STATUTORY INSTRUMENTS

1978 No. 459

Property (Northern Ireland) Order 1978

PART II

IDENTIFICATION, AND MODIFICATION OR EXTINGUISHMENT, OF CERTAIN IMPEDIMENTS TO THE ENJOYMENT OF LAND

Application and interpretation of Part II

3.—(1) Subject to paragraph (2), the provisions of this Part apply to any of the following impediments to the enjoyment of land (whether the impediment exists at the commencement of those respective provisions or comes into existence thereafter, and whether the land affected by the impediment is registered or unregistered):

(a) a restriction, whether general or specific, arising—

(i) under a covenant, condition or agreement contained or implied in a deed, will or other instrument (but not in a mortgage), or

(ii) under a statutory provision of a local or personal character (not including a provision contained in a statutory instrument made or deemed to be made by a government department or a district council);

(b) any of the following obligations, not being an obligation imposed under a statutory provision of a public general character, namely—

(i) an obligation to execute works or do any thing, or to permit works to be executed or any thing to be done, on the land for the benefit of, or to facilitate the better enjoyment of, other land, or

(ii) an obligation to pay, or contribute to, the cost of works to be executed, or any thing to be done, on other land where the execution of those works or the doing of that thing benefits, or facilitates the better enjoyment of, the land or specified land which includes the land;

(c) an easement;

(d) a profit appurtenant to other land; or

(e) a profit in gross.

(2) Articles 5 and 6(2)(*a*) do not apply—

(a) to an impediment created or imposed for naval, military or air force purposes (other than one created or imposed in connection with the use of any land as an aerodrome), so long as the impediment is enforceable by or on behalf of the Crown; or

(b) to an impediment created or imposed for civil aviation purposes or in connection with the use of any land as an aerodrome, so long as the impediment is enforceable by or on behalf of the Crown, a district council, a public body or an international authority.

(3) In any provision of this Part—

"enjoyment" in relation to land includes its use and development;

"government department" includes a department of the Government of the United Kingdom;

"impediment" means an impediment to which, by virtue of paragraphs (1) and (2), that provision of this Part applies;

"lease" includes a sub-lease;

"mortgage" includes a charge;

"mortgagee" includes a chargee and any person deriving title under the original mortgagee;

"public body" means a body established by or under a statutory provision;

"statutory instrument" means an instrument (as defined by section 1(*c*) of the Interpretation Act (Northern Ireland) 1954 made under an Act of the Parliament of Northern Ireland or a Measure of the Assembly, an Order in Council having the effect of such an Act or Measure or an Act of the Parliament of the United Kingdom;

"statutory provision" has the meaning given by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954 .

(4) Any reference in this Part to a person interested in land includes a person who is contemplating acquiring an estate in the land and a person who has an interest in the proceeds of any future sale of the land.

Power of Lands Tribunal to define scope, etc., of impediments

4.—(1) The Lands Tribunal, on the application of any person interested in land, may make an order declaring—

(a) whether or not the land is, or would in any given event be, affected by an impediment;

(b) the nature or extent of the impediment;

(c) whether the impediment is, or would in any given event be, enforceable and, if so, by whom.

(2) Where a question of law arises in connection with an application under this Article, the Lands Tribunal may refer the question to the Court of Appeal for decision.

(3) Paragraph (2) does not prejudice section 8(6) of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 (requirement for case stated following decision).

(4) Where an application is made to the Lands Tribunal under this Article in connection with any impediment, no proceedings for the establishment or enforcement of the impediment shall be taken in any court without leave of the court until the application has been disposed of.

Power of Lands Tribunal to modify or extinguish impediments

5.—(1) The Lands Tribunal, on the application of any person interested in land affected by an impediment, may make an order modifying, or wholly or partially extinguishing, the impediment on being satisfied that the impediment unreasonably impedes the enjoyment of the land or, if not modified or extinguished, would do so.

(2) Except with the permission of the Lands Tribunal, no application shall be made under this Article to modify or extinguish an impediment arising under any provision contained in a lease until the expiration of 21 years from the beginning of the term created by the lease.

(3) On an application under this Article, the Lands Tribunal—

(a) may direct such enquiries, if any, to be made of any government department, district council or public body, and

(b) may direct such notices, if any, to be given—

(i) to the occupier of the land (where the application is made by a person other than the occupier), to mortgagees of the land, to occupiers or mortgagees of land benefited by the impediment and to such other persons, and

(ii) in such manner, whether by advertisement or otherwise, as the Tribunal thinks fit.

(4) Where, on an application under this Article, there arises before the Lands Tribunal a question involving any matter mentioned in paragraph (*a*), (*b*) or (*c*) of Article 4(1), the provisions of that Article shall have effect in relation to that question as if the application were one made to the Lands Tribunal under that Article.

(5) In determining whether an impediment affecting any land ought to be modified or extinguished, the Lands Tribunal shall take into account—

(a) the period at, the circumstances in, and the purposes for which the impediment was created or imposed;

(b) any change in the character of the land or neighbourhood;

(c) any public interest in the land, particularly as exemplified by**[**[F1] the regional development strategy formulated under Article 3 of the Strategic Planning (Northern Ireland) Order 1999 or by**]** any **[**[F2]local development plan (within the meaning of section 6(1) of the Planning Act (Northern Ireland) 2011) for the district**]** in which the land is situated, as that plan is for the time being in force;

(d) any trend shown by planning permissions (within the meaning of **[**[F3]that Planning Act**]**) granted for land in the vicinity of the land, or by refusals of applications for such planning permissions, which are brought to the notice of the Tribunal;

(e) whether the impediment secures any practical benefit to any person and, if it does so, the nature and extent of that benefit;

(f) where the impediment consists of an obligation to execute any works or to do any thing, or to pay or contribute towards the cost of executing any works or doing any thing, whether the obligation has become unduly onerous in comparison with the benefit to be derived from the works or the doing of that thing;

(g) whether the person entitled to the benefit of the impediment has agreed either expressly or by implication, by his acts or omissions, to the impediment being modified or extinguished;

(h) any other material circumstances.

(6) Where the Lands Tribunal makes an order modifying or extinguishing an impediment,—

(a) the Tribunal may add or substitute such new impediment as appears to it to be reasonable in view of the modification or extinguishment of the existing impediment;

(b) the Tribunal may direct the applicant to pay the person entitled to the benefit of the impediment, either—

(i) a sum to compensate him for any loss or disadvantage which, notwithstanding any new impediment which may be added or substituted under sub-paragraph (*a*), he suffers in consequence of the modification or extinguishment of the impediment, or

(ii) a sum to make up for any effect which the impediment had at the time when it was imposed, in reducing the consideration then received for the land affected by it,

or, where it appears to the Tribunal that the modification or extinguishment of the impediment may substantially affect the security for any mortgage on land benefited by the impediment, the Tribunal may direct payment of any such sum as is mentioned in head (i) or head (ii) to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, who shall, in either case, apply the amount so paid as if it were proceeds of sale.

(7) A new impediment shall not be added, or substituted under paragraph (6)(*a*) without the agreement of the applicant; but this provision does not affect the discretion of the Lands Tribunal to refuse an application where such agreement is not forthcoming.

F1 1999 NI 4

F2 Words in art. 5(5)(c) substituted (13.2.2015 for specified purposes, 1.4.2015 insofar as not already commenced) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), **Sch. 6 para. 15(a)** (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2 (as amended (16.3.2016) by S.R. 2016/159, art. 2))

F3 Words in art. 5(5)(d) substituted (13.2.2015 for specified purposes, 1.4.2015 insofar as not already commenced) by Planning Act (Northern Ireland) 2011 (c. 25), s. 254(1)(2), **Sch. 6 para. 15(b)** (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2 (as amended (16.3.2016) by S.R. 2016/159, art. 2))

Modifications etc. (not altering text)

C1 Art. 5 excluded (1.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by Planning Act (Northern Ireland) 2011 (c. 25), **ss. 77(11)**, 254(1), (2) (with s. 211); S.R. 2015/25, arts. 2, 3

Powers of court

6.—(1) Where proceedings for the establishment or enforcement of an impediment are taken in the court—

(a) the court may refer to the Lands Tribunal any question which, in the opinion of the court, could have been disposed of on an application under Article 4 or 5 (and the Lands Tribunal, on the reference, may exercise any power which it could have exercised on such an application); or

(b) the person against whom the proceedings are taken may in the proceedings apply to the court for an order giving leave to apply to the Lands Tribunal under Article 5 and staying the proceedings in the meantime.

(2) In any proceedings for the establishment or enforcement of an impediment, the court may—

(a) make an order modifying or extinguishing the impediment on any ground, and on any terms, on which the Lands Tribunal could have done so on an application under Article 5; or

(b) refuse to make an order where the plaintiff's interest is not materially affected by the breach (if any), or where, for some other reason, it would be unjust to make one; or

(c) where the impediment consists of a positive obligation, make an order for specific performance of the obligation.

(3) In this Article "the court" means the High Court or, in matters within the limit of jurisdiction for the time being exercisable by county courts in actions in which the title to any land comes in question, the county court.

Supplementary provisions

7.—(1) An order made by the Lands Tribunal under Article 4 or 5, or by the court under Article 6(2)(*a*), is binding on all persons, whether ascertained or of full age or capacity or not, then entitled or thereafter capable of becoming entitled to the benefit of the impediment, and whether those persons are parties to the proceedings or have been served with notice or not.

(2) An order may be made under Article 4 or 5 notwithstanding that any instrument which is alleged to impose the impediment may not have been produced to the Lands Tribunal, and the Lands Tribunal may act on such evidence of that instrument as it thinks sufficient.

Registration of orders

8. When an order is made under Article 4 declaring the existence of an impediment not created by an instrument, or an order is made under Article 5 or Article 6(2)(*a*) in relation to an impediment,—

(a) where any registered land is affected by the order (as being subject to, or entitled to the benefit of, the impediment) a copy of the order shall be transmitted by the applicant, or, where the order is made by a court, by the person in whose favour the order is made, to the Registrar of Titles for registration in the Land Registry (and, without prejudice to Land Registry Rules made under section 79(2)(*b*) of the Land Registration Act (Northern Ireland) 1970 , where the land certificate is not in the possession of the person transmitting the order the Lands Tribunal or, as the case may be, the court may order its production by the person in possession of it to the Registrar of Titles for the purposes of such registration); and the order may be registered in the appropriate register—

(i) in any case, in relation to registered land which is subject to the impediment;

(ii) where the impediment is modified or extinguished by the order, in relation to registered land which the impediment has been registered as benefiting (that is to say, land to which the impediment belongs or is attached or is appurtenant);

(iii) where the impediment is a new impediment added or substituted by the order, in relation to registered land benefited (as mentioned in sub-head (ii)) by the impediment;

(b) where any unregistered land is so affected by the order—

(i) a copy of the order shall be caused by the applicant or the person in whose favour the order was made to be registered in the Registry of Deeds, and

(ii) a memorandum of the order shall, if the Lands Tribunal or, as the case may be, the court so directs, be endorsed on such instrument as the Tribunal or the court directs.

Status:
Point in time view as at 01/04/2015.

Changes to legislation:
There are currently no known outstanding effects for the Property (Northern Ireland) Order 1978, PART II.