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STATUTORY INSTRUMENTS

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**1997 No. 1179**

**The Property (Northern Ireland) Order 1997**

**PART IV**

**PROVISIONS SUPPLEMENTARY TO PARTS II AND III**

**Enforcement of covenants**

**45.**—(1) The following remedies, namely,—

- (a) proceedings for an injunction (including a mandatory injunction) or other equitable relief;
- (b) an action for sums due under the covenant;
- (c) an action for damages (whether in respect of pecuniary or non-pecuniary kinds of damage),

are available in the event of a breach, or, in the case of proceedings for an injunction, an anticipated or threatened breach, of a covenant to which Article 25(2) or Article 34 applies.

(2) Where, in the event mentioned in paragraph (1), any kind of damage other than personal injury or damage to property is caused, anticipated or threatened, no person is entitled to equitable relief or damages except in respect of the extent to which he is or may be materially prejudiced by the breach, or anticipated or threatened breach.

(3) In considering for the purposes of paragraph (2) whether a person is or may be materially prejudiced, a court shall have regard, in particular, to—

- (a) the nature of the estate (if any) by virtue of the ownership of which he is entitled to enforce the covenant; and
- (b) the location of the land in which that estate subsists.

(4) Where—

- (a) in breach of such a covenant there has been a failure to carry out any works, but
- (b) those works are carried out by a person entitled to enforce that covenant,

the damages in respect of the breach shall be, or, as the case requires, shall include, an amount equal to the costs incurred by that person in connection with the carrying out of those works less, where the case so requires, any amount which that person would have been required to pay in respect of the carrying out of the works by the person bound by the covenant.

(5) Where damages are awarded to any person in respect of a breach of a covenant requiring the carrying out of works, the amount of the damages is not to be reduced, by reference to any rule as to the mitigation of damages, on the ground that he has not carried out the works himself.