
STATUTORY INSTRUMENTS

1997 No. 1179

The Property (Northern Ireland) Order 1997

PART III

FREEHOLD COVENANTS AND CERTAIN LEASES

Freehold covenants

Running of freehold covenants

34.—(1) Subject to paragraphs (2) and (3) and without prejudice to remedies for enforcement, this Article replaces the rules of common law and equity relating to the enforceability between the owners of estates in fee simple of covenants burdening or benefiting such estates.

(2) This Article does not apply to—

- (a) any covenant contained in a deed made before the appointed day; or
- (b) any covenant contained in a deed made on or after the appointed day in pursuance of an obligation assumed before that day; or
- (c) any covenant for title; or
- (d) any covenant which is expressed to bind only the covenantor; or
- (e) any covenant to which Article 25 applies.

(3) Nothing in this Article affects the enforceability of any covenant as between the original parties to the covenant.

(4) The following kinds of covenant (and only covenants of those kinds) are enforceable (as appropriate to the nature of the covenant and the circumstances of the breach or the anticipated or threatened breach) by the owner for the time being of the land benefited by the covenant against the owner for the time being of the land burdened by it—

- (a) covenants in respect of the maintenance, repair or renewal of party walls or fences or the preservation of boundaries;
- (b) covenants to do, or to pay for or contribute to the cost of, works on, or to permit works to be done on, or for access to be had to, or for any activity to be pursued on, the land of the covenantor for the benefit of land of the covenantee or other land;
- (c) covenants to do, or to pay for or contribute to the cost of, works on land of the covenantee or other land where the works benefit the land of the covenantor;
- (d) covenants to reinstate in the event of damage or destruction;
- (e) covenants for the protection of amenities or services or for compliance with a statutory provision (or a requirement under it), including—
 - (i) covenants (however expressed) not to use the land of the covenantor for specified purposes or otherwise than for the purposes of a private dwelling;
 - (ii) covenants against causing nuisance, annoyance, damage or inconvenience;

- (iii) covenants against interfering with facilities;
- (iv) covenants prohibiting, regulating or restricting building works or the erection of any structure, or the planting, cutting or removal of vegetation (including grass, trees and shrubs) or requiring the tending of such vegetation;

(f) covenants in relation to a body corporate formed for the management of land, and, accordingly, covenants of those kinds cease to be enforceable—

- (i) by a person when he ceases to be owner of the land benefited by the covenant; or
- (ii) save in respect of the transfer of membership of a body corporate such as is mentioned in sub-paragraph (f), against a person when he ceases to be owner of the land burdened by the covenant (but without prejudice to that person's liability to the owner for the time being of the land benefited by the covenant for any breach arising during that person's ownership of the land; and, for the purposes of this provision, any proceedings commenced by an owner of the land so benefited may be continued by any subsequent owner of that land).

(5) For the purposes of paragraph (4), it is conclusively presumed that the benefit and the burden of a covenant of a kind mentioned in that paragraph attach permanently to the whole and every part of the land of the covenantee and the covenantor respectively.

(6) Where there is a development, paragraphs (4) and (5) apply as if (if it is not the case) the covenants made by parcel owners with the developer had been made also with other parcel owners to the extent that those covenants are capable of reciprocally benefiting and burdening the parcels of the various parcel owners and as if references in those paragraphs to the land benefited by a covenant, the land burdened by a covenant and the land of the covenantee and the covenantor included (to that extent) references to parcels.

(7) For the purposes of paragraph (6), a development arises where—

- (a) land is, or is intended to be, divided into two or more parcels for conveyance in fee simple by the developer to parcel owners; and
- (b) there is an intention as between the developer and parcel owners to create reciprocity of covenants such as is referred to in paragraph (6); and
- (c) that intention is shown expressly in conveyances to parcel owners or by implication from the parcels and covenants in question and the proximity of the relationship between parcel owners.

(8) Paragraph (5) does not prejudice the release of a covenant by a deed executed by the owners of the respective lands or, where there is a development, by all the parcel owners to whom paragraph (6) applies and (where he still owns part of the land comprised in the development) the developer.

(9) In this Article—

“conveyance” includes a transfer of registered land;

“developer” means an owner who conveys parcels of land under a development and his successors in title;

“limited owner” means a tenant for life of a settled estate in fee simple or a person who has the powers of a tenant for life over such an estate under the Settled Land Acts 1882 to 1890;

“owner” means a person who holds an estate in fee simple or who is a limited owner; but does not include a person who holds by adverse possession unless—

- (a) that possession has continued for a duration such as is sufficient to extinguish under Article 26 of the Limitation (Northern Ireland) Order 1989 the title to which it is adverse (and, in this event, a covenant to which this Article applies is enforceable by or against that person as if he held under that title); or

- (b) a covenant which is sought to be enforced against that person is restrictive in substance or relates to permission;

“parcel owner” means a person who at any time acquires or holds a parcel of land within a development; and a mortgagee in possession of any parcel, or a person acting as a receiver appointed by a mortgagee, is to be taken to be a parcel owner.

Leases

Enlargement of leasehold estate subject to no rent

35.—(1) Subject to paragraph (2), this Article applies to a leasehold estate (whether or not the immediate reversion on that estate is the freehold) where—

- (a) the unexpired residue of the term of the lease is more than 50 years; and
- (b) no rent is incident to the reversion.

(2) This Article does not apply at a time when—

- (a) the land held under the lease is used wholly for business purposes; or
- (b) the lessee is prohibited by or under the lease from using the land otherwise than wholly for business purposes.

(3) Land is not prevented from being used wholly for business purposes by reason only of the fact that part of it is occupied as a dwelling by a person who is required or permitted to reside there in consequence of his employment or of holding an office.

(4) Whether or not a leasehold estate to which this Article applies is subject to an incumbrance, the lessee may by deed (“the deed of declaration”) declare to the effect that the leasehold estate is enlarged into an estate in fee simple (“the fee simple estate”) and may make application to the Registrar for registration of his title to the fee simple estate.

(5) On an application under paragraph (4)—

- (a) if the leasehold estate is registered, section 27 of the Land Registration Act applies (the references in that section to the leasehold estate’s being converted or having not been converted being read as including references to that estate’s being or having not been the subject of a deed of declaration under paragraph (4));
- (b) if the leasehold estate is not registered and the application is made in accordance with rules, the Registrar may register the lessee’s title to the fee simple estate in accordance with the deed of declaration with such class of title as appears to him to be appropriate (and, until the lessee’s title to the fee simple estate is so registered, the deed of declaration has no effect);

and (notwithstanding any caution or inhibition) the Registrar may make in the register such consequential entries, changes, cancellations or (without prejudice to paragraph (7)) notes as appear to him appropriate.

(6) Upon registration of the title to the fee simple estate—

- (a) that estate of the class shown in the register becomes vested in the lessee; and
- (b) the reversion expectant upon the lessee’s leasehold estate, and the reversion expectant upon any leasehold estate superior to the lessee’s estate, is extinguished (without prejudice to any rights of any reversioner in respect of land other than the land held for the leasehold estate to which this Article applies).

(7) Except where the Registrar is satisfied that the land held for a leasehold estate to which this Article applies was subject to no superior rent (other than a nominal rent, that is to say, a rent of a yearly amount of £1 or less, or a peppercorn or other rent having no money value) on the date of

execution of the deed of declaration, the Registrar shall enter on the register a note to the effect that the fee simple estate is subject to a rentcharge of so much (if any) of any superior rent as would have been redeemed by virtue of Article 18(1) if a ground rent to which the land was subject had been redeemed under Article 5 on that date; and such a note may be discharged in accordance with rules, and it is sufficient to satisfy the Registrar as to the matter mentioned at the beginning of this paragraph that he is furnished by a solicitor with a certificate to that effect,

(8) The fee simple estate is subject to Article 20(7) to (10) and Articles 23 to 26 as if the leasehold estate had yielded a rent which had been redeemed (and the leasehold estate consequently enlarged into a fee simple) under Part II; and, accordingly, for the purposes of this Article those Articles shall be read with the necessary modifications.

(9) Where land held for a leasehold estate has been mortgaged by sub-demise or an assignment of the lease and the right of redemption has become barred, the mortgagee may exercise the right of a lessee under this Article, if the requirements of this Article are otherwise satisfied.

(10) This Article does not apply to a leasehold estate created by way of mortgage.

Perpetually renewable leases

36.—(1) This Article applies to—

- (a) a lease for a life or lives renewable for ever;
- (b) a lease for a life or lives with any concurrent or reversionary term of years, renewable for ever;
- (c) a lease for a term of years renewable for ever.

(2) On and after the appointed day, a lease to which this Article applies is incapable of being created at law or in equity.

(3) Any agreement made on or after the appointed day to grant a lease to which this Article applies is void; any instrument made on or after that day which purports to be such a lease is void; and any agreement to assign, or any purported assignment, of such a lease made on or after that day has effect as an agreement to convey, or a conveyance of, a fee simple.

(4) Subject to paragraph (5), where immediately before the appointed day any lease to which this Article applies was subsisting and would have continued to subsist apart from the provisions of this Article and Schedule 2, the estate created by the lease is, on that day, converted by virtue of this paragraph into an estate in fee simple subject to a fee farm rent.

(5) Where a lease coming within paragraph (4) was subject to one or more than one sub-lease (other than a sub-lease by way of mortgage) which also (by virtue of the definition of “lease” in Article 2(2)) comes within that paragraph, the reference in that paragraph to the estate created by the lease is, to the extent of the land which is the subject of the sub-lease, to be construed as a reference to the estate created by the sub-lease (or the more or most subordinate sub-lease, if more than one).

(6) For the purposes of paragraphs (4) and (5), Schedule 2 contains provisions subject to which the estate in fee simple is held and provides for the amount of the fee farm rent; and the other provisions of that Schedule also have effect.

(7) Where immediately before the appointed day an agreement to grant a lease to which this Article applies was subsisting, the agreement continues to have the effect provided for in section 37 of the Renewable Leasehold Conversion Act, notwithstanding the repeal by this Order of that Act, (that is to say, it is deemed to be an agreement for a conveyance of the land concerned at a fee farm rent).

(8) A mere covenant for renewal on the same terms in any lease is not to be taken to require the inclusion of another covenant for renewal in the renewed lease, unless the contrary intention is expressed or implied in the original lease.

(9) For the purposes of this Article a lease is subsisting so long as the rent provided for by it is being paid, notwithstanding that the lease has fallen due for renewal but has not been renewed or that a fine payable on renewal has not been paid; and for this purpose rent is being paid if no rent is in arrear.

Leases for lives, etc.

37.—(1) This Article applies to a lease at a rent or in consideration of a fine—

- (a) for a life or lives; or
- (b) for a life or lives with a concurrent term of any period; or
- (c) for a life or lives with a reversionary term of any period; or
- (d) for a term of any period determinable with a life or lives or on the marriage of a specified person (including the lessee) or on the happening of any other event.

(2) On and after the appointed day, a lease to which this Article applies is incapable of being created at law or in equity.

(3) Any agreement made on or after the appointed day to grant a lease to which this Article applies is void; any instrument made on or after that day which purports to be such a lease is void; and any agreement to assign, or any purported assignment, of such a lease made on or after that day has effect as an agreement to assign, or an assignment, of the lease into which the lease which is the subject of the agreement or purported assignment was converted by paragraph (4) and Schedule 3.

(4) Where immediately before the appointed day any lease to which this Article applies, or any agreement to grant such a lease, was subsisting and would have continued to subsist apart from the provisions of this Article and Schedule 3, the lease or agreement has effect on and after that day in accordance with the provisions of Schedule 3, and the other provisions of that Schedule have effect.

Repeal of statutory provisions relating to agricultural tenancies

38.—(1) The statutory provisions relating to agricultural tenancies cease to have effect, except in relation to existing tenancies (that is to say, tenancies to which they applied immediately before the appointed day which continue to subsist on that day).

(2) In this Article “the statutory provisions relating to agricultural tenancies” means—

- the Landlord and Tenant (Ireland) Act 1870;
- the Landlord and Tenant (Ireland) Act 1871;
- the Landlord and Tenant (Ireland) Act 1872;
- the Notices to Quit (Ireland) Act 1876;
- the Land Law (Ireland) Act 1881;
- the Purchase of Land (Ireland) Act 1885, sections 4, 8, 12, 15, 16, 25 and 26;
- the Land Law (Ireland) Act 1887, Part I, section 26, Part III and in section 34 the definitions of “judgment” and “landlord”;
- the Land Law (Ireland) Act 1896 (except Part II so far as relating to the Land Purchase Acts, Part III and, in Part VI, in section 48(1) the definitions of “Land Purchase Acts”, “prescribed”, and “Receiver Judge”, section 48(3), section 50(4) and (5) and section 51); and
- the Irish Land Act 1903, Part III and, in Part V, in section 98(1) the definitions of “the Land Law Acts” and “the Act of 1887” and section 100(3).