

# **HOUSING (MISCELLANEOUS PROVISIONS) ACT 2011**

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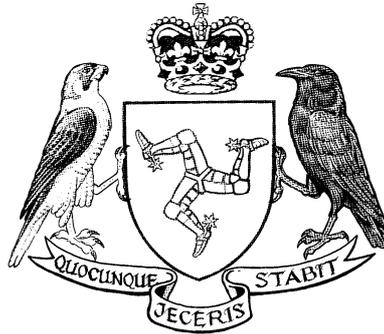
## SCHEDULES: —

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Schedule 4 — Repeals



Isle of Man } Signed in Tynwald: 12th July 2011  
to Wit } Received Royal Assent: 11th November 2011  
Announced to Tynwald: 15th November 2011

## 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.

**B**E 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.** The short title of this Act is the Housing (Miscellaneous Provisions) Act 2011. Title

**2.** (1) The following provisions come into operation on the announcement of Royal Assent to Tynwald — Commencement

(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.

(3) Before making an order under subsection (2) the Department must consult the Department of Infrastructure and the Department of Environment, Food and Agriculture.

Interpretation **3.** (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;

[c.30]

“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; [c.24]

“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. [c.14]

(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

Housing purchase assistance schemes

**4.** (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.

[GC25/07 am  
GC66/07 &  
GC19/08]  
[GC36/05]

(2) Until the coming into operation of the first scheme under this section, the House Purchase Assistance Scheme 2007 and the House Purchase Assistance (Persons Aged 45 or Over) Scheme 2005 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.

Housing improvement schemes

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

[GC48/10]  
[GC29/05 am  
GC31/06 &  
GC68/07]

(2) Until the coming into operation of the first scheme under this section the House Improvement and Energy Conservation Scheme 2010 and (insofar as it continues to have effect) the House Improvement and Energy Conservation Scheme 2005 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.

Historic buildings conservation schemes

**6.** (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.

[GC19/05 am  
GC8/06 &  
GC 1/11]

(2) Until the coming into operation of the first scheme under this section the Historic Buildings Conservation Scheme 2011 and (insofar as it continues to have effect) the Historic Buildings Conservation Scheme 2005 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 [c.9]

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

7. (1) A scheme under section 4, 5 or 6 may contain provision of the kind specified in subsection (2). Schemes under section 4, 5 or 6: supplemental

(2) The provision referred to in subsection (1) is provision about —

- (a) eligibility for assistance;
- (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.** 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.

Rights of entry

**9.** (1) A person authorised in writing by the relevant Department may exercise the power conferred by subsection (2) in relation to documents reasonably required by that body —

Powers to require information

P2004/34/235

- (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.

Offences

**10.** (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 —

(a) on summary conviction, to a fine of not more than £5,000;

(b) 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 —

(a) the reference to the production of a document is a reference to the production of a copy of the information in legible form, and

(b) 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 OCCUPATION

**11.** (1) The Department of Environment, Food and Agriculture must make regulations about facilities provided in, Housing standards regulations

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.

Flats and houses in multiple occupation to be registered

**12.** (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.

[c.18]

(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.** (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.

Flats and houses in multiple occupation to which this Part applies

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

**14.** (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.

Enforcement and information powers

(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.** This Part applies to premises —

Premises to which this Part applies

(a) that consist of the whole or a part of a building containing 2 or more flats;

P1987/31/21 (part)

(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.

Interpretation  
for the  
purposes of  
this Part

**16.** (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.

[c.17]

(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).

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

**17.** (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

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(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.** (1) Before applying for a management order in respect of any premises, the tenant must serve a notice (“a management application notice”) on —

Management application notice

P1987/31/22

(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).

[XIX p.273] (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.

[c.7] (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.** (1) A management application may be made to the Commissioners only if the relevant precondition is met. Management application: preconditions

(2) In a case where a management application notice has been served the relevant precondition is that — P1987/31/23

(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.** (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 — Management orders  
P1987/31/24

(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.14]

- (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 —

[XIX p.273]

(a) section 29 of the Registration of Deeds Act 1961 (registration of encumbrances affecting unregistered land); and

[c.7]

(b) section 31(4) of the Land Registration Act 1982 (effect of transfer of registered land).

Discharge of management orders

P1987/31/24(9)-(10)

[c.7]

**21.** (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.

Form and content of notices

**22.** (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.** (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.

Compulsory acquisition of landlord’s interest by qualifying tenants

P1987/31/25

- (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).

Interpretation  
for the  
purposes of  
this Part

**24.** (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.

Qualifying  
tenants

P1987/31/26

**25.** (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.

[c.17]

(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).

[c.13]

**26.** (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.

Preliminary  
notice by  
tenants

P1987/31/27

(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.

Acquisition  
applications  
P1987/31/28

**27.** (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 be 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 Act are to be construed accordingly).

[c.7]

**28.** (1) An acquisition order may be made in respect of any premises on an acquisition application if —

Acquisition  
orders: conditions

P1987/31/29

- (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 do 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.** (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 dispose of the landlord's interest in premises which are subject to an acquisition order only 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. [c.7]

**30.** (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 — Determination of terms by the Court  
P1987/31/31

(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.

Discharge  
of existing  
mortgages

P1987/31/32

**31.** (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).

[c.7]

**32.** (1) Subsection (2) applies if —

Acquisition order where landlord cannot be found

- (a) an acquisition order is made by the Court; and
- (b) the landlord cannot be found, or the landlord’s identity cannot be ascertained.

P1987/31/33

(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 the 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 the 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.

Discharge of acquisition order and withdrawal by tenants

P1987/31/34

**33.** (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,

[c. 7]

the Court may by order direct that that entry shall be cancelled.

## PART 6

### VARIATION OF LEASES

Application  
by party to  
lease for  
variation  
of lease

P1987/31/35

**34.** (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.

[c.17]

Application  
by respondent  
for variation  
of other leases

P1987/31/36

**35.** (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.** (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.

Application by majority of parties for variation of leases

P1987/31/37

(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.** (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.

Orders varying leases

P1987/31/38

- (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.** (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 —

Effect of orders varying leases: applications by third parties

- (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) shall, as from the date when the modification takes effect, apply to the variation as modified.

PART 7

CLOSING PROVISIONS

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

**40.** Schedule 3 contains amendments to housing legislation. Amendments to housing legislation

**41.** (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. Indemnity

(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. [c.1]

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

(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). [c.1]  
[c.43]

(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.

Public documents

**43.** (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.

[c.20]

(2) Orders of the Commissioners under this Act are not public documents within the meaning of section 3 of the Interpretation Act 1976.

Offences by bodies corporate

**44.** (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; [c.19]

“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.

Repeals      **45.** 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.

Section 11(3) SCHEDULE 1

HOUSING STANDARDS REGULATIONS

*Content of housing standards regulations*

1. (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.

SCH. 1

*Housing standards regulations: additional provision*

2. 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.

*Provision that must be made in housing standards regulations*

3. 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.

[c.18]

*Enforcement notices*

4. (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.

*Ancillary enforcement powers*

5. (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.

*Duty to enforce*

SCH. 1

**6.** 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.

*Power to amend paragraphs 1 and 2*

**7.** (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.



*Determination of amounts due in respect of mortgages*

SCH. 2

3. (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.

*Charge in favour of related person*

4. (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; [c.19]
- (e) P is a subsidiary of B;
- (f) P is a holding company of B;

SCH. 2

- (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.

*Payments into Court*

SCH. 2

5. (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.

SCH. 2

*Savings*

**6.** (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.

AMENDMENTS TO HOUSING LEGISLATION

*Housing Act 1955 (XVIII p.544)*

**1. Section 9 (use of premises in contravention of closing order or undertaking)**

- (1) Section 9 is amended as follows.
- (2) Renumber the existing text as subsection (1).
- (3) At the end of the section add —

“(2) This subsection applies where an offence under subsection (1) 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.

- (3) The connected person, as well as A, shall be guilty of the offence.

(4) If a connected person is convicted of an offence under this Act by virtue of this section, that person shall be liable to the same penalty as the body.

- (5) 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;

SCH. 3

- (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;

[c.19]

“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.”.

**2. Section 47 (management of local authority’s houses) amended)**

- (1) Section 47 is amended as follows.
- (2) After subsection (1) insert —

[c. 1]

“(1A) Subsection (1) is subject to section 47A and to Schedule 3 to the Housing (Miscellaneous Provisions) Act 1976 (selection of tenants for public sector housing).”.

- (3) For subsection (2) substitute —

“(2) Any house provided by a local authority under this Part of this Act shall be open to inspection by the authority, or an officer authorised by the authority, at all reasonable times.”.

**3. Section 47A inserted**

After section 47 insert —

“Housing revenue account and estimates” **47A.** (1) Each local authority providing or intending to provide housing accommodation shall operate a housing revenue account in a form approved by the Department. SCH. 3

(2) An authority shall only charge to the housing revenue account items of expenditure of a description approved by the Department.

(3) An authority may only borrow money for the purposes of capital expenditure on housing accommodation with the consent of, and on terms approved by, the Treasury.

(4) An authority providing or intending to provide housing accommodation shall have its annual revenue and capital expenditure estimates under this Part approved by the Department.”.

#### 4. Section 92 (interpretation) amended

In section 92 for the definition of “sanitary defects” substitute —

““sanitary defect”, in relation to a house means that —

- (a) it is structurally unstable;
- (b) its condition is prejudicial to the health, safety or welfare of the occupants;
- (c) it has inadequate provision for lighting, heating and ventilation;
- (d) it does not have an adequate piped supply of wholesome water;
- (e) it does not have satisfactory facilities for the preparation and cooking of food, including a sink with a satisfactory supply of hot and cold water;
- (f) it does not have a suitably located water-closet for the exclusive use of the occupants;
- (g) it does not have, for the exclusive use of the occupants —
  - (i) a suitably located fixed bath or shower; and
  - (ii) a suitably located wash-hand basin;each of which is provided with a satisfactory supply of hot and cold water;
- (h) it does not have an effective system for the draining of foul, waste and surface water; or
- (i) it has inadequate paving or drainage to courts, yards, or passages,

and in consequence is not reasonably suitable for occupation;”.

**5. Section 3 (sale of land at the Mooragh)**

In section 3(a) at the beginning insert “With the consent of the Department of Infrastructure”.

*Housing (Miscellaneous Provisions) Act 1976 [c.1]***6. Amendment of Schedule 3**

(1) For the heading to the Schedule substitute “Selection of tenants for public sector housing”.

(2) In paragraph 1 for “paragraphs 2 to 4 below” substitute “paragraphs 1A to 3”.

(3) After paragraph 1 insert —

“**1A.** (1) The Department may adopt an all-Island policy for the allocation of housing by the Department and local authorities.

(2) Before adopting such a policy the Department shall consult all the local authorities that would be affected by it.

(3) Such a policy shall not come into operation unless it has been approved by Tynwald.

(4) Once such a policy has been adopted local authorities shall comply with it.”.

(4) In paragraph 3 for “Paragraph 1” substitute “Paragraphs 1 and 1A”.

(5) After paragraph 3 insert —

“**3A.** (1) A person commits an offence if, for the purpose of obtaining the provision of housing under this Schedule, whether for that person or another, 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 sub-paragraph (1) in connection with obtaining housing for himself or herself, the court may, in addition to any other penalty, make an order depriving that person of the estate or interest obtained as a result of the statement or representation or the production or furnishing of the document or information.

An order under this sub-paragraph may be suspended on such terms as the court thinks fit.” SCH. 3

(6) Sub-paragraphs (1) to (4) (and the amendments made by them) shall be deemed to have come into operation on 20th October 1999, and the policy adopted by the former Department of Local Government and the Environment and approved by the Council of Ministers on 17th January 2002 shall be deemed to have had effect in accordance with paragraph 1A of Schedule 3 to the 1976 Act as if it had been approved by Tynwald on the latter date and references in that paragraph to the Department are to be read, in respect of times before 1st April 2010, as references to that former Department.

*Property Service Charges Act 1989 (c.14)*

**7. Section 12 (offences) amended**

In section 12(1) for “the Schedule” substitute “Schedule 1”.

**8. Section 12A inserted**

After section 12 insert —

“Offence by body corporate etc **12A.** (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.

(3) If a connected person is convicted of an offence under this Act by virtue of this section, that person shall be liable to the same penalty as the body.

(4) 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;

SCH. 3

- (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 —

[c.19]

- (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.”.

Section 45

SCHEDULE 4

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
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.

