

GROUND RENTS ACT (NORTHERN IRELAND) 2001

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Ground Rents Act (Northern Ireland) 2001. They have been prepared by Department of Finance and Personnel in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

Background to the proposals

3. The Ground Rents Act (Northern Ireland) 2001 is intended to replace Part II of the Property (Northern Ireland) Order 1997. Part II of the 1997 Order contained a complex and costly scheme for the redemption of ground rents on residential property in Northern Ireland. That scheme has not yet been brought into operation. It is intended to replace that complex and costly scheme with the more streamlined ground rent redemption procedure contained in the Ground Rents Act.

Purpose of the Act and summary of its main provisions

4. The ground rent redemption scheme has as its primary objective the simplification of the conveyancing process in Northern Ireland. It aims to achieve this by creating the right for owners of residential property subject to an annual ground rent to enlarge their title to the property into a fee simple or freehold title. Upon redemption of the ground rent the property owner will no longer have to pay an annual ground rent to the rent-owner. This part of the scheme is known as voluntary redemption and is dealt with by section 1. The owner of the ground rent (that is the person entitled to receive

the annual ground rent) will not be able to object to the rent-payer redeeming the ground rent. However, the Ground Rents Act does make provision for the rent-owner to receive compensation to reflect the loss of his future entitlement to the annual ground rent on the property concerned. The amount of the compensation payable will be known as the "redemption money".

5. The Ground Rents Act also makes provision for the compulsory redemption of the ground rent on residential property in defined circumstances (section 2). The Act provides that when a person buys a house he or she will have to redeem the ground rent on the property before his or her new title will be registered by the Land Registry. The compulsory ground rent redemption scheme will apply both to existing unregistered residential property as well as registered residential property. As with the voluntary redemption scheme, the rent-owner will receive compensation from the purchaser of the property to reflect the loss of future entitlement to payments of the annual ground rent on the property. Again, as with the voluntary scheme, the rent-owner will not be able to object to the redemption of the ground rent.

6. The most important policy aim of the Ground Rents Act is the introduction of a scheme for the compulsory redemption of ground rents on residential property. It is envisaged that the compulsory redemption scheme will be introduced in two phases. First, compulsory redemption of a ground rent will apply to the purchase of existing unregistered residential property. The introduction of this phase of the compulsory element will be tied to the extension of compulsory first registration (CFR) of existing unregistered land in Northern Ireland, and is likely to occur sometime in 2001. The commencement of compulsory redemption of the ground rent on registered residential property in Northern Ireland will follow some time after that, probably 2003. The aim of phasing in the two elements of the compulsory scheme is to minimise the financial and staffing impact on the Land Registry and to allow Land Registry to familiarise themselves with new procedures and ensure that the scheme operates as it is intended.

7. A central feature relating to the fairness of both the voluntary and compulsory ground rent redemption procedures is the adequate payment of compensation to rent-owners who, upon redemption, will lose their future entitlement to the annual ground rent on property currently held by them. The compensation payable will be calculated by multiplying the amount of the annual ground rent by a fixed number of years to give the amount of the redemption money payable to the rent-owner. Provision is made in Schedule 1 to the Act for the Department of Finance and Personnel to fix the multiplier by Order subject to negative resolution by the Assembly. Different multipliers may be set for different categories of ground rent.

CONSULTATION

8. This Ground Rents Act is intended to replace the ground rent redemption scheme contained in Part II of the Property (Northern Ireland) Order 1997. This new Act does not fundamentally change the policy objectives and aims of Part II of the 1997 Order, but rather is intended to simplify the redemption process.

9. The Property (Northern Ireland) Order 1997 was made on 8 April 1997. A draft Order in Council and Explanatory document had been published in June 1996 and circulated to a wide number of bodies and individuals in Northern Ireland seeking views on the draft Order in Council. Some twenty organisations and individuals commented, most of whom were generally content with the thrust of the proposals. The provisions of the Property (Northern Ireland) Order except those relating to ground rent redemption and Article 35 are now in force.

10. After the 1997 Order was made, representations were made to the Department of Finance and Personnel that Part II of the 1997 Order dealing with ground rents should not be introduced in its present form. It was suggested that the scheme for both voluntary and compulsory redemption in the 1997 Order, while workable, would be costly to administer from the point of view of both those wishing to redeem a ground rent voluntarily, those compelled to redeem a ground rent, and the Land Registry in administering the scheme

11. As a result of these representations the Department of Finance and Personnel decided to look again at the original redemption scheme to see if a redemption scheme could be devised which would be easier to administer and which would reduce the costs associated with the redemption procedure. Following detailed discussion with members of the Law Society for Northern Ireland a new redemption procedure was devised. Both the Department and the Law Society were greatly assisted in this work by retaining the services of an eminent land law academic. This new scheme was put to a number of the professional organisations involved in the conveyancing process as well as the General Consumer Council for Northern Ireland in June 1999. The response to this limited consultation was favourable and the Department decided to proceed with the new ground rent redemption scheme. As the new scheme did not alter fundamentally the policy of the original scheme, the Department decided that there was no need for wider public consultation.

OPTIONS CONSIDERED

12. This exercise involved examining the original ground rent redemption scheme contained in Part II of the Property (Northern Ireland) Order 1997 and identifying which elements of the redemption procedure were likely to prove unworkable or too costly in practice. It had already been agreed by the Department and all interested

bodies that there was no requirement to review the underlying policy objectives and aim of the redemption procedure which was to simplify the conveyancing process in the long term.

Cumbersome notice procedure

13. The core change, therefore, to the original scheme was to abandon that part of the redemption process which permitted the rent-owner to be involved in the redemption process through his serving counter-notice to the rent-payer wishing to redeem. The counter-notice, described in representations to the Department as a cumbersome procedure, required the concurrence of those superior rent-owners, if any, who would be entitled to a share in any redemption money (compensation) payable to the immediate rent-owner. This notice procedure required the redeeming rent-payer to pay all the costs and expenses of the rent-owner and superior rent-owners. This would have resulted in costs and expenses exceeding the redemption money payable by the rent-payer. On reflection, we considered that retaining this provision would deter many home-owners from using the voluntary redemption procedure.

Pre-sale redemption procedure

14. As Part II of the 1997 Order was drafted, the introduction of the compulsory redemption of ground rents would require the vendor to redeem the ground rent prior to the completion of the sale of the property. On reflection, this may have led to the risk of conveyancing transactions being delayed or nullified if the rent-owner proved to be obstructive or uncooperative. The new scheme in the Ground Rents Act now provides that before the new owner's title to the property can be registered the purchaser of the property must redeem the ground rent. Only once the Registrar of Titles is satisfied that the ground rent has been redeemed will he permit the purchaser's newly acquired interest in the property to be registered with the Land Registry.

OVERVIEW

15. The Act has 33 sections and 3 Schedules. The Act is concerned exclusively with the redemption of ground rents on residential property in Northern Ireland. Commercial property has been excluded from the scope of the redemption scheme as commercial conveyancing in Northern Ireland traditionally has not involved the same degree of complex pyramid title to property which is a feature of residential conveyancing, especially in the Greater Belfast area and other towns in Northern Ireland.

COMMENTARY ON SECTIONS

Section 1: Power of certain rent-payers to redeem ground rent

Subsection (1) provides a rent-payer with power to redeem the ground rent on residential property in accordance with the provisions of the Act.

Subsections (2) and (3) limit the power to redeem the ground rent to residential property in Northern Ireland and excludes commercial property. Commercial property is defined as land used wholly for business purposes, although the fact that part of the land is used by a person as his residence in consequence of his or her employment does not prevent the property still being regarded as used wholly for business purposes.

Subsection (3) provides that building leases are not excluded from the redemption scheme in Section 1.

Section 2: Compulsory redemption in case of dwelling-house

Subsection (1) provides for the compulsory redemption of a ground rent on unregistered residential property.

Subsection (2) provides for the compulsory redemption of a ground rent on registered residential property.

Section 3: Exceptions to, or restrictions on, Sections 1 and 2

Subsections (1) - (6) exclude from both the voluntary and compulsory redemption scheme particular types of estate in land. They also make special provision in relation to leases of agricultural land and in cases where the rent-owner or superior rent-owner is the National Trust.

Subsections (7) and (8) provide that flats shall be excluded from both the voluntary and compulsory redemption procedures. This is because with flat developments there are other complex considerations relating to ownership of the common parts such as stairways, utility rooms, gardens etc.

Section 4: Redemption

This section sets out the procedure for redeeming the ground rent on residential property in Northern Ireland. It is a procedure which applies equally to the voluntary and compulsory redemption processes. The redemption procedure will commence with an application to the Land Registry accompanied by various payments and other documents. Immediately after the rent-payer has made his application to the Land Registry he shall serve notice on the rent-owner (if known) that he has done so.

Section 5: The redemption money

This section provides for the calculation of the redemption money payable by the rent-payer to the Land Registry and for the keeping of a register of redemption moneys by the Land Registry. The redemption money is the sum produced by multiplying the

annual ground rent by a fixed number of years. Other payments necessary before the redemption of a ground rent can take place are also specified.

Section 6: Disposal of redemption money

This section sets out the basis for dealing with claims in respect of redemption and other moneys lodged with the Registrar of Titles under section 4 of the Act. The Registrar shall only pay out the redemption moneys if satisfied that the person who has made the claim to them is actually entitled to the money. In the vast majority of cases the person claiming the redemption moneys will be the immediate rent-owner. However, in certain prescribed cases a superior rent-owner may be entitled to claim the redemption money. The person to whom the redemption moneys are paid out will sometimes not be entitled to all of that money. Where this is the case the person to whom the money is paid shall agree to pay out to other rent-owners their respective shares of the money lodged with the Land Registry as part of the redemption process. Provision is made in section 23 for appeals to the Lands Tribunal against any decision of the Registrar in respect of entitlement to claim the redemption moneys.

Section 7: Certificate of redemption

This section provides that the date on which the ground rent has been redeemed is the date on which the Registrar shall seal the Certificate of Redemption, which he shall forward to the rent-payer.

Section 8: Exclusion of re-possession of land while redemption is pending

The purpose of this section is to protect the occupation rights of a rent-payer in the period between his or her application to the Land Registry commencing the redemption procedure and the sealing of the Certificate of Redemption by the Registrar which completes the redemption procedure. The need for such a provision arises as there may be some delay between the lodging of the rent-payer's initial application and the sealing of the Certificate by the Registrar. This delay could arise, for instance, where all the appropriate documents had not been lodged with the rent-payer's application.

Section 9: Application of certain provisions of Act to certain other periodic payments

This section applies provisions of the Act to other types of periodic payments which are not ground rents.

Section 10: Effect of certificate of redemption

This section sets out the effect of the Certificate of Redemption and in particular permits cancellation of the certificate where it has been obtained by fraud.

Section 11: Superior rents

The main effect of this section is to provide that the redemption of a ground rent under sections 1 or 2 of this Act has the effect of redeeming all superior rents to which the land is subject. In many instances, especially as regards older residential property in Belfast, the ground rent which is being redeemed may have an immediate rent-owner and several superior rent-owners.

Section 12: Land in separate occupation subject to a single ground rent

This section deals with a not infrequent case where perhaps two or three adjoining terraced houses are subject to a single ground rent but the houses are occupied by different individuals. It permits the rent-payer occupier of one of the houses to redeem the ground rent for all the properties if the various occupiers do not decide jointly to redeem the rent under section 4(6). Other provisions of this section permit the Registrar to issue a copy of the Certificate of Redemption to a rent-payer occupier of one of the properties even though that person did not redeem the rent. However, provision is made that the Certificate shall not be issued unless the non-redeeming rent-payer has paid any outstanding moneys and his or her share in the costs of the redemption to the person who did redeem the ground rent.

Section 13: Effect of redemption on titles

This section sets out the effect of the redemption of a ground rent on the titles of the rent-payer, the rent-owner and any superior rent-owners. It also deals separately with land held in fee simple subject to a ground rent and leasehold land subject to a ground rent. It also sets out the effect of the sealing of the Certificate of Redemption on unregistered land and registered land.

Section 14: Continuance of rights and equities affecting leasehold land

This section applies where the redemption of a ground rent on a leasehold estate has the effect of enlarging it into a fee simple. In such cases all the equities that affected the former leasehold estate are preserved against the new freehold title by virtue of them being treated as a graft on the new freehold.

Section 15: Mortgages and leases

This section provides for the effect on mortgages and leases where a leasehold estate is enlarged by virtue of redemption of the ground rent. Whatever mortgage or lease was granted on the leasehold estate prior to redemption shall continue as if it were a mortgage or a lease of the enlarged estate after the redemption has taken effect.

Sections 16 - 17: Covenants and Enforceability of covenants

These sections identify which covenants affecting land survive the redemption of a ground rent and by and against whom such covenants are enforceable. As a general rule these sections provide that covenants do not survive the redemption of the ground rent, and then list those covenants which do. In particular, these sections preserve any

covenants which were reciprocally enforceable between the rent-payer and neighbours in the context of a building scheme. Thus important covenants for quiet enjoyment, against causing nuisance or interfering with facilities that benefit neighbours are preserved despite the difference in title between the neighbours.

Section 18: Settled land

The purpose of this section is to make special provision for the application of the ground rent redemption scheme to settled land: that is land subject to a settlement which provides for successive interests in the land. Settlements are rarely created today but were common in the nineteenth century and many remain today. A typical example of a settlement would have been the case where, in his will, a substantial landowner leaves his property to his wife for the remainder of her life, but on her death the property passes to his eldest son. The wife benefits from ownership of the land during her life but cannot dispose of it.

Section 19: Cesser of Act of 1971 as to enlargement of leases to which this Act applies

This section prevents initiation of the procedure to enlarge a leasehold estate in land or fee farm grant under the Leasehold (Enlargement and Extension) Act (Northern Ireland) 1971 into a freehold estate if the land is subject to a ground rent which can be voluntarily redeemed under Section 1 of this Act.

Section 20: Avoidance of certain agreements

This section renders void certain agreements which would deprive a rent-payer of the full benefit this Act.

Section 21: Mental patients

Where a rent-payer, rent-owner or superior rent-owner is incapable by reason of mental disorder of managing and administering his or her own affairs, this section permits representation of that person's interests in any aspect of the ground rent redemption procedure by a person authorised or appointed by the High Court or by a person exercising representative powers under an enduring power of attorney.

Section 22: Service of documents

This section deals with the service of documents required under the Act.

Section 23: Disputes

This section sets out the range of issues within the redemption process which may give rise to a dispute. Jurisdiction to deal with the dispute is given in the first instance to the Registrar of Titles and then ultimately to the Lands Tribunal.

Section 24: Offences

This section makes it a criminal offence to knowingly or recklessly make a false statement in any documents which must be made, served or lodged during the redemption process. The maximum fine applicable to this offence is level 4 which is currently set at £2,500.

Section 25: Civil remedy for misstatement

This section makes it possible for a person who has suffered loss as a result of a misstatement to claim damages in a civil action.

Section 26: Fees and rules

This section deals with the making of rules prescribing fees payable to the Land Registry. It also authorises the making of Land Registry rules to give effect to the Act.

Sections 27-29: Interpretation

These sections provide definitions for the key words and phrases used throughout the Act. They mirror, with minor differences, the interpretation Articles in the Property (Northern Ireland) Order 1997. Section 28 provides the definition of ground rent: the definition excludes ground rents which are nominal which means either that the ground rent is a yearly sum of less than £1 or a peppercorn rent or rent of no other value. The practical effect of this is that a person who pays a ground rent of less than £1 cannot redeem the ground rent on his or her property using the redemption procedures contained in this Act. However, Article 35 of the Property (Northern Ireland) Order 1997 (as amended by Schedule 2 to his Act) permits the rent-payer of a rent of less than £1 to enlarge his or her title to the property into a freehold title by making a deed of declaration that the title has been enlarged into a freehold title. Section 29 defines dwelling-house. The main effect of this is to exclude commercial premises from the redemption scheme.

Sections 30-33 and Schedules 1-3: Supplementary provisions

These sections and Schedules are of a technical nature.