
STATUTORY INSTRUMENTS

1997 No. 1179

The Property (Northern Ireland) Order 1997

PART II

GROUND RENTS AND CERTAIN OTHER PAYMENTS

Prohibition of transactions giving rise to, or to increases in, ground rents

Fee farm grants

28.—(1) Subject to paragraph (3), on and after the appointed day a fee farm grant is incapable of being made at law or in equity.

(2) In relation to any land, any agreement made on or after the appointed day to make a fee farm grant, or any instrument made on or after that day which purports to make a fee farm grant the making of which is prohibited by this Article, operates as, respectively, an agreement to convey or conveyance of a fee simple in the land subject to any fine specified in the agreement or instrument but free from the fee farm rent so specified and any covenants or other provisions which are connected with the rent or are for the benefit of the intended rent-owner as such.

(3) This Article does not prohibit the making of a fee farm grant in pursuance of an obligation assumed before the appointed day, nor does it prejudice Article 36(4) or (7).

(4) For the purposes of paragraph (2) provisions are connected with the rent if they are concerned with the amount of the rent or its payment or recovery, or are otherwise concerned (directly or indirectly) with the rent.

Rentcharges

29.—(1) Subject to paragraph (3), on and after the appointed day a rentcharge is incapable of being created at law or in equity.

(2) Any agreement made on or after the appointed day, and any instrument made on or after that day, is void to the extent that it provides for the creation of, or purports to create, a rentcharge the creation of which is prohibited by this Article.

(3) This Article does not prohibit the creation of a rentcharge—

- (a) in pursuance of an obligation assumed before the appointed day;
- (b) as an annuity;
- (c) which is payable under an agreement of indemnity to the owner of a legal estate in land contingently upon his being made to pay the whole or part of a rent in respect of all or part of that land or in respect of a larger area of land of which that land forms or formed part;
- (d) under any statutory provision;
- (e) by, or in accordance with the requirements of, any order of a court.

Long leases of dwelling-houses

30.—(1) Without prejudice to Article 36(1)(c) and (2) or Article 37(3), and subject to paragraph (5), on and after the appointed day a lease of a dwelling-house for a term of more than 50 years (“a long lease”) is incapable of being created at law or in equity.

(2) In relation to any land, any agreement made on or after the appointed day to grant a long lease the creation of which is prohibited by this Article, and any instrument made on or after that day which purports to be such a lease, has effect (in either case) as an agreement with the prospective or purported lessee binding the prospective or purported lessor—

- (a) to acquire a fee simple in the land (if he does not already own such a fee) at no expense to the intended lessee (that is to say, the person designated in the agreement or instrument as the prospective or purported lessee); and
- (b) to convey the fee simple to the intended lessee at no expense to the intended lessee (but without prejudice to the intended lessee’s liability for his own costs) and without any consideration (save any fine specified in the agreement or instrument).

(3) Where the leasehold estate purported to be created by an instrument such as is mentioned in paragraph (2) purports to be subject to a mortgage, the mortgage binds the fee simple, when conveyed, as if it had been created in relation to the fee simple, and, in particular,—

- (a) where the instrument creating the mortgage purported to be an assignment of the leasehold estate, it has effect as if it were a conveyance of the fee simple;
- (b) where the instrument creating the mortgage purported to be a sub-lease, it has effect as if it were a lease for a term equivalent to the term of the sub-lease;

and the purported lessor’s duty to acquire and convey the fee simple is enforceable by the mortgagee, whether he is in possession or not, as though the mortgagee were a party to the agreement second-mentioned in paragraph (2) (and, accordingly, that paragraph applies as if references in it to the intended lessee, except the first reference in sub-paragraph (b), included the mortgagee).

(4) For the purposes of this Article a lease is for a term of more than 50 years if (although expressed to be for a term of or less than that period) it is, by virtue of any provision of the lease or of a collateral agreement, capable of being extended or renewed for any period or periods which, taken with the original term, in the aggregate exceed the period of 50 years (ignoring any part of the term falling before the date of the grant of the lease).

(5) This Article does not prohibit—

- (a) the grant of a long lease in pursuance of an obligation assumed before the appointed day;
- (b) the grant of a concurrent lease;
- (c) the grant of a long lease by way of mortgage;
- (d) the grant of an equity-sharing lease;
- (e) the grant of a long lease of a flat;
- (f) the grant of a long lease by the National Trust.

(6) In paragraphs (2) and (3) references to the prospective lessor or the purported lessor and to the intended lessee include, as the case requires, their respective successors in title or the persons who would have been their respective successors in title if the agreement or instrument had had the effect intended (and similarly in relation to a mortgagee); and in paragraph (5)(e) “flat” has the same meaning as in Article 7(7).

Avoidance of provisions for increase or review of ground rent

31.—(1) Subject to paragraphs (3) and (4), this Article applies to any of the following instruments executed on or after the appointed day, that is to say—

- (a) a fee farm grant;
 - (b) a lease of a dwelling-house originally granted for a term of more than 50 years;
 - (c) an agreement collateral to any instrument mentioned in sub-paragraph (a) or (b).
- (2) Any provision of an instrument to which this Article applies for the increase or review of a ground rent on one or more than one occasion is of no effect.
- (3) Nothing in this Article affects section 18(3) of the Act of 1971 (which allows the rent fixed on the extension of a lease under that Act to be made subject to revision).
- (4) This Article does not apply to a building lease or to a fee farm grant for purposes corresponding to those of a building lease merely because provision is made for increases in the ground rent which are related to periods or events in the progress of building or related activities.