approved dwelling in question;

“**written offer**” means a written offer by the Department, accepted in writing by an applicant or applicants, of an approved dwelling at a specified price.

(2) The provisions of this Scheme apply to all written offers made on or after *****.

4 Purpose of Scheme

- (1) The purpose of this Scheme is to enable assistance to be given by the Department by way of equity share of the purchase price of an approved dwelling.
- (2) The provision of assistance under this Scheme does not prevent the granting of assistance under any scheme in place from time to time to assist in the repair and modernisation of a residential property.

5 Assistance under this Scheme

- (1) The Department may assist a person by —
 - (a) providing not less than 20% and not more than 30% of the purchase price of an approved dwelling, subject to the qualifications and conditions for assistance set out in this Scheme; and
 - (b) providing access to an approved dwelling at a discounted price.
- (2) For the purpose of this Scheme the Department’s “**equity share**” in an approved dwelling is —

- (a) the percentage of the purchase price provided under subparagraph (1)(a); and
 - (b) 50% of the discount.
- (3) Accordingly on a disposal of an interest purchased with assistance under this Scheme the assisted person must repay the outstanding equity share and any interest due on that share.
- (4) Assistance which is provided by the Department under this Scheme is subject to adequate funding being available to the Department within its annual budget.
- (5) The Department's equity share in an approved dwelling subsists for the entire term of the assisted persons ownership unless –
 - (a) subject to the conditions in paragraph 17 (purchasing equity share), the assisted person buys out the total equity share the Department holds in the approved dwelling; or
 - (b) subject to the conditions in paragraph 20 (disposal of the dwelling in the first 5 years) or 21 (disposal of the dwelling after five years), the approved dwelling is disposed of.

6 Applications

- (1) An application for assistance must be made in the first instance to the Department on a form supplied by the Department, and must be accompanied by the fee specified in paragraph 7(1) (fees).
- (2) The Department must reject an application for assistance if –
 - (a) any information required to be given by the application form, or any further information required by the Department, is not given within any timescales determined by the Department, or any information given is false in a material particular;
 - (b) the income of the applicant does not fall within limits set out in this Scheme;
 - (c) the other financial circumstances of the applicant do not conform to criteria set out in this Scheme;
 - (d) the application is not for an approved dwelling on an approved development;
 - (e) any approval of plans for the purpose of building regulations and any planning approvals and other consents required for the construction, alteration or adaptation of the dwelling have not been granted;
 - (f) the applicant is unable to demonstrate that he or she or they can obtain a loan from an approved mortgage provider to fund the remaining share in the purchase price of the approved dwelling; and

- (g) any further information or document necessary to the Department's consideration of the application is not supplied within any timescales determined by the Department.

7 Fees

- (1) An application fee of £100 must be paid by the applicant to the Department on the making of an application for assistance under this Scheme.
- (2) A purchase fee of £50 must be paid by the assisted person to the Department on the purchase of all, or part of the Department's equity share in an approved dwelling under paragraph 17 (purchasing equity share).

DIVISION 2 – QUALIFICATIONS FOR ASSISTANCE

8 Eligibility

- (1) Subject to sub-paragraphs (2) to (5), a person is eligible to apply for assistance under this Scheme if that person –
 - (a) has not previously owned a dwelling in their sole name or jointly with another person or persons (whether in the Island or elsewhere); and
 - (b) meets either of the following residential requirements, namely that the person –
 - (i) has lived in the Island for an uninterrupted period of 5 years immediately preceding the date of the application; or
 - (ii) currently resides on the Island, having done so for the previous 6 months, and has previously lived in the Island for an aggregate period or periods totalling 15 years before the date of the application.
- (2) The Department may, in its discretion, accept an application from any residentially qualified person under sub-paragraph (1)(b) for assistance in such particular circumstances as it considers appropriate.
- (3) The Department may refuse an application by an applicant, or joint applicants except in relation to properties as set out in column 3 of the table in the Schedule to this Scheme (eligibility criteria).
- (4) The Department may refuse an application by a person who is not –
 - (a) in full-time permanent employment; or
 - (b) engaged full-time in an all-year-round business as a self-employed person;in the Island.

- (5) The Department must refuse an application by a person who, in the opinion of the Department, has, or is likely to have, sufficient means or sources of finance to enable that person to buy a dwelling suitable for that persons own occupation without assistance under this Scheme.

9 Income

- (1) The maximum annual income of an applicant or applicants is set out in column 2 of the table in the Schedule to this Scheme (eligibility criteria).
- (2) For the purpose of this Scheme the income of an applicant for assistance or an assisted person is calculated as follows —
- (a) if the applicant or assisted person is one individual, the aggregate of his or her permanent gross income;
 - (b) if the applicant or assisted person is married, is a civil partner, or living with another as if they were married or were civil partners, the permanent gross income of the other person; or
 - (c) if the application is or was made by two individuals, the aggregate of their permanent gross incomes.
- (3) In this paragraph “income” means —
- (a) in the case of an employed person —
 - (i) his or her gross basic income; and
 - (ii) any regular overtime up to one-sixth of basic income, as certified by his or her employer; and
 - (iii) his or her income from other sources to the extent allowed by the Department; or
 - (b) in the case of a self-employed person —
 - (i) the average of his or her last 3 years’ gross income as shown by audited accounts; or
 - (ii) such other estimate of his or her income as the Department may in a particular case approve; and
 - (iii) his or her income from other sources to the extent allowed by the Department.

10 Deposit

An applicant or applicants for assistance must be able to demonstrate that they can provide a deposit of at least 5% of the purchase price of the approved dwelling.

11 Mortgage

An applicant or applicants for assistance must be able to demonstrate that they have obtained an offer of the highest level of mortgage available to them.

12 Maximum purchase price

The maximum purchase price for an approved dwelling is set out in column 4 of the table in the Schedule to this Scheme (eligibility criteria).

DIVISION 3 – CONDITIONS OF ASSISTANCE

13 Restrictions on assistance

- (1) The assisted person is responsible for all professional, mortgage, registration and other fees and expenses incurred by him or her or them in connection with an application for assistance and the giving of any security for it.
- (2) The approved dwelling must be used for the personal occupation of the assisted person and his or her or their child or children, and must not, without the prior written consent of the Department, be —
 - (a) used for the purpose of any trade or business;
 - (b) let or sub-let; or
 - (c) occupied by persons other than the assisted person, including if applicable, any child or children of the assisted person.
- (3) For the avoidance of doubt, the assisted person or persons jointly and severally fails to comply with the conditions of assistance under this Scheme if they cease to reside at the approved dwelling but permit his or her or their child or children to continue to reside at the approved dwelling.
- (4) The approved dwelling must not be altered or adapted in any way without the prior written consent of the Department.
- (5) The Department must be satisfied as to —
 - (a) the assisted person's title to the approved dwelling; and
 - (b) in the case of a flat, the arrangements for the maintenance of the building of which it forms part.
- (6) While the assisted person remains liable to repay any assistance under this Scheme the assisted person must —
 - (a) keep the approved dwelling in good repair;
 - (b) pay rates and all other outgoings in respect of the approved dwelling;
 - (c) comply with all requirements of the legislation from time to time in force relating to town and country planning and building control;
 - (d) insure the approved dwelling against fire and all other risks required by the Department and produce the last home insurance premium receipt to the Department on demand; and

- (e) allow all persons authorised by the Department to inspect the approved dwelling at any reasonable time.
- (7) The instrument by which the repayment of assistance is to be secured under this Scheme must be —
- (a) in such form; and
 - (b) include such provisions for ensuring compliance with the conditions of this Scheme, and any other conditions which the Department may consider appropriate;
- as the Department may require.

14 Failure to comply with conditions of assistance

- (1) On any failure by the assisted person to comply with the conditions of any assistance provided to that person —
- (a) the Department may by notice require that the Department's equity share is to be repaid immediately at the prevailing market rate;
 - (b) the amount of any such equity share (with accrued interest, as set out in paragraph 15 (interest)) becomes due and repayable and the Department may take action to —
 - (i) repossess the approved dwelling,
 - (ii) sell the approved dwelling to realise its security.
- (2) The assisted person must co-operate in all respects with the Department if action under this paragraph is necessary.

15 Interest

- (1) Interest on the Department's equity share in the approved dwelling is due and payable by the assisted person from the year commencing on the second anniversary.
- (2) Subject to sub-paragraph (1), interest on the Department's equity share in the approved dwelling is charged on each anniversary at whichever is the lesser of the following —
- (a) the relevant rate + 5%; or
 - (b) a rate of 1% per annum, and increasing by 1% on each subsequent anniversary.
- (3) In this paragraph —

“the relevant rate” means the Bank of England's Base Rate as last published on the anniversary (or, if that rate ceases to be published, such other rate as Treasury may determine); and

“anniversary” means the anniversary of the date of purchase of the dwelling.

16 Order of priority for repayment

- (1) For the purposes of paragraph 17 (purchasing equity share), any repayment must be repaid in the following order –
 - (a) any interest due up to and including the date of repayment calculated in accordance with paragraph 15 (interest); followed by,
 - (b) the Department's equity share.
- (2) The Department's equity share will rank as a second charge on the property, any charge in favour of a commercial mortgagee having priority.

17 Purchasing equity share

An assisted person can buy out the total or part of the Department's equity share in the approved dwelling, at the prevailing market rate, after five years from the date of purchase of the approved dwelling if –

- (a) the amount of the Department's equity share that the assisted person is buying out under this paragraph is –
 - (i) the whole of the remaining equity share; or
 - (ii) greater than £5000;
- (b) the assisted person has not previously purchased a part of the Department's equity share in the current financial year;
- (c) the assisted person pays the administrative fee to the Department as set out in paragraph 7(2) (fees); and
- (d) the assisted person pays all professional, mortgage, registration and any other fees and expenses incurred by him or her or them in connection with the purchase of the Department's equity share.

18 Transfer of equity share

- (1) Subject to sub-paragraph (4), if the title of the approved dwelling is held in the sole name of an assisted person, including a person to whom a share in the approved dwelling has been transferred under paragraph 19 (disposal of the dwelling to a remaining assisted person), ("A") A may, at the discretion of the Department, be permitted to purchase the approved dwelling jointly with another person ("B") if sub-paragraphs (2) and (3) are satisfied.
- (2) This sub-paragraph is satisfied if B –
 - (a) is qualified under Division 2 (qualifications for assistance), and
 - (b) submits an application under and subject to the provisions of paragraph 6 (applications);

and is therefore eligible as an assisted person under the terms of the Scheme.

- (3) This sub-paragraph is satisfied if the title and the security documents are transferred into the joint names of A and B at no cost to the Department.
- (4) In a case where A and B have purchased the approved dwelling jointly, B does not have any right under this paragraph to transfer the assistance further.

19 Disposal of the dwelling to a remaining assisted person

Disposal of an approved dwelling from a joint assisted person to a remaining assisted person may, at the discretion of the Department, be permitted provided that –

- (a) the Department is satisfied that the remaining applicant can finance security on the approved dwelling on his or her own; and
- (b) that all the title and security documents are transferred into the name of the remaining applicant at no cost to the Department.

20 Disposal of the dwelling in the first five years

- (1) For the purposes of this paragraph the value of an approved dwelling is to be treated as fixed at the original purchase price for the first five years from the date of purchase.
- (2) During this time, subject to sub-paragraphs (3) and (4), the approved dwelling can be disposed of by –
 - (a) the assisted person;
 - (b) the assisted person's estate; or
 - (c) any person deriving title under him or her or them if the assisted person dies.
- (3) The Department has the right to –
 - (a) purchase the approved dwelling from the assisted person; or
 - (b) direct the approved dwellings sale to another named assisted person within the terms of the Scheme.
- (4) At the time of disposal –
 - (a) any of the Department's outstanding equity share in the approved dwelling at the prevailing market rate; and
 - (b) any interest under paragraph 15 (interest);must be repaid.

21 Disposal of the dwelling after five years

- (1) Subject to sub-paragraph (2), after five years from the date of purchase the approved dwelling can be disposed of at any time by –
 - (a) the assisted person, or
 - (b) the assisted person's estate, or
 - (c) any person deriving title under him or her or them if the assisted person dies.
- (2) At the time of disposal –
 - (a) any of the Department's outstanding equity share in the approved dwelling at the prevailing market rate; and
 - (b) any interest under paragraph 15 (interest);must be repaid.

DIVISION 4 – CLOSING PROVISIONS

22 Revocation and savings

- (1) The House Purchase Assistance Scheme 2012² is revoked.
- (2) Revocation by sub-paragraph (1) does not affect its continuing operation in respect of assistance provided under it, or agreed to be provided under it, before this Scheme, or any other Scheme, comes into operation.

MADE

R H QUAYLE
Minister for Social Care

² SD 0396/12

Consultation Draft

SCHEDULE
ELIGIBILITY CRITERIA

| <i>Column 1</i> | <i>Column 2</i> | <i>Column 3</i> | <i>Column 4</i> |
|--|------------------------------|--------------------------------|--|
| Eligible persons | Maximum annual income | Approved dwelling type | Maximum purchase price (discounted) |
| Single persons | £25,000 | Apartments; 2 bedroom house | up to £140,000 |
| Couples – no children | £35,000 | Apartments; 2 bedroom house | up to £140,000; up to £150,000 |
| Single or couple with 1 or more children | £45,000 | 2 or 3 bedroom house | up to £160,000 |

Consultation Draft

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme enables the Department to assist first time buyers in purchasing a subsidised property on an approved development by obtaining an equity share in the property. This Scheme is provided for under sections 4 and 7 of the Housing (Miscellaneous Provision) Act 2011.

Division 1 introduces the Scheme and its extent.

Paragraph 4 provides for the purpose of the Scheme which is to enable financial assistance to be given by the Department in purchasing an equity share of an approved dwelling.

Paragraph 5 provides for the extent of the assistance which is not less than 20% and not more than 30% of the market value of the subsidised property in exchange for a corresponding equity share. In addition to this equity share in the property, the Department's interest in the property will also be for 50% of the discounted equity.

Paragraph 6 outlines how applications for assistance will be made and the circumstances in which applications will be rejected.

Paragraph 7 provides for fees which will be applied to applications and equity buy backs under the Scheme. Fees are £100 for the initial application and £50 where the assisted person wishes to purchase some or all of the Department's equity share.

Division 2 outlines the qualifications for assistance.

Paragraph 8 provides for who will be eligible for assistance under the Scheme.

Paragraph 9 introduces the table in the Schedule to this Scheme which outlines the eligibility criteria for assistance under this Scheme. It also provides details of how an assisted person's income will be assessed for the purposes of this Scheme.

Paragraphs 10 and 11 provide for the deposit and mortgage an assisted person must have in place in order to be able to obtain assistance under this Scheme.

Division 3 outlines the conditions of assistance.

Paragraph 13 provides for the restrictions on assistance and also outlines the assisted person's responsibilities whilst assistance is being provided.

Paragraph 14 outlines the consequences of a failure to comply with the conditions of assistance under this Scheme.

Paragraph 15 provides for the calculation of interest that will be charged on the Department's equity share.

Paragraph 16 provides for the order of priority for any equity buy back under the Scheme.

Paragraph 17 provides for the conditions where an assisted person can buy out all or part of the Department's equity share after 5 years at the prevailing market rate.

Paragraph 18 provides for the circumstances in which a sole assisted person can purchase the dwelling jointly with another person.

Paragraph 19 provides that where the property is jointly owned, it can be transferred to one of the assisted persons subject to certain criteria.

Paragraph 20 provides that if the assisted person wishes to sell the property in the first five years it has to be offered for sale to the Department in the first instance, or sold to another assisted person at the original purchase price.

Paragraph 21 provides that after 5 years, the assisted person can dispose of the property as they wish, but on doing so the Department's equity share is repaid at the prevailing market rate.

Division 4 provides for revocations and saving provisions

Paragraph 22 revokes the previous House Purchase Assistance Scheme, but provides for saving provision in respect of assistance already provided for, or agreed to be provided for, before this Scheme came into operation.



SHARED EQUITY PURCHASE ASSISTANCE (FIRST HOME CHOICE) SCHEME 2014

Index

| Regulation | Page |
|---|-----------|
| DIVISION 1 - INTRODUCTION | 3 |
| 1 Title | 3 |
| 2 Commencement | 3 |
| 3 Interpretation..... | 3 |
| 4 Purpose of Scheme..... | 4 |
| 5 Assistance under this Scheme | 4 |
| 6 Applications..... | 5 |
| 7 Fees | 5 |
| DIVISION 2 – QUALIFICATIONS FOR ASSISTANCE | 6 |
| 8 Eligibility | 6 |
| 9 Income | 7 |
| 10 Deposit | 7 |
| 11 Mortgage | 7 |
| 12 Maximum purchase price | 7 |
| DIVISION 3 – CONDITIONS OF ASSISTANCE | 8 |
| 13 Restrictions on assistance | 8 |
| 14 Failure to comply with conditions of assistance | 9 |
| 15 Previously assisted persons..... | 9 |
| 16 Interest..... | 9 |
| 17 Order of priority for repayment | 10 |
| 18 Purchasing equity share..... | 10 |
| 19 Transfer of equity share | 11 |
| 20 Disposal of the dwelling to a remaining assisted person..... | 11 |
| 21 Disposal of the dwelling | 11 |
| SCHEDULE | 13 |
| ELIGIBILITY CRITERIA | 13 |

Consultation Draft

Statutory Document No. XX/20XX



Housing (Miscellaneous Provisions) Act 2011

SHARED EQUITY PURCHASE ASSISTANCE (FIRST HOME CHOICE) SCHEME 2014

Approved by Tynwald:

Coming into Operation:

July 2014

The Department of Social Care makes the following Scheme under sections 4(1) and 7 of the Housing (Miscellaneous Provisions) Act 2011¹.

DIVISION 1 - INTRODUCTION

1 Title

This Scheme is the Shared Equity Purchase Assistance (First Home Choice) Scheme 2014.

2 Commencement

If approved by Tynwald, this Scheme comes into operation on *****.

3 Interpretation

(1) In this Scheme —

“**approved mortgage provider**” means a bank or building society carrying on business in the Island which is approved for the purposes of this Scheme by the Department after consultation with Treasury;

“**assistance**” means financial assistance under this Scheme;

“**assisted person**” means a person to whom assistance is given (or if assistance is given to 2 or more persons, both or all those persons each of whom is jointly and severally liable for the repayment of the assistance) and includes, where the context so admits, an applicant for assistance;

“**the Department**” means the Department of Social Care;

¹ AT 19 of 2011.

“**dwelling**” includes a dwelling to be constructed or in the course of construction, and any land forming the curtilage of a dwelling or otherwise occupied with it, and “**the dwelling**” means the dwelling in relation to which assistance is given;

“**equity share**” has the meaning given by paragraph 5(2) (assistance under this Scheme);

“**minimum standards**” in relation to a dwelling means a dwelling which is either –

- (a) not less than 55 square metres in area and must include a separate bedroom and bathroom, or
- (b) less than 55 square metres in area with such other internal layout as the Department in its discretion deems acceptable;

“**open market dwelling**” means a dwelling purchased by a first time buyer which complies with both the purchase price and the minimum standards determined by the Department;

“**purchase price**” means the aggregate of all sums required to be paid by an applicant or assisted person to acquire the dwelling in question; and

“**written offer**” means a written offer by the Department, accepted in writing by an applicant or applicants, of an open market property at a specified price.

- (2) The provisions of this Scheme apply to all written offers made on or after *****.

4 Purpose of Scheme

- (1) The purpose of this Scheme is to enable assistance to be given by the Department by way of equity share of the purchase price of an open market dwelling.
- (2) The provision of assistance under this Scheme does not prevent the granting of assistance under any other Scheme in place from time to time to assist in the repair and modernisation of a residential property.

5 Assistance under this Scheme

- (1) The Department may assist a person by providing up to 30% of the purchase price of a dwelling, subject to the qualifications and conditions for assistance set out in this Scheme.
- (2) For the purpose of this Scheme the Department’s “**equity share**” in the dwelling is the percentage of the purchase price provided under subparagraph (1).
- (3) Assistance which is provided by the Department under this Scheme is subject to adequate funding being available to the Department within its annual budget.

- (4) The Department's equity share in a dwelling subsists for the entire original agreed term of the assisted persons ownership unless –
 - (a) subject to the conditions in paragraph 18 (purchasing equity share), the assisted person buys out the total equity share the Department holds in the dwelling; or
 - (b) subject to the conditions in paragraphs 20 (disposal of the dwelling to a remaining assisted person) or 21 (disposal of the dwelling), the property is disposed of.

6 Applications

- (1) An application for assistance must be made in the first instance to the Department on a form supplied by the Department, and must be accompanied by the fee specified in paragraph 7(1) (fees).
- (2) The Department must reject an application for assistance if –
 - (a) any information required to be given on the application form, or any further information required by the Department, is not given within any timescales determined by the Department, or any information given is false in a material particular;
 - (b) the income of the applicant does not fall within limits set out in this Scheme;
 - (c) the other financial circumstances of the applicant do not conform to criteria set out in this Scheme;
 - (d) the dwelling does not conform to criteria determined by the Department;
 - (e) any approval of plans for the purpose of building regulations and any planning approvals and other consents required for the construction, alteration or adaptation of the dwelling have not been granted;
 - (f) the applicant is unable to demonstrate that he or she or they can obtain a loan from an approved mortgage provider to fund the balance of the purchase price of the dwelling;
 - (g) any further information or document necessary to the Department's consideration of the application is not supplied within any timescales determined by the Department.

7 Fees

- (1) An application fee of £100 must be paid by the applicant to the Department on the making of an application for assistance under this Scheme.
- (2) A purchase fee of £50 must be paid by the assisted person to the Department on the purchase of all, or part of the Department's equity share in the dwelling under paragraph 18 (purchasing equity share).

DIVISION 2 – QUALIFICATIONS FOR ASSISTANCE

8 Eligibility

- (1) Subject to sub-paragraphs (2) to (6), a person is eligible to apply for assistance under this Scheme if that person –
 - (a) has not previously owned a dwelling in their sole name or jointly with another person or persons (whether in the Island or elsewhere); and
 - (b) meets either of the following residential requirements, namely that the person –
 - (i) has lived in the Island for an uninterrupted period of 5 years immediately preceding the date of the application; or
 - (ii) currently resides on the Island, having done so for the previous 6 months and having previously lived in the Island for an aggregate period or periods totalling 15 years before the date of the application.
- (2) The Department may, in its discretion, accept an application from any residentially qualified person under sub-paragraph (1)(b) for assistance in such particular circumstances as it considers appropriate.
- (3) Subject to paragraph 15 (previously assisted persons), the Department may in its discretion, on one occasion only, allow a person who owns a dwelling purchased as an assisted person under any previous House Purchase Assistance Scheme, to dispose of his or her, or their dwelling to the Department, or another assisted person in order to acquire a different dwelling within the terms of this Scheme.
- (4) The Department may refuse an application by an applicant, or joint applicants except in relation to properties as set out in column 3 of the table in the Schedule to this Scheme (eligibility criteria).
- (5) The Department may refuse an application by a person who is not –
 - (a) in full-time permanent employment; or
 - (b) engaged full-time in an all-year-round business as a self-employed person;in the Island.
- (6) The Department must refuse an application by a person who, in the opinion of the Department, has, or is likely to have, sufficient means or sources of finance to enable that person to buy a dwelling suitable for that persons own occupation without assistance under this Scheme.

9 Income

- (1) The maximum annual income of an applicant or applicants is set out in column 2 of the table in the Schedule to this Scheme (eligibility criteria).
- (2) For the purpose of this Scheme the income of an applicant for assistance or an assisted person is calculated as follows –
 - (a) if the applicant or assisted person is one individual, the aggregate of his or her permanent gross income;
 - (b) if the applicant or assisted person is married, is a civil partner, or living with another as if they were married or were civil partners, the permanent gross income of the other person; or
 - (c) if the application is or was made by two individuals, the aggregate of their permanent gross incomes.
- (3) In this paragraph “income” means –
 - (a) in the case of an employed person –
 - (i) his or her gross basic income, and
 - (ii) any regular overtime up to one-sixth of basic income, as certified by his or her employer, and
 - (iii) his or her income from other sources to the extent allowed by the Department; or
 - (b) in the case of a self-employed person –
 - (i) the average of his or her last 3 years’ gross income as shown by audited accounts, or
 - (ii) such other estimate of his or her income as the Department may in a particular case approve; and
 - (iii) his or her income from other sources to the extent allowed by the Department.

10 Deposit

An applicant or applicants for assistance must be able to demonstrate that they can provide a deposit of at least 5% of the purchase price of the dwelling.

11 Mortgage

An applicant or applicants for assistance must be able to demonstrate that they have obtained an offer of the highest level of mortgage available to them.

12 Maximum purchase price

The maximum purchase price for a dwelling is set out in column 4 of the table in the Schedule to this Scheme (eligibility criteria).

DIVISION 3 – CONDITIONS OF ASSISTANCE

13 Restrictions on assistance

- (1) The assisted person is responsible for all professional, mortgage, registration and other fees and expenses incurred by him or her or them in connection with an application for assistance and the giving of any security for it.
- (2) The dwelling must be used for the personal occupation of the assisted person and his or her or their child or children, and must not, without the prior written consent of the Department, be —
 - (a) used for the purpose of any trade or business;
 - (b) let or sub-let; or
 - (c) occupied by persons other than the assisted person, including if applicable, any child or children of the assisted person.
- (3) For the avoidance of doubt, the assisted person or persons jointly and severally fails to comply with the conditions of assistance under this Scheme if they cease to reside at the dwelling but permit his or her or their child or children to continue to reside at the dwelling.
- (4) The dwelling must not be altered or adapted in any way without the prior written consent of the Department.
- (5) The Department must be satisfied as to —
 - (a) the assisted person's title to the dwelling; and
 - (b) in the case of a flat, the arrangements for the maintenance of the building of which it forms part.
- (6) While the assisted person remains liable to repay any assistance under this Scheme the assisted person must —
 - (a) keep the dwelling in good repair;
 - (b) pay rates and all other outgoings in respect of the dwelling;
 - (c) comply with all requirements of the legislation from time to time in force relating to town and country planning and building control;
 - (d) insure the dwelling against fire and all other risks required by the Department and produce the last home insurance premium receipt to the Department on demand; and
 - (e) allow all persons authorised by the Department to inspect the dwelling at any reasonable time.
- (7) No assistance may be given for the construction of a dwelling where works which are normally carried out by craftsmen of a class to which

the Scheme for the Certification of Craftsmen 1990² applies unless those works are carried out by persons registered in accordance with that Scheme.

- (8) The instrument by which the repayment of assistance is to be secured under this Scheme must be —
- (a) in such form; and
 - (b) include such provisions for ensuring compliance with the conditions of this Scheme, and any other conditions which the Department may consider appropriate;
- as the Department may require.

14 Failure to comply with conditions of assistance

- (1) On any failure by the assisted person to comply with the conditions of any assistance provided to that person —
- (a) the Department may by notice require that the Department's equity share to be repaid immediately at the prevailing market rate;
 - (b) the amount of any such equity share (with accrued interest, as set out in paragraph 16 (interest)) becomes due and repayable and the Department may take action to —
 - (i) repossess the dwelling,
 - (ii) sell the dwelling to realise its security.
- (2) The assisted person must co-operate in all respects with the Department if action under this paragraph is necessary.

15 Previously assisted persons

- (1) This paragraph applies if a person has previously been assisted by the Department to purchase a dwelling under any previous House Purchase Assistance Scheme provided by the Department.
- (2) If this paragraph applies and there is a sum of assistance outstanding in respect of the previous assistance then sub-paragraph (3) applies.
- (3) Any assistance outstanding must be reflected in the Department's equity share in the assisted person's purchase of a new dwelling under this Scheme.

16 Interest

- (1) Interest on the Department's equity share in the dwelling is due and payable by the assisted person from the year commencing on the second anniversary.

² GC 412/90

- (2) Subject to sub-paragraph (1), interest on the Department's equity share in the dwelling is charged on each anniversary at whichever is the lesser of the following –
- (a) the relevant rate + 5%; or
 - (b) a rate of 1% per annum, increasing by 1% on each subsequent anniversary.
- (3) In this paragraph –

“**the relevant rate**” means the Bank of England's Base Rate as last published on the anniversary (or, if that rate ceases to be published, such other rate as Treasury may determine); and

“**anniversary**” means the anniversary of the date of purchase of the dwelling.

17 Order of priority for repayment

- (1) For the purposes of paragraph 18 (purchasing equity share), any repayment must be repaid in the following order –
- (a) any interest due up to and including the date of repayment calculated in accordance with paragraph 16 (interest);
followed by,
 - (b) the Department's equity share.
- (2) The Department's equity share will rank as a second charge on the property, any charge in favour of a commercial mortgagee having priority.

18 Purchasing equity share

An assisted person can buy out the total or part of the Department's equity share in the dwelling, at the prevailing market rate, at any time if –

- (a) the amount of the Department's equity share that the assisted person is buying out under this paragraph is –
 - (i) the whole of the remaining equity share; or
 - (ii) greater than £5000;
- (b) the assisted person has not previously purchased a part of the Department's equity share in the current financial year;
- (c) the assisted person pays the administrative fee to the Department as set out in paragraph 7(2) (fees); and
- (d) the assisted person pays all professional, mortgage, registration and any other fees and expenses incurred by him or her or them in connection with the purchase of the Department's equity share.

19 Transfer of equity share

- (1) Subject to sub-paragraph (4), if the title of the dwelling is held in the sole name of an assisted person, including a person to whom a share in the dwelling has been transferred under paragraph 20 (disposal of the dwelling to a remaining assisted person), (“A”) A may, at the discretion of the Department, be permitted to purchase the dwelling jointly with another person (“B”) if sub-paragraphs (2) and (3) are satisfied.
- (2) This sub-paragraph is satisfied if B –
 - (a) is qualified under Division 2 (qualifications for assistance), and
 - (b) submits an application under and subject to the provisions of paragraph 6 (applications);and is therefore eligible as an assisted person under the terms of the Scheme.
- (3) This sub-paragraph is satisfied if the title and the security documents are transferred into the joint names of A and B at no cost to the Department.
- (4) In a case where A and B have purchased the dwelling jointly, B does not have any right under this paragraph to transfer the assistance further.

20 Disposal of the dwelling to a remaining assisted person

Disposal of a dwelling from a joint assisted persons to a remaining assisted person may, at the discretion of the Department, be permitted provided that—

- (a) the Department is satisfied that the remaining applicant can finance security on the dwelling on his or her own; and
- (b) that all the title and the security documents are transferred into the name of the remaining applicant at no cost to the Department.

21 Disposal of the dwelling

- (1) Subject to sub-paragraph (2), the dwelling can be disposed of at any time by –
 - (a) the assisted person, or
 - (b) his or her or their estate, or
 - (c) any person deriving title under him or her or them, if the assisted person dies.
- (2) At the time of disposal –
 - (a) any of the Department’s outstanding equity share in the dwelling at the prevailing market rate; and
 - (b) any interest under paragraph 16 (interest);must be repaid.

MADE

R H QUAYLE
Minister for Social Care

Consultation Draft

SCHEDULE
ELIGIBILITY CRITERIA

| <i>Column 1</i> | <i>Column 2</i> | <i>Column 3</i> | <i>Column 4</i> |
|--|------------------------------|---------------------------------------|-------------------------------|
| Eligible persons | Maximum annual income | Dwelling type | Maximum purchase price |
| Single persons | £35,000 | Apartments; 2 bedroom house | up to £165,000 |
| Couples – no children | £55,000 | Apartments; 2 and 3 bedroom houses | up to £175,000 |
| Single or couple with 1 or more children | £60,000 | 2, 3 and 4 bedroom houses | up to £190,000 |

Consultation Draft

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme enables the Department of Social Care (“the Department”) to assist first-time buyers in purchasing a property on the open market by obtaining an equity share in the property. This Scheme is provided for under sections 4 and 7 of the Housing (Miscellaneous Provision) Act 2011.

Division 1 introduces the Scheme and its extent.

Paragraph 4 provides for the purpose of the Scheme, which is to enable financial assistance to be given by the Department in purchasing an equity share of an open market dwelling.

Paragraph 5 provides for the extent of the assistance, which may be up to 30% of the market value of the property in exchange for a corresponding equity share in the property.

Paragraph 6 outlines how applications for assistance will be made and the circumstances in which applications will be rejected.

Paragraph 7 provides for fees which will be applied to applications and equity buy backs under the Scheme. Fees are £100 for the initial application and £50 where the assisted person wishes to purchase some or all of the Department’s equity share.

Division 2 outlines the qualifications for assistance.

Paragraph 8 provides for who will be eligible for assistance under the Scheme.

Paragraph 9 introduces the table in the Schedule to this Scheme which outlines the eligibility criteria for assistance under this Scheme. It also provides details of how an assisted person’s income will be assessed for the purposes of this Scheme.

Paragraphs 10 and 11 provide for the deposit and mortgage an assisted person must have in place in order to be able to obtain assistance under this Scheme.

Division 3 outlines the conditions of assistance.

Paragraph 13 provides for the restrictions on assistance and also outlines the assisted person’s responsibilities whilst assistance is being provided.

Paragraph 14 outlines the consequences of a failure to comply with the conditions of assistance under this Scheme.

Paragraph 15 provides for the circumstances whereby assistance may be provided under this Scheme to a person previously assisted under an earlier House Purchase Assistance Scheme.

Paragraph 16 provides for the calculation of interest that will be charged on the Department's equity share in a dwelling.

Paragraph 17 provides for the order of priority for any equity buy back under the Scheme.

Paragraph 18 provides for the conditions where an assisted person can buy out all or part of the Department's equity share in a dwelling.

Paragraph 19 provides for the circumstances in which a sole assisted person can purchase the property jointly with another person.

Paragraph 20 provides that where the property is jointly owned, it can be transferred to one of the assisted persons subject to certain criteria.

Paragraph 21 deals with the disposal of a property when an assisted person dies, and that the Department's full equity share is repaid at the current market value.



Isle of Man

Ellan Vannin

AT 19 of 2011

**HOUSING (MISCELLANEOUS
PROVISIONS) ACT 2011**



Isle of Man

Ellan Vannin

HOUSING (MISCELLANEOUS PROVISIONS) ACT 2011

Index

| Section | Page |
|--|-----------|
| PART 1 – OPENING PROVISIONS | 7 |
| 1 Title | 7 |
| 2 Commencement | 7 |
| 3 Interpretation..... | 8 |
| PART 2 – HOUSING ASSISTANCE | 9 |
| 4 Housing purchase assistance schemes | 9 |
| 5 Housing improvement schemes | 9 |
| 6 Historic buildings conservation schemes..... | 10 |
| 7 Schemes under section 4, 5 or 6: supplemental | 10 |
| 8 Rights of entry | 12 |
| 9 Powers to require information..... | 12 |
| 10 Offences..... | 13 |
| PART 3 – CONTROL OF FLATS AND HOUSES IN MULTIPLE OCCUPATION | 14 |
| 11 Housing standards regulations..... | 14 |
| 12 Flats and houses in multiple occupation to be registered..... | 15 |
| 13 Flats and houses in multiple occupation to which this Part applies | 15 |
| 14 Enforcement and information powers..... | 16 |
| PART 4 – APPOINTMENT OF MANAGERS | 16 |
| 15 Premises to which this Part applies | 16 |
| 16 Interpretation for the purposes of this Part..... | 16 |
| 17 Tenant’s right to apply to Commissioners for appointment of manager | 17 |
| 18 Management application notice | 17 |
| 19 Management application: preconditions..... | 19 |
| 20 Management orders..... | 19 |
| 21 Discharge of management orders..... | 21 |
| 22 Form and content of notices | 22 |

| | |
|--|-----------|
| PART 5 – FLATS: COMPULSORY ACQUISITION OF LANDLORD’S INTEREST | 22 |
| 23 Compulsory acquisition of landlord’s interest by qualifying tenants | 22 |
| 24 Interpretation for the purposes of this Part | 23 |
| 25 Qualifying tenants..... | 24 |
| 26 Preliminary notice by tenants..... | 24 |
| 27 Acquisition applications..... | 25 |
| 28 Acquisition orders: conditions | 26 |
| 29 Content of acquisition orders | 27 |
| 30 Determination of terms by the Court | 28 |
| 31 Discharge of existing mortgages | 29 |
| 32 Acquisition order where landlord cannot be found..... | 30 |
| 33 Discharge of acquisition order and withdrawal by tenants..... | 30 |
| PART 6 – VARIATION OF LEASES | 32 |
| 34 Application by party to lease for variation of lease..... | 32 |
| 35 Application by respondent for variation of other leases | 34 |
| 36 Application by majority of parties for variation of leases | 35 |
| 37 Orders varying leases | 35 |
| 38 Effect of orders varying leases: applications by third parties..... | 37 |
| PART 7 – CLOSING PROVISIONS | 38 |
| 39 Right to make applications not displaced by lease etc..... | 38 |
| 40 Amendments to housing legislation..... | 38 |
| 41 Indemnity | 38 |
| 42 Proceedings, enforcement of Commissioners’ orders and appeals | 38 |
| 43 Public documents | 39 |
| 44 Offences by bodies corporate | 40 |
| 45 Repeals..... | 41 |
| SCHEDULE 1 | 43 |
| HOUSING STANDARDS REGULATIONS | 43 |
| SCHEDULE 2 | 46 |
| DISCHARGE IN PURSUANCE OF ACQUISITION ORDERS | 46 |
| SCHEDULE 3 | 51 |
| AMENDMENTS TO HOUSING LEGISLATION | 51 |
| SCHEDULE 4 | 52 |
| REPEALS | 52 |
| ENDNOTES | 53 |
| TABLE OF LEGISLATION HISTORY | 53 |

| | |
|--------------------------------|----|
| TABLE OF RENUMBERED PROVISIONS | 53 |
| TABLE OF ENDNOTE REFERENCES | 53 |

**Isle of Man***Ellan Vannin*

HOUSING (MISCELLANEOUS PROVISIONS) ACT 2011

Received Royal Assent: 11 November 2011
Announced to Tynwald: 15 November 2011
Commenced: See Endnotes

AN ACT to make fresh provision about assistance for the purchase and improvement of homes and the preservation of historic buildings; to make further provision about housing and about leasehold premises; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – OPENING PROVISIONS

1 Title

The short title of this Act is the Housing (Miscellaneous Provisions) Act 2011.

2 Commencement

- (1) The following provisions come into operation on the announcement of Royal Assent to Tynwald—
 - (a) this Part;
 - (b) Part 2; and
 - (c) section 40 and the amendments in Schedule 3.
- (2) Subject to subsection (1), this Act comes into operation on such day as the Department may by order appoint and different days may be appointed for different provisions and for different purposes.¹
- (3) Before making an order under subsection (2) the Department must consult the Department of Infrastructure and the Department of Environment, Food and Agriculture.

3 Interpretation

(1) In this Act—

“**associated company**” means, in respect of a body corporate—

- (a) any subsidiary of that body;
- (b) any holding company of that body;
- (c) any subsidiary of that holding company;
- (d) any director or employee of any such holding company or subsidiary,

and for the purposes of this definition, “**holding company**” and “**subsidiary company**” are to be construed in accordance with section 1 of the *Companies Act 1974*;

“**charitable purposes**”, in relation to a charity, means charitable purposes whether of that charity or of that charity and other charities;

“**the Commissioners**” mean the Isle of Man Rent and Rating Appeal Commissioners;

“**common parts**”, in relation to any building or part of a building, includes the structure and exterior of that building or part and any common facilities within it;

“**the Court**” means the High Court;

“**the Department**” means the Department of Social Care;

“**flat**” means a separate set of domestic premises, whether or not on the same floor —

- (a) forming part of a building; and
- (b) either the whole or a material part of which lies above or below some other part of the building;

“**functional land**”, in relation to a charity, means land occupied by the charity, or by trustees for it, and wholly or mainly used for charitable purposes;

“**house in multiple occupation**” has the meaning given in an order under section 13;

“**housing standards regulations**” has the meaning given by section 11(3);

“**landlord**” except in the expression “**superior landlord**” means the immediate landlord;

“**lease**” and “**tenancy**” have the same meaning, and both expressions include—

- (a) a sub-lease or sub-tenancy; and
- (b) an agreement for a lease or tenancy (or for a sub-lease or sub-tenancy);

“**LGA 1985**” means the *Local Government Act 1985*;

“**long lease**” means a lease granted for a term exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture;

“**owner**” includes a joint or part owner, or any person in the actual receipt or possession of the rents of premises, whether on that person’s own account or on account of or as agent or trustee for any other person;

“**resident landlord**” is to be construed in accordance with subsection (2);

“**service charge**” has the meaning given by section 1 of the *Property Service Charges Act 1989*.

- (2) For the purposes of this Act the landlord of any premises consisting of the whole or part of a building is a resident landlord of those premises at any time if—
- (a) the premises are not, and do not form part of, a purpose-built block of flats;
 - (b) at that time the landlord occupies a flat contained in the premises as the landlord’s only or principal residence; and
 - (c) the landlord has so occupied such a flat throughout a period of not less than 12 months ending with that time.

PART 2 – HOUSING ASSISTANCE

4 Housing purchase assistance schemes

- (1) With the concurrence of the Treasury, the Department may make schemes to assist residents of the Island, as defined in the scheme, to purchase accommodation, or to continue residing in accommodation which they have purchased.
- (2) Until the coming into operation of the first scheme under this section, the House Purchase Assistance Scheme 2007¹ and the House Purchase Assistance (Persons Aged 45 Or Over) Scheme 2005² have effect as if each were such a scheme, but not so as to make any person guilty of an offence in respect of anything done or omitted to be done before the coming into operation of this section.

5 Housing improvement schemes

- (1) With the concurrence of the Treasury, the Department may make schemes to assist residents of the Island, as defined in the scheme, to make specified improvements to their living accommodation, or to living

¹ GC25/07 as amended by GC66/07 and GC19/08.

² GC36/05

accommodation which they intend to occupy once specified improvements have been made.

- (2) Until the coming into operation of the first scheme under this section the House Improvement and Energy Conservation Scheme 2010³ and (insofar as it continues to have effect) the House Improvement and Energy Conservation Scheme 2005⁴ have effect as if each were such a scheme, but not so as to make any person guilty of an offence in respect of anything done or omitted to be done before the coming into operation of this section.

6 Historic buildings conservation schemes

- (1) With the concurrence of the Treasury, the Department of Infrastructure may make schemes to provide funding for—
 - (a) the maintenance of registered buildings;
 - (b) the maintenance of buildings not within paragraph (a) but that are situate within a conservation area;
 - (c) works to repair, restore or improve buildings not falling within paragraph (a) or (b) where such works would in the opinion of the Department of Infrastructure make an important contribution to an historic townscape or to the rural landscape.
- (2) Until the coming into operation of the first scheme under this section the Historic Buildings Conservation Scheme 2011⁵ and (insofar as it continues to have effect) the Historic Buildings Conservation Scheme 2005⁶ have effect as if each were such a scheme, but not so as to make any person guilty of an offence in respect of anything done or omitted to be done before the coming into operation of this section.
- (3) In this section—

“conservation area” means an area designated under section 18(1) of the *Town and Country Planning Act 1999*; and

“registered building” has the meaning given in section 45(1) of that Act.

7 Schemes under section 4, 5 or 6: supplemental

- (1) A scheme under section 4, 5 or 6 may contain provision of the kind specified in subsection (2).
- (2) The provision referred to in subsection (1) is provision about—
 - (a) eligibility for assistance;

³ GC48/10

⁴ GC29/05 as amended by GC31/06 and GC68/07

⁵ GC1/11

⁶ GC19/05 as amended by GC8/06.

- (b) the types of property for which assistance is available;
 - (c) the form and manner of application for assistance;
 - (d) the information to be provided on an application for assistance;
 - (e) how an applicant's income is to be calculated;
 - (f) the provision of assistance, and the form which it is to take;
 - (g) conditions subject to which the assistance may be granted;
 - (h) the repayment of assistance, including the payment of interest;
 - (i) the security which the relevant Department is to have over the estate or interest in the relevant property;
 - (j) the priority of the relevant Department's security in relation to other monies secured on the estate or interest in the relevant property;
 - (k) the relevant Department's power to inspect the relevant property;
 - (l) circumstances in which an assisted person may continue to satisfy the requirements of the scheme despite selling the property purchased with assistance under a scheme under section 4 and acquiring a further property;
 - (m) circumstances in which the relevant Department may acquire the applicant's estate or interest in the relevant property;
 - (n) circumstances in which the repayable amount of any assistance may be reduced;
 - (o) matters about which the relevant Department is to be satisfied before providing assistance;
 - (p) fees which are to be payable to the relevant Department in connection with an application;
 - (q) costs and expenses which the relevant Department is to be entitled to recover in the event of a failure to comply with the terms on which assistance has been granted;
 - (r) appeals to the High Bailiff against a decision of the relevant Department under such of its provisions, and subject to such conditions as to review of the decision in question, as may be prescribed.
- (3) A scheme under section 4, 5 or 6 may —
- (a) provide for matters to be subject to approval by the relevant Department, and for such approval to be given by means other than a scheme;
 - (b) provide for the relevant Department, an officer of the relevant Department or another person to exercise a discretion;
 - (c) provide for the relevant Department to dispense with such of its requirements, and in such circumstances, as may be prescribed in the scheme.

- (4) The Department may, after consulting the Department of Infrastructure, by order amend subsection (2) or (3).
- (5) A scheme under section 4, 5 or 6, and an order under subsection (4), may contain consequential, incidental, supplementary and transitional provisions.
- (6) A scheme under section 4, 5 or 6 and any order under subsection (4), must not come into operation until it has been approved by Tynwald.

For the sake of clarity, this subsection does not apply to the schemes treated as being made under section 4, 5, or 6 by virtue of subsection (2) of each of those sections.

- (7) In this section –

“relevant Department” means the Department by which a scheme under this Part is made or deemed to have been made;

“relevant property” –

- (a) means property purchased or improved with assistance provided under a scheme made or having effect as if made, under section 4, 5 or 6; and
- (b) in the case of a scheme made, or having effect as if made, under section 4 includes a further property acquired in accordance with provision made under subsection (2)(1).

8 Rights of entry

This Part is a relevant enactment for the purposes of section 35 of LGA 1985 (powers to enter on land) and, so far as is necessary, a reference in that section to a local authority shall be read as including a reference to a relevant Department within the meaning of section 7.

9 Powers to require information

P2004/34/235

- (1) A person authorised in writing by the relevant Department or the relevant Department may exercise the power conferred by subsection (2) in relation to documents reasonably required by that body –
 - (a) for any purpose connected with the exercise of any of that body’s functions under this Part in relation to any premises, or
 - (b) for the purpose of investigating whether any offence has been committed under this Part in relation to any premises.
- (2) A person so authorised may give a notice to a relevant person (“P”) requiring P –
 - (a) to produce any documents which –

- (i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice, and
 - (ii) are in P's custody or under P's control, and
- (b) to produce them at a time and place so specified and to a person so specified.
- (3) The notice must include information about the possible consequences of not complying with the notice.
- (4) The person to whom any document is produced in accordance with the notice may copy the document.
- (5) P may not be required under this section to produce any document which P would be entitled to refuse to provide in proceedings before the Court on grounds of legal professional privilege.
- (6) In this section—
 - “document” includes information recorded otherwise than in legible form, and in relation to information so recorded, any reference to the production of a document is a reference to the production of a copy of the information in legible form;
 - “relevant Department” has meaning given by section 7(7);
 - “relevant person” means, in relation to any premises, a person within any of the following paragraphs—
 - (a) a person who has an estate or interest in the premises;
 - (b) a person who is, or is proposing to be, managing or having control of the premises;
 - (c) a person who is, or is proposing to be, otherwise involved in the management of the premises;
 - (d) an occupier of the premises.

10 Offences

- (1) A person commits an offence if, for the purpose of obtaining a payment under a scheme made or having effect as if made under section 4, 5 or 6 whether for himself, herself or another, or for any other purpose connected with such a scheme, that person—
 - (a) makes a statement or representation knowing it to be false; or
 - (b) produces or furnishes, or knowingly causes or knowingly allows to be produced or furnished, any document or information knowing it to be false in a material particular.
- (2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or both.

- (3) If a person is convicted of an offence under subsection (1) in relation to a scheme under section 4 or 5, the court may in addition make an order depriving that person of his or her estate or interest in the property obtained or improved (as the case requires) with money provided under the scheme as a result of the statement or representation.
- Any order under this subsection may be suspended on such terms, and may contain such other provisions, as the court thinks just.
- (4) A person who fails to comply with a requirement of a notice under section 9 commits an offence.
- (5) In proceedings for an offence under subsection (4) it is a defence for the defendant to show that he or she had reasonable excuse for failing to comply with the notice.
- (6) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding £5,000.
- (7) A person commits an offence if he or she intentionally alters, suppresses or destroys a document which he or she knows to have been required to be produced by a notice under section 9.
- (8) A person who commits an offence under subsection (7) is liable—
- on summary conviction, to a fine of not more than £5,000;
 - on conviction on information, to a fine.
- (9) In this section “document” includes information recorded other than in legible form, and in relation to information so recorded—
- the reference to the production of a document is a reference to the production of a copy of the information in legible form, and
 - the reference to suppressing a document includes a reference to destroying the means of reproducing the information.

PART 3 — CONTROL OF FLATS AND HOUSES IN MULTIPLE OCCUPATION²

11 Housing standards regulations

- (1) The Department of Environment, Food and Agriculture must make regulations about facilities provided in, and in connection with, the occupation of flats and houses in multiple occupation.

Such regulations are referred to in this Act as “**housing standards regulations**”.

- (2) For the sake of clarity, housing standards regulations may apply to a flat or a house in multiple occupation regardless of whether it is required to be registered under section 12.

- (3) Schedule 1 makes provision about the content of housing standards regulations.
- (4) Housing standards regulations must not come into operation until they have been approved by Tynwald.

12 Flats and houses in multiple occupation to be registered

- (1) The Department of Environment, Food and Agriculture must make regulations (“registration regulations”) specifying the circumstances in which flats and houses in multiple occupation are to be registered by the local authority within whose area they are situate.
- (2) Registration regulations must provide that premises to which they apply may not be registered as flats or as houses in multiple occupation unless they, and any building containing them, comply with any applicable requirements of regulations under Part 1 of Schedule 8 to the *Fire Precautions Act 1975*.
- (3) Registration regulations may provide for exceptions from all or any of their requirements (other than those imposed under subsection (2)).
- (4) Exceptions under subsection (3) may be framed, in particular, by reference to—
 - (a) the structure of the premises;
 - (b) the nature of any building of which the premises form a part;
 - (c) the facilities available to the occupants of the premises, or of the building mentioned in paragraph (b);
 - (d) the circumstances in which the premises are occupied; or
 - (e) the basis on which the occupants occupy the premises.
- (5) Nothing in subsection (4) limits the scope of subsection (3).
- (6) Registration regulations may provide for a fee to be payable for registration.
- (7) Registration regulations must not come into operation until they are approved by Tynwald.
- (8) A person who permits the occupation of a flat or a house in multiple occupation that is required to be registered under registration regulations, when it is not registered, commits an offence and is liable on summary conviction to a fine not exceeding £20,000.

13 Flats and houses in multiple occupation to which this Part applies

- (1) This Part applies to flats and houses in multiple occupation of a description specified in an order made by the Department of the Environment, Food and Agriculture.

- (2) An order under subsection (1) must not come into operation until approved by Tynwald.

14 Enforcement and information powers

- (1) For the purposes of section 35 of LGA 1985 (powers to enter on land), this Part and regulations made under it are relevant enactments.
- (2) Sections 36 to 41 and 46 to 49 (which concern enforcement powers and the recovery of expenses and charges) and Part VII of LGA 1985 (legal proceedings) apply for the purposes of this Part with the modification that references in those provisions to a local authority are to be read as including references to the Department of Environment, Food and Agriculture.

PART 4 — APPOINTMENT OF MANAGERS

15 Premises to which this Part applies

P1987/31/21 (part)

This Part applies to premises—

- (a) that consist of the whole or a part of a building containing 2 or more flats;
- (b) that do not form part of the functional land of any charity; and
- (c) in respect of which the landlord's interest is held by a person who is not—
- (i) an exempt landlord, or
- (ii) a resident landlord, unless at least 50% of the flats contained in the premises are held on long leases.

16 Interpretation for the purposes of this Part

- (1) In this Part—

“**exempt landlord**” means—

- (a) a Department,
- (b) a Statutory Board,
- (c) a local authority, or
- (d) a joint board within the meaning of LGA 1985,

but does not include the Treasury as the holder of *bona vacantia*;

“**management application**” means an application under section 17 for a management order;

“**management application notice**” means a notice complying with section 18;

“**management order**” has the meaning given in section 20(1);

“**relevant premises**” means premises to which this Part applies by virtue of section 15;

“**tenant**” does not include a tenant under a tenancy to which the *Tenancy of Business Premises Act 1971* applies.

- (2) A reference in this Part –
- (a) to the management of relevant premises includes a reference to the repair, maintenance, improvement or insurance of those premises;
 - (b) to a single tenant is a reference to one of the tenants entitled to make a joint application under section 17(2)(a).

17 **Tenant’s right to apply to Commissioners for appointment of manager**

P1987/31/21

- (1) The tenant of a flat contained in relevant premises may apply to the Commissioners, in accordance with this Part, for a management order.
- (2) In addition to an application by a single tenant, an application for a management order may be made –
 - (a) jointly by tenants of 2 or more flats if they are each entitled to make such an application by virtue of this section; and
 - (b) in respect of 2 or more relevant premises.
- (3) If the tenancy of a flat contained in relevant premises is held by joint tenants, an application for a management order in respect of those premises may be made by any one or more of those joint tenants.
- (4) An application to the Court for it to exercise in relation to any premises any other power to appoint a receiver or manager shall not be made by a tenant (acting in that capacity) in any circumstances in which the tenant could apply for a management order in relation to those premises.

18 **Management application notice**

P1987/31/22

- (1) Before applying for a management order in respect of any premises, the tenant must serve a notice (“**a management application notice**”) on –
 - (a) the landlord, and
 - (b) any other person by whom obligations relating to the management of the premises or any part of them are owed to the tenant under the tenancy.

This is subject to subsection (3).

- (2) A management application notice must –
 - (a) specify the tenant’s name, the address of the flat and an address in the Island (which may be the address of the flat) at which any

- person on whom the notice is served may serve notices, including notices in proceedings, on the tenant in connection with this Part;
- (b) state that the tenant intends to apply under section 20 for a management order in respect of the relevant premises specified in the notice, but (if paragraph (d) is applicable) that the tenant will not do so if the requirement specified under that paragraph is met;
 - (c) specify the grounds on which the order will be sought and the matters relied on by the tenant for the purpose of establishing those grounds;
 - (d) if those matters are capable of being remedied by any person on whom the notice is served (“the relevant recipient”), require the relevant recipient, within such reasonable period as is specified in the notice, to take steps for the purpose of remedying them as are so specified; and
 - (e) contain such information (if any) as the Department may prescribe in regulations.
- (3) The Commissioners may (whether on the hearing of a management application or not)—
- (a) by order dispense with the requirement to serve a management application notice on a person if satisfied that its service would not be reasonably practicable; and
 - (b) if they make an order under paragraph (a) direct that such other notices are served, or such other steps are taken, as they think fit.
- (4) In a case where—
- (a) a management application notice has been served on the landlord; and
 - (b) the landlord’s interest in the premises specified under subsection (2)(b) is subject to a mortgage,
- the landlord must, as soon as is reasonably practicable after receiving the notice, serve a copy of the notice on the mortgagee.
- (5) Subsection (6) or (7) applies if—
- (a) a management application notice has been served in accordance with this section, or
 - (b) the service of such a notice has been dispensed with under subsection (3).
- (6) If the landlord’s title derives from a document registered under the *Registration of Deeds Act 1961* the management application notice may be recorded in the Deeds Register as a burden on the landlord’s title.
- (7) If the landlord’s title is registered under the *Land Registration Act 1982* —

- (a) section 60 of that Act (cautions against first registration) applies as if the tenant were such a person as is mentioned in subsection (1)(a) of that section; and
- (b) section 61 of that Act (cautions against registered dispositions) applies as if the tenant were a person interested in the registered land comprising the landlord's title (or so much of it as is the subject of the management application).

19 Management application: preconditions

P1987/31/23

- (1) A management application may be made to the Commissioners only if the relevant precondition is met.
- (2) In a case where a management application notice has been served the relevant precondition is that—
 - (a) the period specified under section 18(2)(d) has expired without the relevant recipient taking the steps required in the notice, or
 - (b) section 18(2)(d) did not apply.
- (3) In a case where the Commissioners have, by order, dispensed with the requirement to serve a management application notice, the relevant precondition is that—
 - (a) any requirement to serve notices or take other steps specified by the order has been met, or
 - (b) no direction was given under section 18(3)(b) by the Commissioners when making the order.

20 Management orders

P1987/31/24

- (1) If a management application is made in relation to any relevant premises, the Commissioners may make an order (“**a management order**”) appointing a manager to carry out—
 - (a) such functions in connection with the management of the premises; or
 - (b) such functions of a receiver,or both, as the Commissioners think fit.
- (2) A management order may be interim or final.
- (3) The Commissioners may make a management order only if satisfied it is just and convenient to do so in all the circumstances of the case and that—
 - (a) any relevant person either is in breach of any obligation owed by that person to the tenant under the tenancy and relating to the management of the relevant premises or any part of them or (in

- the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give the relevant person the appropriate notice;
- (b) unreasonable service charges have been made, or are proposed or likely to be made;
 - (c) no service charges have been made, or are proposed or likely to be made, in circumstances where it would be reasonable to expect such charges to be made;
 - (d) there has been a failure to comply with a duty imposed by or by virtue of section 11 of the *Property Service Charges Act 1989* (tenants' contributions to be held in trust); or
 - (e) the state of repair of the relevant premises (or a part of them) or their management is likely to improve significantly if a management order were made.
- (4) On making a management order the Commissioners must direct the Chief Registrar to cause the management order —
- (a) in the case of registered land, to be registered —
 - (i) as a burden on the landlord's title; and
 - (ii) as an appurtenant right on the title of the tenants;
 - (b) in the case of unregistered land, to be recorded in the Register of Deeds.
- (5) In this section "relevant person" means a person —
- (a) on whom a management application notice has been served; or
 - (b) in whose case the requirement to serve a management application notice has been dispensed with by an order under section 18(3).
- (6) For the purposes of subsection (3)(b) a service charge is unreasonable if —
- (a) the amount is unreasonable having regard to the items for which it is payable;
 - (b) the items for which it is payable are of an unnecessarily high standard; or
 - (c) the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.
- (7) The premises in respect of which a management order are made may, if the Commissioners think fit, be either more or less extensive than the premises specified in the application giving rise to the order.
- (8) A management order may make provision with respect to —
- (a) such matters relating to the exercise by the manager of functions under the order, and

- (b) such incidental or ancillary matters,
as the Commissioners think fit; and, on any subsequent application made for the purpose by the manager, the Commissioners may give directions with respect to any such matters.
- (9) A management order may provide—
- (a) for rights and liabilities arising under contracts to which the manager is not a party to become the manager's rights and liabilities;
 - (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether in contract or tort) accruing before or after the date of the manager's appointment;
 - (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
 - (d) for the manager's functions to be exercisable (subject to subsection (10)) either during a specified period or without limit of time.

Nothing in this subsection limits the operation of subsection (8).

- (10) If they make a management order, the Commissioners may impose such conditions as they think fit, including suspending the order's operation on terms.
- (11) In a case where an application for a management order was preceded by the service of a management application notice, the Commissioners may, if they think fit, make such an order despite the fact that—
- (a) any period specified in the management application notice by virtue of section 18(2)(d) was not a reasonable period; or
 - (b) the notice failed in any other respect to comply with any requirement contained in section 18(2) or in any regulations applying to the notice under section 18(2)(e).
- (12) A management order is enforceable against any person deriving title from the landlord in respect of that person's interest in the premises to which the order relates but without prejudice to—
- (a) section 29 of the *Registration of Deeds Act 1961* (registration of encumbrances affecting unregistered land); and
 - (b) section 31(4) of the *Land Registration Act 1982* (effect of transfer of registered land).

21 Discharge of management orders

P1987/31/24(9) – (10)

- (1) The Commissioners may, on the application of any person interested, vary or discharge a management order and direct the cancellation of any entry registered under the *Land Registration Act 1982* protecting the order.

- (2) The Commissioners may impose conditions on the variation or discharge of the order.
- (3) The Commissioners may only vary or discharge a management order by virtue of subsection (1) if satisfied—
 - (a) that the variation or discharge will not result in a recurrence of the circumstances which led to the management order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the management order.
- (4) The Commissioners may not discharge a management order by reason only that the premises in respect of which the order was made have ceased to be relevant premises—
 - (a) by becoming part of the functional land of a charity; or
 - (b) by reason of the landlord's interest becoming vested in an exempt landlord.

22 Form and content of notices

- (1) The Department may specify—
 - (a) the form of any notices required or authorised to be served under or in pursuance of any provision of this Part; and
 - (b) the particulars which any such notices must contain whether in addition to, or in substitution for, any particulars required by virtue of the provision in question.
- (2) If the Department exercises the power conferred by subsection (1) it must take such steps as it considers reasonable to notify those likely to be affected by its exercise.

PART 5 — FLATS: COMPULSORY ACQUISITION OF LANDLORD'S INTEREST

23 Compulsory acquisition of landlord's interest by qualifying tenants

P1987/31/25

- (1) This Part has effect for the purpose of enabling qualifying tenants of flats contained in any premises to which this Part applies to make an application to the Court for an order (“**an acquisition order**”) providing for a person nominated by them to acquire their landlord's interest in the premises without the landlord's consent.
- (2) This Part applies to premises if—
 - (a) they consist of the whole or part of a building;

- (b) they contain 2 or more flats held by tenants of the landlord who are qualifying tenants; and
 - (c) the total number of flats held by qualifying tenants is not less than $\frac{2}{3}$ of the total number of flats contained in the premises.
- (3) But this Part does not apply if—
- (a) any part or parts of the premises is or are occupied or intended to be occupied otherwise than for residential purposes; and
 - (b) the internal floor area of that part or those parts (taken together) exceeds $\frac{1}{2}$ of the internal floor area of the premises (taken as a whole).
- For the purposes of this subsection the internal floor area of any common parts shall be disregarded.
- (4) Nor does this Part apply to premises at a time when—
- (a) the landlord's interest in the premises is held by an exempt landlord or a resident landlord; or
 - (b) the premises form part of the functional land of a charity.
- (5) The Department may by order vary the fraction specified in subsection (3)(b).

24 Interpretation for the purposes of this Part

- (1) In this Part—
- “**acquisition application**” means an application for an acquisition order;
- “**acquisition application notice**” has the meaning given by section 26(1);
- “**acquisition order**” means an order under section 23(1);
- “**exempt landlord**” has the same meaning as in section 16(1);
- “**nominated person**” means, in relation to an acquisition order, the person nominated for the purposes of this Part by those making the acquisition application; and
- “**qualifying tenant**” has the meaning given by section 25.
- (2) In this Part a reference to “**the requisite majority**” of qualifying tenants of the flats contained in any premises is a reference to qualifying tenants of the flats so contained holding not less than $\frac{2}{3}$ of the available votes.
- (3) For the purpose of subsection (2)—
- (a) the total number of available votes shall correspond to the total number of those flats for the time being let to qualifying tenants; and
 - (b) one available vote in respect of each of the flats so let shall be attributed to the qualifying tenant to whom it is let.

- (4) Nothing in this Part requires the persons constituting the requisite majority in any one context to be the same as the persons constituting that majority in any other context.

25 **Qualifying tenants**

P1987/31/26

- (1) A person is a qualifying tenant of a flat for the purposes of this Part if the person is the tenant of the flat under a long lease.
- (2) But a person is not a qualifying tenant of a flat if, by virtue of one or more long leases, that person is the tenant not only of the flat in question but also of at least 2 other flats contained in any particular premises consisting of the whole or part of a building.
- (3) In computing the number of flats a tenant occupies for the purposes of subsection (2), disregard any flat occupied by virtue of a tenancy to which the *Tenancy of Business Premises Act 1971* applies.
- (4) A tenant of a flat under a long lease, whose landlord is a qualifying tenant of that flat, is not a qualifying tenant of that flat.
- (5) For the purposes of subsections (2) and (3) if a tenant of a flat contained in the premises in question is a company, it shall be treated as the tenant of any other flat so contained and let to an associated company (within the meaning of section 218 of the *Companies Act 2006*).

26 **Preliminary notice by tenants**

P1987/31/27

- (1) Before an acquisition application is made in respect of any premises, a notice (“**an acquisition application notice**”) must be served by or on behalf of the requisite majority of the qualifying tenants of the flats contained in the premises.
- (2) The acquisition application notice must be served on the landlord, subject to subsection (3)(a).
- (3) The Court—
 - (a) may by order dispense with the requirement to serve the acquisition application notice if satisfied it would not be reasonably practicable to do so; and
 - (b) if it makes an order under paragraph (a), may direct that such other notices are served, or such other steps are taken, as it thinks fit.
- (4) An acquisition application notice must—
 - (a) specify the names of the qualifying tenants by whom it is served, the addresses of their flats and the name and address in the Island of a person on whom the landlord may serve notices (including

- notices in proceedings) in connection with this Part instead of serving them on those tenants;
- (b) state that those tenants intend to make an acquisition application in respect of the premises specified in the notice, but, if paragraph (d) is applicable, that they will not do so if the landlord complies with the requirement specified under that paragraph;
 - (c) specify the grounds on which the Court would be asked to make such an acquisition order and the matters on which the tenants would rely to establish those grounds;
 - (d) if the landlord could remedy those matters, require the landlord, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are specified in it; and
 - (e) contain such information (if any) as the Department may specify.
- (5) If the Department exercises the power conferred by subsection (4)(e) it must take such steps as it considers reasonable to notify those likely to be affected by its exercise.

27 Acquisition applications

P1987/31/28

- (1) An acquisition application may only be made by qualifying tenants of the flats contained in the premises if, when it is made, they constitute the requisite majority.
- (2) An application may only made to the Court if (but only if) —
 - (a) in a case where an acquisition application notice has been served—
 - (i) the period specified under section 26(4)(d) has expired without the landlord having taken the steps required under that paragraph, or
 - (ii) section 26(4)(d) was not applicable in the circumstances of the case; or
 - (b) in a case where the requirement to serve such a notice has been dispensed with by an order under section 26(3)—
 - (i) anything required to be done by virtue of a direction given on the making of the order has been done, or
 - (ii) no direction was given on the making of the order.
- (3) An acquisition application may, subject to the preceding provisions of this Part, be made in respect of 2 or more premises to which this Part applies.
- (4) Rules of Court may—

- (a) require notice of an acquisition application to be served on such descriptions of persons as the rules specify; and
 - (b) enable persons served with a notice under paragraph (a) to be joined as parties to the proceedings.
- (5) The applicants for an acquisition order may register the application under the *Land Registration Act 1982* as a pending action (and references to pending actions in that are to be construed accordingly).

28 Acquisition orders: conditions

P1987/31/29

- (1) An acquisition order may be made in respect of any premises on an acquisition application if—
- (a) the Court is satisfied—
 - (i) the premises were, at the date of service on the landlord of the acquisition application notice (if any) and on the date when the acquisition application was made, premises to which this Part applies, and
 - (ii) they have not ceased to be such premises since the date when the acquisition application was made;
 - (b) the condition in subsection (2) or (4) is fulfilled with respect to those premises; and
 - (c) the Court considers it appropriate to make the order in the circumstances of the case.
- (2) The condition is that the Court is satisfied—
- (a) that the landlord—
 - (i) is in breach of any obligation owed to the applicants under their leases and relating to the management of the premises in question, or any part of them, or
 - (ii) where the obligation is dependent on notice, would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give the landlord the appropriate notice; and
 - (b) that the circumstances in which the landlord is (or would be) in breach of any such obligation are likely to continue.
- (3) The reference in subsection (2)(a)(i) to the management of any premises includes a reference to the repair, maintenance, improvement or insurance of those premises.
- (4) The condition is that, both at the date when the application was made and throughout the 2 years immediately preceding it, a management order was in force in relation to the premises in question which was made by reason of an act or omission on the part of the landlord.

- (5) If the Court thinks fit an acquisition order may—
- (a) include any yard, garden, outhouse or appurtenance belonging to, or usually enjoyed with, the premises specified in the application on which the order is made;
 - (b) exclude any part of the premises so specified.
- (6) Even if satisfied of the matters in subsection (1), the Court must not make an acquisition order on the application if—
- (a) the premises in respect of which the application is made consist of part only of more extensive premises in which the landlord has an interest, and
 - (b) it appears to the Court that the landlord's interest in the latter premises is not reasonably capable of being severed, either in the manner contemplated by the application or under subsection (5)(b).
- (7) If an application for an acquisition order was preceded by the service of an acquisition application notice, the Court may, if it thinks fit, make the order despite the fact—
- (a) that any period specified in the notice in pursuance of section 26(4)(d) was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in section 26(4) or imposed by the Department under this Part.
- (8) If any premises are premises to which this Part applies at the time when an acquisition application is made in respect of them, then, for the purposes of this section and the following provisions of this Part, they shall not cease to be such premises by reason only that—
- (a) the landlord's interest subsequently becomes held by an exempt landlord or a resident landlord, or
 - (b) they subsequently become included within the functional land of any charity.

29 Content of acquisition orders

P1987/31/30

- (1) Unless section 32(2) applies, an acquisition order must provide for the nominated person to be entitled to acquire the landlord's interest in the premises specified in the order on such terms as may be determined—
- (a) by agreement between the landlord and the qualifying tenants in whose favour the order is made, or
 - (b) in default of agreement, by the Court under section 30.

- (2) An acquisition order may be granted subject to such conditions as the Court thinks fit, and in particular its operation may be suspended on terms.
- (3) The applicants must secure that the nominated person is joined as a party to the application.
- (4) Once the acquisition order is made, the applicants may nominate another person for the purposes of this Part (whether in addition to, or in substitution for, the existing nominated person) but only with the Court's approval.
- (5) If, as a result of any covenant, condition or other obligation, the landlord may only dispose of the landlord's interest in premises which are subject to an acquisition order with the consent of some other person the landlord must—
 - (a) use the landlord's best endeavours to obtain that consent, and
 - (b) if it appears to the landlord that that person is obliged not to withhold consent unreasonably but has nevertheless so withheld it, institute proceedings for a declaration to that effect.
- (6) However, if —
 - (a) the landlord has discharged any duty imposed under subsection (5),
 - (b) the consent of that person has been withheld, and
 - (c) no such declaration has been made,the order shall cease to have effect.
- (7) The *Land Registration Act 1982* applies in relation to an acquisition order as it applies in relation to an order affecting land made by a court for the purpose of enforcing a judgment, and on a conveyance in pursuance of an acquisition order the nominated person must register the title acquired by virtue of the order under that Act.

30 **Determination of terms by the Court**

P1987/31/31

- (1) The Court has jurisdiction to determine the terms on which the landlord's interest in the premises specified in an acquisition order may be acquired by the nominated person to the extent that those terms have not been determined by agreement between the landlord and either —
 - (a) the qualifying tenants in whose favour the order was made, or
 - (b) the nominated person.
- (2) The Court must determine any terms under subsection (1) on the basis of what appears to it to be fair and reasonable.
- (3) If an application is made under this section for the Court to determine the consideration payable for the acquisition of a landlord's interest in

any premises, the Court must do so by determining an amount equal to the amount which, in its opinion, that interest might be expected to realise if sold on the open market by a willing seller on the appropriate terms and on the assumption that none of the tenants of the landlord of any premises comprised in those premises was buying or seeking to buy that interest.

- (4) In subsection (3) “the appropriate terms” means all the terms to which the acquisition of the landlord’s interest under the order is to be subject apart from those relating to the consideration payable.
- (5) On any application under this section the interests of the qualifying tenants in whose favour the acquisition order was made shall be represented by the nominated person, and accordingly the parties to any such application shall not include those tenants.

31 Discharge of existing mortgages

P1987/31/32

- (1) If the landlord’s interest in any premises is acquired in pursuance of an acquisition order, the instrument by virtue of which it is so acquired shall (subject to Schedule 2) operate to discharge the premises from any mortgage on that interest to secure the payment of money or the performance of any other obligation by the landlord or any other person.
- (2) Subsection (1) does not apply to a mortgage if—
 - (a) it has been agreed between the landlord and—
 - (i) the qualifying tenants in whose favour the order was made, or
 - (ii) the nominated person,that the landlord’s interest should be acquired subject to the mortgage, or
 - (b) the Court is satisfied, whether on the application for the order or on an application made by the person entitled to the benefit of the mortgage, that in the exceptional circumstances of the case it would be fair and reasonable that the landlord’s interest should be acquired subject to the mortgage, and orders accordingly.
- (3) This section and Schedule 2 apply, with any necessary modifications, to liens as they apply to mortgages; but nothing in those provisions applies to a rentcharge.
- (4) On making an acquisition order the Court must deliver a certified copy to the Chief Registrar who must record it in the Register of Deeds or register it under the *Land Registration Act 1982* (as the case requires).

32 Acquisition order where landlord cannot be found

P1987/31/33

- (1) Subsection (2) applies if—
 - (a) an acquisition order is made by the Court; and
 - (b) the landlord cannot be found, or the landlord's identity cannot be ascertained.
- (2) If this subsection applies, the acquisition order must provide for the landlord's interest in the premises specified in the order to vest in the nominated person on—
 - (a) such terms as to payment as are specified in subsection (3), and
 - (b) such other terms (if any) which the Court considers correspond so far as possible to those on which the interest might be expected to be transferred if the landlord were transferring it.
- (3) The terms as to payment are terms requiring the payment into Court of—
 - (a) such amount as a surveyor selected by the Court may certify to be in the surveyor's opinion the amount which the landlord's interest might be expected to realise if sold as mentioned in section 30(3); and
 - (b) any amounts or estimated amounts remaining due to the landlord from any of the landlord's tenants of any premises comprised in the premises in respect of which the order is made, being amounts or estimated amounts determined by the Court as being due from those persons under the terms of their leases.
- (4) If any amount required to be paid into Court by virtue of subsection (3) is paid as required, the landlord's interest shall vest in the nominated person.
- (5) In subsection (3)(a) "surveyor" means a fellow or professional associate of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers appearing to the Court to have ability in, and experience of, the valuation of land in the Island.

33 Discharge of acquisition order and withdrawal by tenants

P1987/31/34

- (1) If, on an application by a landlord in respect of whose interest an acquisition order has been made, the Court is satisfied that—
 - (a) the nominated person has had a reasonable time within which to effect the acquisition of that interest in pursuance of the order but has not done so,
 - (b) the number of qualifying tenants of flats contained in the premises in question wishing to proceed with the acquisition of

the landlord's interest is less than the requisite majority of qualifying tenants of the flats contained in those premises, or

- (c) the premises in question have ceased to be premises to which this Part applies,

the Court may discharge the order.

- (2) If —

- (a) a notice is served on the landlord by the qualifying tenants by whom an acquisition application notice has been served or (as the case may be) by whom an acquisition application has been made, or by the person nominated for the purposes of this Part by any such tenants, and

- (b) the notice indicates an intention no longer to proceed with the acquisition of the landlord's interest in the premises in question,

the landlord may (except in a case where subsection (4) applies) recover under this subsection any costs reasonably incurred in connection with the disposal of the landlord's interest down to the time when the notice is served; and, if the notice is served after the making of an acquisition order, that order shall cease to have effect.

- (3) If (whether before or after the making of an acquisition order) the nominated person becomes aware—

- (a) that the number of qualifying tenants of flats contained in the premises in question who desire to proceed with the acquisition of the landlord's interest is less than the requisite majority of qualifying tenants of the flats contained in those premises, or

- (b) that those premises have ceased to be premises to which this Part applies,

the nominated person must immediately serve on the landlord a notice indicating an intention no longer to proceed with the acquisition of that interest, and subsection (2) shall apply accordingly.

- (4) If, at any time when any proceedings taken under or by virtue of this Part are pending before the Court—

- (a) a notice under subsection (2) or (3) is served on the landlord;

- (b) the nominated person indicates that that person is no longer willing to act in the matter and nobody is nominated for the purposes of this Part instead;

- (c) the number of qualifying tenants of flats contained in the premises in question who desire to proceed with the acquisition of the landlord's interest falls below the requisite majority of qualifying tenants of the flats contained in those premises; or

- (d) those premises cease to be premises to which this Part applies,

or if the Court discharges an acquisition order under subsection (1), the landlord may recover such costs in connection with the disposal of the landlord's interest in those premises as the Court may determine.

- (5) The costs incurred by the landlord that may be recovered under subsection (2) or (4) include costs in connection with any proceedings under this Part (other than proceedings before the Commissioners).
- (6) Any liability for costs arising under this section shall be the joint and several liability of the following persons, namely—
- (a) if the liability arises before the making of an application for an acquisition order, the tenants by whom an acquisition application notice was served, or
 - (b) if the liability arises after the making of such an application, the tenants by whom the application was made,
- together with (in either case) any nominated person.
- (7) If the interest of a tenant has become vested in a successor in title subsection (6) shall have effect as if the references in paragraphs (a) and (b) to tenants—
- (a) included the successor; but
 - (b) excluded the tenant from whom the successor derived title.
- (8) This section does not authorise the Court to discharge an acquisition order if the landlord's interest has already been acquired under it.
- (9) If—
- (a) an acquisition order is discharged, or ceases to have effect, under this Part, and
 - (b) the order has been protected by an entry registered under the *Land Registration Act 1982*,
- the Court may by order direct that that entry shall be cancelled.

PART 6 — VARIATION OF LEASES

34 Application by party to lease for variation of lease

P1987/31/35

- (1) A party to a long lease of a flat may apply to the Commissioners for an order varying the lease in such manner as is specified in the application on the ground that the lease fails to make satisfactory provision about any or all of the matters listed in subsection (2).
- (2) The matters are—
- (a) the repair or maintenance of—
 - (i) the flat in question,

- (ii) the building containing the flat, or
 - (iii) any land or building let to the tenant under the lease or in respect of which rights are conferred on the tenant under it;
 - (b) the insurance of the building containing the flat or of any such land or building mentioned in paragraph (a)(iii);
 - (c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;
 - (d) the provision or maintenance of any services reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);
 - (e) the recovery by one party to the lease (“A”) from another party to it (“B”) of expenditure incurred or to be incurred by A, or on A’s behalf, for the benefit of B or persons including B;
 - (f) whether a service charge is payable under the lease;
 - (g) the computation of a service charge payable under the lease; and
 - (h) such other matters as the Department may prescribe by regulations.
- (3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation include—
- (a) the safety and security of the flat and its occupiers and of any common parts of the building containing it; and
 - (b) other factors relating to the condition of any such common parts.
- (4) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.
- (5) For the purposes of subsection (2)(g) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if —
- (a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

- (b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and
 - (c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would be different from the whole of any such expenditure.
- (6) Regulations by the Department may make provision—
- (a) requiring notice of any application under this Part to be served by the applicant, and by any respondent to it, on any person who the applicant or respondent knows or has reason to believe is likely to be affected by any variation specified in the application, and
 - (b) enabling persons served with any such notice to be joined as parties to the proceedings.
- (7) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—
- (a) the demised premises consist of or include three or more flats contained in the same building; or
 - (b) the lease constitutes a tenancy to which the *Tenancy of Business Premises Act 1971* applies.

35 Application by respondent for variation of other leases

P1987/31/36

- (1) If an application (“the original application”) is made under section 34 by a party to a lease, any other party to that lease may apply to the Commissioners asking them, in the event of their making an order effecting any variation of the lease in pursuance of the original application, to make an order which effects a corresponding variation of each of such one or more other leases as are specified in the application.
- (2) Any lease so specified—
- (a) must be a long lease of a flat under which the landlord is the same person as the landlord under the lease specified in the original application (“the original lease”); but
 - (b) need not be a lease—
 - (i) of a flat in the same building, or
 - (ii) drafted in terms identical to the original lease.
- (3) The grounds on which an application may be made under this section are that—
- (a) each of the leases specified in the application fails to make satisfactory provision with respect to the matter or matters specified in the original application; and

- (b) if any variation were effected in pursuance of the original application, it would be in the interests of—
 - (i) the person making the application under this section, or
 - (ii) the other persons who are parties to the leases specified in that application,

to have all the leases in question (that is, the ones specified in that application and the one specified in the original application) varied to the same effect.

36 **Application by majority of parties for variation of leases**

P1987/31/37

- (1) An application may be made to the Commissioners in respect of 2 or more leases for an order varying each of those leases in such manner as is specified in the application, but subject to the following provisions of this section.
- (2) Those leases must be long leases of flats under which the landlord is the same person, but they need not be—
 - (a) leases of flats in the same building, or
 - (b) leases drafted in identical terms.
- (3) The grounds for an application are that the object to be achieved by the variation can only be satisfactorily achieved if all the leases are varied to the same effect.
- (4) An application in respect of any leases may be made—
 - (a) by the landlord or any of the tenants under the leases; but
 - (b) only if at least $\frac{3}{4}$ of the tenants concerned consent to it.
- (5) For the purposes of subsection (4), the tenant under each lease in respect of which the application is made shall constitute one tenant and a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of tenants.

37 **Orders varying leases**

P1987/31/38

- (1) If, on an application under section 34, the grounds on which the application was made are established to the satisfaction of the Commissioners, the Commissioners may make an order varying the lease specified in the application in such manner as is specified in the order.
- (2) If —
 - (a) an application under section 35 was made in connection with the application under section 34, and

- (b) the grounds set out in section 35(3) are established to the Commissioners' satisfaction with respect to the leases specified in the application under section 35,

the Commissioners may also make an order varying each of those leases in such manner as is specified in the order.

- (3) If, on an application under section 36, the grounds set out in subsection (3) of that section are established to the Commissioners' satisfaction with respect to the leases specified in the application, the Commissioners may make an order varying each of those leases in such manner as is specified in the order.
- (4) The preceding provisions of this section are subject to subsections (7) and (8).
- (5) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 34 or 35 or such other variation as the Commissioners think fit.
- (6) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the Commissioners' satisfaction with respect to some but not all of the leases specified in the application, the power to make an order under that subsection extends only to those leases about which they are satisfied.
- (7) The Commissioners must not make an order under this section effecting any variation of a lease if it appears to the Commissioners—
 - (a) that the variation would be likely substantially to prejudice—
 - (i) any respondent to the application, or
 - (ii) any person who is not a party to the application,and that an award under subsection (12) would not afford that person adequate compensation, or
 - (b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.
- (8) On an application relating to the provision to be made in a lease about insurance, the Commissioners must not make an order varying the lease—
 - (a) by terminating any existing right of the landlord to nominate an insurer;
 - (b) by requiring the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer; or
 - (c) in a case where the lease requires the tenant to effect insurance with a specified insurer, by requiring the tenant to effect insurance otherwise than with another specified insurer.

- (9) The Commissioners may, instead of making an order varying a lease, make an order directing the parties to the lease to vary it in such manner as is specified in the order.
- (10) Accordingly any reference in this Part (however expressed) to—
- (a) an order which effects any variation of a lease, or
 - (b) any variation effected by an order,
- includes a reference respectively to an order which directs the parties to a lease to effect a variation of it or to any variation effected in pursuance of such an order.
- (11) The Commissioners may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as the order specifies.
- (12) An order under this section varying a lease may provide for any party to the lease to pay compensation to—
- (a) any other party to the lease; or
 - (b) any other person,
- in respect of any loss or disadvantage which the Commissioners consider that person is likely to suffer as a result of the variation.

38 **Effect of orders varying leases: applications by third parties**

P1987/31/39

- (1) Any variation effected by an order under section 37 is binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title of those parties), whether or not—
- (a) they were parties to the proceedings in which the order was made, or
 - (b) they were served with a notice in accordance with regulations under section 34(6).
- (2) Without limiting the effect of subsection (1), a variation effected by such an order binds any surety who has guaranteed the performance of any obligation varied by the order; and the surety is accordingly to be taken to have guaranteed the performance of that obligation as varied.
- (3) If such an order has been made a person who, by virtue of regulations under section 34(6), was required to be served with a notice relating to the proceedings in which it was made, but was not served as required, may —
- (a) bring an action for damages for breach of statutory duty against the person required to serve the notice in respect of that person's failure to do so; and
 - (b) apply to the Commissioners for the cancellation or modification of the variation in question.

- (4) On an application under subsection (3)(b) the Commissioners may—
- (a) by order cancel the variation or modify it in such manner as is specified in the order as they think fit, or
 - (b) make such an order as is mentioned in section 37(12) in favour of the person making the application as they think fit.
- (5) If a variation is cancelled or modified under subsection (4)(a)—
- (a) the cancellation or modification is to take effect as from the date of the making of the order under that paragraph or as from such later date as may be specified in the order, and
 - (b) the Commissioners may by order direct that a memorandum of the cancellation or modification shall be endorsed on such documents as are specified in the order,

and, in a case where a variation is so modified, subsections (1) and (2) above shall, as from the date when the modification takes effect, apply to the variation as modified.

PART 7— CLOSING PROVISIONS

39 **Right to make applications not displaced by lease etc**

For the sake of clarity, the rights under Parts 4, 5 and 6 to make applications to the Court or the Commissioners cannot be displaced by any provision of a tenant's lease or any other agreement between the landlord and the tenant in connection with the tenant's occupation of the flat.

40 **Amendments to housing legislation**

Schedule 3 contains amendments to housing legislation.

41 **Indemnity**

- (1) The Commissioners shall not be liable in damages for, or in respect of, any act or matter done or omitted to be done in good faith in the exercise, or purported exercise, of the functions conferred on them by or under this Act.
- (2) But subsection (1) does not prevent the award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the *Human Rights Act 2001*.

42 **Proceedings, enforcement of Commissioners' orders and appeals**

- (1) The power to make rules of procedure under section 8 of the *Tribunals Act 2006* applies in respect of the Commissioners' functions under this Act.

- (2) This section does not limit the application of section 3(3) of the *Rent and Rating Appeals Act 1986* (rules in respect of the Commissioners' functions under that Act).
- (3) If any person—
 - (a) is guilty of any act or omission in relation to proceedings before the Commissioners which, if those proceedings were proceedings before the Court, would constitute contempt of court; or
 - (b) contravenes an order, or fails to comply with a decision, made by, the Commissioners under this Act,the Commissioners may certify the act, omission, contravention or failure to the Court.
- (4) On receipt of a certificate under subsection (3), the Court may inquire into the matter and deal with it in any manner in which it could deal with—
 - (a) such an act or omission in relation to proceedings before the Court; or
 - (b) any contravention or failure to comply with a decision of, or order made by, the Court.
- (5) A party to proceedings before the Commissioners under this Act may appeal to the Court from a decision of the Commissioners.
- (6) On an appeal the Court may exercise any power which was available to the Commissioners under this Act.

43 **Public documents**

- (1) Public documents under this Act, except—
 - (a) schemes under Part 2;
 - (b) orders under section 7(4);
 - (c) housing standards regulations;
 - (d) registration regulations under section 12(1);
 - (e) an order under section 13(1) (flats and houses in multiple occupation to which Part 3 applies);
 - (f) orders under paragraph 7 of Schedule 1 (power to amend paragraphs 1 and 2 of that Schedule);must be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the documents are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.
- (2) Orders of the Commissioners under this Act are not public documents within the meaning of section 3 of the *Interpretation Act 1976*.

44 Offences by bodies corporate

- (1) This section applies where an offence under this Act is committed by a body corporate (“A”) and it is proved that the offence —
 - (a) was committed with the consent or connivance of a connected person; or
 - (b) was attributable to neglect on the part of a connected person.
- (2) The connected person, as well as A, shall be guilty of the offence, and liable to be punished accordingly.
- (3) In this section —

“associate” means, in relation to any person —

- (a) the spouse, civil partner, son, step-son, daughter or step-daughter of that person;
- (b) a body corporate in respect of which that person is a connected person;
- (c) a person who is an employee or partner of that person;
- (d) if that person is a body corporate —
 - (i) any director of that body;
 - (ii) any subsidiary of that body;
 - (iii) any holding company of that body;
 - (iv) any subsidiary of that holding company;
 - (v) any director or employee of any such holding company or subsidiary;

“connected person” means —

- (a) an officer of A;
- (b) a controller of A;
- (c) if the affairs of A are managed by its members, a member of A;
- (d) in relation to a limited liability company constituted under the *Limited Liability Companies Act 1996*, a member, the company’s manager, or registered agent;

“controller” means —

- (a) a director of a body corporate of which A is either a holding company or a subsidiary;
- (b) a person who either alone or with any associate is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of A or of another body corporate of which it is a holding company or a subsidiary;

“manager” includes a person who, under the immediate authority of a director, exercises managerial functions in respect of the business of A;

“officer” includes —

- (a) a director, manager or secretary;
- (b) a person purporting to act as a director, manager or secretary;
- (c) any person occupying the position of director by whatever name called;
- (d) any person in accordance with whose directions or instructions one or more of the directors are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity.

45 **Repeals**

The enactments listed in column 1 of Schedule 4 (which include some that are of no further practical utility) are repealed to the extent specified in column 2.

SCHEDULE 1

[Section 11(3)]

HOUSING STANDARDS REGULATIONS**1 Content of housing standards regulations**

- (1) Housing standards regulations may –
- (a) make provision about, or
 - (b) provide for the application of standards or codes of practice to, flats and houses in multiple occupation in relation to any or all of the items in Table 1.
- (2) Paragraph 2 contains additional powers which may be exercised in the making of housing standards regulations and paragraph 3 sets out provision which must be included in housing standards regulations.

Table 1

Matters for which housing standards regulations may make provision

| | |
|-----|--|
| 1. | Minimum space standards. |
| 2. | General storage space. |
| 3. | Internal arrangements for circulation, privacy and convenience. |
| 4. | Ventilation, heating, thermal insulation and lighting. |
| 5. | Power supply. |
| 6. | Sanitary provision. |
| 7. | Storage and disposal of refuse. |
| 8. | Drainage, water supply, and washing accommodation. |
| 9. | Accommodation for storage, preparation and cooking of food. |
| 10. | Prevention of, and precautions in the case of, infectious disease. |
| 11. | Health and safety of residents and visitors. |
| 12. | Sound insulation. |

2 Housing standards regulations: additional provision

Housing standards regulations may also make provision with respect to a building, of which a flat or a house in multiple occupation forms part, in connection with any of the matters specified in Table 2.

Table 2

Additional provision

| | |
|----|--|
| 1. | Inspection of the building. |
| 2. | Keeping the building in a clean, safe and wholesome condition and a good state of decoration. |
| 3. | Keeping the building in a good state of repair. |
| 4. | Keeping the boundaries of the premises in which the building is situate in a good state of repair. |
| 5. | Keeping gardens of the premises in which the building is situate tidy. |
| 6. | Requiring adequate ventilation and lighting of all parts of the building to which the occupants have access. |

3 Provision that must be made in housing standards regulations

Housing standards regulations must provide that premises to which they apply must not be used as flats or as houses in multiple occupation unless they, and any building containing them, comply with any applicable requirements of regulations under Part 1 of Schedule 8 to the *Fire Precautions Act 1975*.

4 Enforcement notices

- (1) Housing standards regulations may empower the body by which they are to be enforced to serve a notice (“**an enforcement notice**”) on a person of a description specified in the regulations requiring that person to execute works specified in the enforcement notice that are necessary to comply with the regulations.
- (2) A person upon whom an enforcement notice has been served commits an offence if he or she fails to execute the works specified in it.
- (3) A person guilty of an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding £20,000.

5 Ancillary enforcement powers

- (1) Section 35 (powers of entry) of LGA 1985 applies to housing standards regulations.
- (2) Sections 35 to 41, 46 to 49 and 57 to 62 of LGA 1985 have effect in relation to functions of the Department of Environment, Food and Agriculture under housing standards regulations as if references in those provisions to a local authority were references to that Department.

6 Duty to enforce

Each local authority must enforce housing standards regulations within its district, but the Department of Environment, Food and Agriculture may enforce regulations within

any district where the local authority has failed to do so, and may recover the expenses of so doing from the local authority.

7 Power to amend paragraphs 1 and 2

- (1) The Department of Environment, Food and Agriculture may amend paragraphs 1 and 2 by order.
- (2) An order under sub-paragraph (1) must not come into force until it is approved by Tynwald.

SCHEDULE 2

[Section 31]

DISCHARGE IN PURSUANCE OF ACQUISITION ORDERS**1 Construction**

In this Schedule —

“**the consideration payable**” means the consideration payable for the acquisition of the landlord’s interest referred to in section 31(1);

“**a debenture holders’ charge**” means a charge (whether a floating charge or not) in favour of the holders of a series of debentures issued by a body corporate, or in favour of trustees for such debenture holders; and

“**the nominated person**” means the person or persons nominated for the purposes of Part 5 by the persons who applied for the acquisition order in question.

2 Nominated person must redeem mortgages

(1) Where in accordance with section 31(1) an instrument will operate to discharge any premises from a charge to secure the payment of money, the nominated person must apply the consideration payable, in the first instance, in or towards the redemption of any such charge (and, if there are more than one, according to their priorities).

(2) Where sub-paragraph (1) applies to any charge or charges, then if (and only if) the nominated person —

- (a) applies the consideration payable in accordance with that sub-paragraph; or
- (b) pays that consideration into Court in accordance with paragraph 5,

the instrument in question operates as mentioned in sub-paragraph (1) despite the fact that the consideration payable is insufficient to enable the charge or charges to be redeemed in its or their entirety.

(3) Sub-paragraph (1) does not apply to a debenture holder’s charge unless—

- (a) the charge is in favour of trustees; and
- (b) it is, at the date of the instrument by virtue of which the landlord’s interest in the premises in question is acquired, as regards those premises, a specific, and not a floating, charge,

and any such charge must be disregarded in determining priorities for the purposes of that sub-paragraph.

- (4) This paragraph is subject to paragraph 4.

3 Determination of amounts due in respect of mortgages

(1) For the purpose of determining the amount payable in respect of any charge under paragraph 2(1), a person entitled to the benefit of a charge to which that provision applies shall not be permitted to exercise any right to consolidate that charge with a separate charge on other property.

(2) For the purpose of discharging any premises from a charge to which paragraph 2(1) applies, a person may be required to accept 3 months' or any longer notice of the intention to pay the whole or part of the principal secured by the charge, together with interest to the date of payment, despite the terms of the security making other provision or no provision as to the time and manner of payment.

(3) The recipient of a notice under sub-paragraph (2) shall be entitled, if the recipient gives notice to that effect, to receive such additional payment as is reasonable in the circumstances in respect of the costs of re-investment or other incidental costs and expenses and in respect of any reduction in the rate of interest obtainable on re-investment.

4 Charge in favour of related person

- (1) If it appears to the Court that —
- (a) a charge has been executed by a landlord (or a former landlord) in favour of a related person;
 - (b) the charge was one which would not have been entered into by parties dealing with each other at arm's length; and
 - (c) the purpose or effect of the charge is to discourage or prevent the making of an acquisition application or any order on such an application;

the Court may make such order in relation to the charge as appears to it to be just and equitable, including setting the charge aside (whether on terms or not).

(2) Before making an order under this paragraph the Court shall give notice of the proceedings to the related person, who shall be entitled to be heard on the question of the order which ought to be made.

(3) For the purposes of this paragraph where the landlord is a body corporate ("B") a person ("P") is related to B if —

- (a) P is an officer of B
- (b) P is a controller of B
- (c) the affairs of B are managed by its members and P is a member of B;
- (d) B is a limited liability company constituted under the *Limited Liability Companies Act 1996* and P is a member of B, B's manager or B's registered agent;

- (e) P is a subsidiary of B;
- (f) P is a holding company of B;
- (g) P is a subsidiary of a holding company of B;
- (h) P is a director or employee of a subsidiary or a holding company falling within paragraph (e) to (g); or
- (i) P is an associate of a person related to B by virtue of any of the preceding paragraphs.

(4) For the purpose of this paragraph where the landlord (“L”) is not a body corporate a person (“P”) is related to L if —

- (a) P is L’s associate
- (b) P is L’s ancestor, descendant or sibling;
- (c) P is an associate of a person related to L by virtue of paragraph (a) or (b); or
- (d) L is an officer or director of P.

(5) In this paragraph —

“associate” means, in relation to a person —

- (a) that person’s spouse, civil partner, child or step-child;
- (b) a person living with that person as his or her spouse or civil partner;

“controller” means —

- (a) a director of a body corporate of which B is either a subsidiary or a holding company;
- (b) a person who alone or with any associate is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of B or of another body corporate of which B is a subsidiary or a holding company;

“manager” includes a person who, under the immediate authority of a director, exercises managerial functions in respect of B’s business;

“officer” includes —

- (a) a director, manager or secretary;
- (b) a person purporting to act as a director, manager or secretary;
- (c) a person occupying the position of director by whatever name called; and
- (d) any person in accordance with whose directions or instructions one or more of the directors are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity.

5 Payments into Court

(1) Where under section 31 any premises are to be discharged from a charge and, in accordance with paragraph 2(1), a person is or may be entitled in respect of the charge to receive the whole or part of the consideration payable, then if difficulty arises —

- (a) for any reason in ascertaining how much is payable in respect of the charge, or
- (b) for any reason mentioned in sub-paragraph (2), in making a payment in respect of the charge,

sub-paragraph (3) applies.

(2) The reasons are that —

- (a) a person who is or may be entitled to receive payment cannot be found or ascertained;
- (b) any such person refuses or fails to make out a title, or to accept payment and give a proper discharge, or to take any steps reasonably required of that person to enable the sum payable to be ascertained and paid; or
- (c) a tender of the sum payable —
 - (i) cannot be effected, or
 - (ii) cannot be effected without incurring unreasonable cost or delay by reason of complications in the title to it or the want of 2 or more trustees or for other reasons, be effected, or not without incurring or involving unreasonable cost or delay.

(3) If this sub-paragraph applies, the nominated person may pay into Court on account of the consideration payable —

- (a) if known, the amount of the payment to be made in respect of the charge; or
- (b) if that amount is not known, the whole of that consideration or such lesser amount as the nominated person thinks right in order to provide for that payment.

(4) The nominated person must pay the whole or part of the consideration payable into Court if, before execution of the instrument referred to in paragraph 2(1), the nominated person receives notice —

- (a) that the landlord or a person entitled to the benefit of a charge on the premises in question requires the nominated person to do so for the purpose of protecting the rights of persons so entitled, or for reasons related to the bankruptcy or winding up of the landlord, or

- (b) that steps have been taken to enforce any charge on the landlord's interest in those premises by the bringing of proceedings in any court, or by the appointment of a receiver or otherwise.

6 Savings

(1) Where any premises are discharged by section 31 from a charge (without the obligations secured by the charge being satisfied by the receipt of the whole or part of the consideration payable), the discharge of those premises from the charge does not prevent the exercise of any right or remedy for the enforcement of those obligations against other property comprised in the same or any other security, nor limit any personal liability as principal or otherwise of the landlord or any other person.

(2) Nothing in this Schedule prevents a person from joining in the instrument referred to in paragraph 2(1) for the purpose of discharging the premises in question from any charge without payment or for a lesser payment than that to which the person joining would otherwise be entitled.

(3) If a person joins in the instrument for the purpose mentioned in subparagraph (2), the persons to whom the consideration payable ought to be paid shall be determined accordingly.

SCHEDULE 3

[Section 40]

AMENDMENTS TO HOUSING LEGISLATION

[Sch 3 amends the following Acts —

Housing Act 1968 q.v.

Ramsey Town Act 1970 q.v.

Housing (Miscellaneous Provisions) Act 1976 q.v.

Property Service Charge Act 1989 q.v.]

SCHEDULE 4³

[Section 445]

REPEALS

| Enactment | Extent of repeal |
|---|---|
| Douglas Squares Act 1938 (XV p. 43) | Section 7. |
| Derby Square Act 1945 (XVI p. 283) | Section 6. |
| Queen's Gardens Act 1949 (XVII p.424) | Section 6. |
| Housing Improvement Act 1975 (c.29) | The whole Act. |
| Housing (Miscellaneous Provisions) Act 1976 (c.1) | In section 13 the definitions of "flat" and "house let in multiple occupation". |
| Property Service Charges Act 1989 (c.14) | Section 10C. Schedule 3. |
| Housing (Amendment) Act 1990 (c.7) | Sections 1 and 2. Schedule 1. |
| Douglas Head Act 2000 (c.1) | Section 3(2). |
| Property Service Charges (Amendment) Act 2003 (c.3) | Section 5. |
| Housing (Multi-Occupancy) Act 2005 (c.4) | The whole Act. |

ENDNOTES**Table of Legislation History**

| Legislation | Year and No | Commencement |
|-------------|-------------|--------------|
| | | |
| | | |
| | | |

Table of Renumbered Provisions

| Original | Current |
|----------|---------|
| | |
| | |
| | |

Table of Endnote References

¹ Parts 4 to 6 came into operation on 1 May 2012. The remaining sections in Part 7 also came into operation on that day, but, of the repeals in Schedule 4, only those relating to the Douglas Squares Act 1938, the Derby Square Act 1945, the Queen's Gardens Act 1949 and the Douglas Head Act 2000 came into operation on that day.

² This Part is not in operation.

³ Schedule 4 partially in operation. [Repeals relating to the Douglas Squares Act 1938, the Derby Square Act 1945, the Queen's Gardens Act 1949 and the Douglas Head Act 2000 came into operation on 1 May 2012].