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STATUTORY INSTRUMENTS

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**1996 No. 725**

**The Business Tenancies (Northern Ireland) Order 1996**

*Supplemental*

**Compensation for misrepresentation etc., or landlord's failure to fulfil intentions**

27.—(1) Where the Lands Tribunal—

- (a) makes an order that the tenant is not entitled to a new tenancy; and
- (b) is subsequently satisfied that it was induced to make the order by misrepresentation or by the concealment of material facts or that the intentions of the landlord as represented by him to the Lands Tribunal regarding any of the matters specified in Article 12(1)(e), (f), (g) or (h) have not without reasonable excuse been fulfilled,

the Lands Tribunal may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the refusal.

(2) Where—

- (a) the tenant has quit the holding—
  - (i) after making but withdrawing a tenancy application; or
  - (ii) without making such an application; and
- (b) the Lands Tribunal is satisfied that he did so by reason of misrepresentation or the concealment of material facts,

the Lands Tribunal may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of quitting the holding.

**Penalties for fraud or the wilful concealment of material facts**

28.—(1) Any person who fraudulently or by the wilful concealment of material facts induces the Lands Tribunal to order the grant of a new tenancy or to make an order that the tenant is not entitled to a new tenancy shall, without prejudice to the provisions of the Perjury (Northern Ireland) Order 1979, be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both a fine and such imprisonment.

(2) For the purposes of any proceedings under this Article, a certificate under the hand of a member of the Lands Tribunal that, in any proceedings of the Lands Tribunal heard before him (whether sitting alone or otherwise), a statement of material facts as set out in the certificate was made to the Tribunal or that any material facts as set out in the certificate were not disclosed to the Tribunal, shall, until the contrary is shown, be accepted as proof that such statement was made, or, as the case may be, that such facts were not disclosed to the Tribunal.

### **Duty of tenants and landlords of business premises to give information to each other**

29.—(1) Any person having an estate in any business premises, being an estate in reversion expectant (whether immediate or not) on a tenancy of those premises, may serve on the tenant under such tenancy a notice for particulars.

(2) A tenant of business premises, being a tenant under such a tenancy as is mentioned in Article 7(1), may serve a notice for particulars on all or any of the following persons—

- (a) his immediate landlord or the person to whom he pays the rent in respect of the premises comprised in the tenancy;
- (b) any person whom the tenant reasonably believes to be a superior landlord or the agent of a superior landlord;
- (c) any person whom the tenant reasonably believes may be a mortgagee in possession of an estate in the premises superior to the tenant's estate.

(3) For the purposes of this Article a notice for particulars is a notice in the prescribed form requiring the person on whom the notice is served to furnish to the person by whom the notice is served such information as, in all the circumstances, it is reasonable for the second-mentioned person to demand and as is specified in the notice.

(4) Any notice for particulars served by a landlord or a tenant must be served before the service of, respectively, a notice to determine or a request for a new tenancy.

(5) It shall be the duty of any person on whom a notice for particulars is served under this Article to furnish in writing within one month after the service of such notice to the person by whom such notice was so served, the information asked for by such notice so far as it is within the possession or procurement of such person.

(6) Where a notice for particulars is served under this Article and the person on whom such notice is so served ("the defaulter") fails or neglects to furnish in writing, within the time limited by this Article, the information he is required by the notice to furnish, or furnishes information which is incomplete, inaccurate or misleading in any material respect, the person by whom the notice was served may apply to the Lands Tribunal, which may—

- (a) make such order as it thinks necessary with a view to compelling the defaulter so to furnish such information as the Lands Tribunal considers proper;
- (b) in the event of the defaulter not complying with an order under sub-paragraph (a), order the defaulter to pay to the person by whom the notice was served such sum as appears sufficient as compensation for damage or loss sustained by that person as the result of the defaulter's breach of the duty imposed on him by paragraph (5).

(7) In the case of a tenancy granted for a term certain the foregoing provisions of this Article shall not apply to a notice served by or on the tenant more than 2 years before the date on which but for this Order his tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit served by the immediate landlord.

(8) In this Article—

"business premises" means premises used wholly or partly for the purposes of a business;

"mortgagee in possession" includes a receiver, appointed by the mortgagee or by a court of competent jurisdiction, who is in receipt of the rents and profits;

"superior landlord" means a person whose estate is superior to the estate of the immediate landlord.

## Trusts

**30.**—(1) Where a tenancy is held on trust, occupation by all or any of the beneficiaries under the trust, and the carrying on of a business by all or any of the beneficiaries, shall be treated for the purposes of Article 3 as equivalent to occupation or the carrying on of a business by the tenant; and in relation to a tenancy to which this Order applies by virtue of the foregoing provisions of this paragraph—

- (a) references (however expressed) in this Order to the business of, or to carrying on of business, use or occupation by, the tenant shall be construed as including references to the business of, or to carrying on of business, use or occupation by, the beneficiaries or beneficiary;
- (b) the reference in Article 18(2)(d) to the tenant shall be construed as including the beneficiaries or beneficiary; and
- (c) a change in the persons of the trustees shall not be treated as a change in the person of the tenant.

(2) Where the landlord's estate is held on trust, the references in sub-paragraph (g) of Article 12(1) to the landlord, and the references in sub-paragraph (h) to a person with a controlling interest in the company, shall be construed as including references to the beneficiaries under the trust or any of them; but, except in the case of a trust arising under a will or on the intestacy of any person, the reference in Article 13(4) to the creation of the estate therein mentioned shall be construed as including the creation of the trust.

## Groups of companies

**31.**—(1) For the purposes of this Article two bodies corporate shall be taken to be members of a group if and only if one is a subsidiary of the other or both are subsidiaries of a third body corporate.

(2) In paragraph (1) "subsidiary" has the meaning given by Article 4 of the Companies (Northern Ireland) Order 1986.

(3) Where a tenancy is held by a member of a group, occupation by another member of the group, and the carrying on of a business by another member of the group, shall be treated for the purposes of Article 3 as equivalent to occupation or the carrying on of a business by the member of the group holding the tenancy; and in relation to a tenancy to which this Order applies by virtue of the foregoing provisions of this paragraph—

- (a) references (however expressed) in this Order to the business of, or to use or occupation by, the tenant shall be construed as including references to the business of, or to use or occupation by, the said other member;
- (b) the reference in Article 18(2)(d) to the tenant shall be construed as including the said other member; and
- (c) an assignment of the tenancy from one member of the group to another shall not be treated as a change in the person of the tenant.

(4) Where the landlord's estate is held by a member of a group—

- (a) the reference in Article 12(1)(g) to intended occupation for the purposes of a business to be carried on by the landlord shall be construed as including intended occupation for the purposes of a business to be carried on by any member of the group; and
- (b) the reference in Article 12(1)(h) to intended occupation for the purposes of a business to be carried on by a person with a controlling interest or by the company shall be similarly construed; and
- (c) the reference in Article 13(4) to the purchase or creation of any estate shall be construed as a reference to a purchase from or creation by a person other than a member of the group.

## **Partnerships**

**32.**—(1) This Article applies where—

- (a) a tenancy is held by two or more persons; and
- (b) the property comprised in the tenancy is or includes premises occupied for the purposes of a business; and
- (c) the business (or some other business) was at some time during the existence of the tenancy carried on in partnership by all the persons who were then the tenants or by those and other persons, and the tenants' estate in the premises was then partnership property; and
- (d) the business is carried on (whether alone or in partnership with other persons) by one or some only of the tenants and no part of the property comprised in the tenancy is occupied, in right of the tenancy, for the purposes of a business carried on (whether alone or in partnership with other persons) by the other or others.

(2) In this Article those of the tenants who for the time being carry on the business are referred to as the “remaining tenants” and the others are referred to as the “departed tenants”.

(3) Any notice given by the remaining tenants which, had it been given by all the tenants, would have been a tenant’s request for a new tenancy made in accordance with Article 7 shall be treated as such if it states that it is given by virtue of this Article and sets out the facts by virtue of which the persons giving it are the remaining tenants, and references in that Article to the tenant shall be construed accordingly.

(4) A notice given by the landlord to the remaining tenants which, had it been given to all the tenants, would have been a notice under Article 6 shall be treated as such, and references in that Article to the tenant shall be construed accordingly.

(5) A tenancy application under Article 10(1)(b) may, instead of being made by all the tenants, be made by the remaining tenants alone; and where an application is so made—

- (a) this Order shall have effect, in relation to it, as if the references therein to the tenant included references to the remaining tenants alone; and
- (b) the remaining tenants shall be liable, to the exclusion of the departed tenants, for the payment of rent and the discharge of any other obligation under the current tenancy for any rental period beginning after the date specified in the landlord’s notice under Article 6 or, as the case may be, beginning on or after the date specified in their request for a new tenancy.

(6) Where the Lands Tribunal makes an order under Article 15 for the grant of a new tenancy on an application made by the remaining tenants it may order the grant to be made to them or to them with the persons carrying on the business in partnership with them; and, in exercising its power under Article 19(2), the Lands Tribunal may have regard to the omission of the departed tenants from the persons who will be the tenant under the new tenancy.

(7) The remaining tenants shall be entitled to recover any sum payable by way of compensation under Article 23 or 27.

## **Provisions as to reversions**

**33.**—(1) Where by virtue of any provision of this Order a tenancy (“the inferior tenancy”) is continued for a period such as to extend to or beyond the end of a superior tenancy, the superior tenancy shall, for the purposes of this Order and of any other statutory provision and of any rule of law, be deemed so long as it subsists to be an estate in reversion expectant upon the termination of the inferior tenancy, and if there is no intermediate tenancy, to be the estate in reversion immediately expectant upon the termination thereof.

(2) In the case of a tenancy continuing by virtue of any provision of this Order after the coming to an end of the estate of the immediate landlord, the person then having the reversion immediately expectant upon the coming to an end of that estate shall, from such coming to an end and so long as his term subsists, be deemed, to the extent and for the purpose of preserving the incidents to and obligations on the said estate which would have subsisted if that estate had not come to an end, to be the immediate landlord in relation to the tenancy so continued (and similarly where that person's estate comes to an end in similar circumstances).

(3) Where by virtue of any provision of this Order a tenancy ("the continuing tenancy") is continued beyond the beginning of a reversionary tenancy which was granted so as to begin on or after the date on which but for this Order the continuing tenancy would have come to an end, the reversionary tenancy shall have effect as if it had been granted subject to the continuing tenancy.

(4) Where by virtue of any provision of this Order a tenancy ("the new tenancy") is granted for a period beginning on the same date as a reversionary tenancy or for a period such as to extend beyond the beginning of the term of a reversionary tenancy, the reversionary tenancy shall have effect as if it had been granted subject to the new tenancy.

#### **Provision as to overholding**

**34.** A tenant shall not be deemed for the purposes of section 76 of the Landlord and Tenant Law Amendment Act, Ireland, 1860 wilfully to hold over any property comprised in a tenancy by reason only of his remaining in possession thereof under any provision of this Order.

#### **Mesne landlords**

**35.** The provisions of Schedule 1 shall have effect for the purposes of the application of this Order to cases where there are several persons standing in the relation to each other of landlord and tenant.

#### **Mortgagees in possession**

**36.** Without prejudice to Article 29(2)(c), anything authorised or required by the provisions of this Order, to be done at any time by, to or with a landlord, shall, if at that time the estate of the landlord in question is subject to a mortgage and the mortgagee is in possession or a receiver is in receipt of the rents and profits, be deemed to be authorised or required to be done by, to or with the mortgagee instead of that landlord.

#### **Determination of tenancies of derelict land**

**37.—(1)** Where in relation to a tenancy continued by virtue of this Order or granted under this Order the immediate landlord on an application to the Lands Tribunal satisfies the Lands Tribunal—

- (a) that he has taken all reasonable steps to communicate with the person last known to him to be the tenant and has failed to do so;
- (b) that during the period of 6 months ending with the date of the application neither the tenant nor any person claiming under him has been in occupation of the property comprised in the tenancy or any part thereof; and
- (c) that during the said period either no rent was payable by the tenant or the rent payable has not been paid,

the Lands Tribunal may if it thinks fit by order determine the tenancy as from the date of the order.

(2) Nothing in this Article shall prejudice or affect the right of a landlord to bring an action for the recovery of any land under Article 12(3) of the County Courts (Northern Ireland) Order 1980.

### **Application of capital money under the Settled Land Acts**

**38.**—(1) Capital money arising under the Settled Land Acts 1882 and 1890 may be applied—

- (a) in payment, as for an improvement authorised by the said Acts, of any money expended and costs incurred under and in pursuance of this Order in or about the execution of an improvement;
- (b) in payment of any sum payable to a tenant in respect of compensation under Article 23 and any costs payable to such tenant in relation to his claim for such compensation;
- (c) in payment of the costs incurred in or in relation to making or opposing an application to the Lands Tribunal under this Order.

(2) The satisfaction of a claim for compensation under Article 23 shall be included amongst the purposes for which a tenant for life may raise money under section 18 of the Settled Land Act 1882.

(3) Where a landlord liable to pay compensation under Article 23, or to pay such costs as are mentioned in paragraph (1)(c), is a tenant for life or in a fiduciary position, he may require the sum payable in respect of such compensation and all such costs to be paid out of any capital money held on the same trusts as the settled land.

(4) In paragraph (3) the expression “capital money” includes any personal estate held on the same trusts as the land, and the expression “settled land” includes land held on trust for sale.

### **Protection of landlords in fiduciary capacities**

**39.**—(1) Where a landlord is a person entitled to receive the rents and profits from any premises comprised in a tenancy as trustee or in any character otherwise than for his own benefit and money is payable by such landlord to his tenant in respect of compensation under Article 23 or in respect of costs in relation to any application under this Order, the following provisions shall have effect, that is to say —

- (a) such money shall not be recovered personally against such landlord nor shall he be under any liability to pay such money, but such money shall be a charge on and recoverable only against the premises comprised in the said tenancy and all property real or personal, held by the landlord on the same trusts or in the same character as the premises comprised in the said tenancy;
- (b) such landlord shall, either before or after having paid such money to such tenant, be entitled to obtain from a county court an order charging such premises and all property, real or personal, held by him on the same trusts or in the same character as such premises with the payment of the amount of such money and of all costs properly incurred by him in obtaining such order or raising the amount of the charge;
- (c) if such landlord neglects or fails to pay such money within one month after such tenant has quit such premises, such tenant shall be entitled to obtain from a county court an order directing that such premises and all property, real or personal, held by such landlord on the same trusts or in the same character as such premises shall be charged with the payment of the amount of such moneys or of so much thereof as is then unpaid and of all costs properly incurred by him in obtaining such order or in raising the amount of the charge.

(2) Any company having power to lend money on mortgage or to advance money for the improvement of land may take an assignment of any charge made by a county court under this Article, and such company may assign any such charge so assigned to it to any person whomsoever.

### **Provisions as to notices**

**40.**—(1) Any form of notice or other document required by this Order to be prescribed shall be prescribed by regulations made by the Department of Finance and Personnel subject to negative resolution.

(2) Where the form of a notice is to be prescribed for any of the purposes of this Order, that form may include such explanation of the relevant provisions of this Order as appears to the Department of Finance and Personnel requisite for informing any persons of their rights and obligations under those provisions.

(3) Where, in any particular case, objection is taken to the sufficiency of any form of notice under this Order, the Lands Tribunal may give such directions in the matter as it thinks fit.

### **Service of notices, etc.**

**41.** Any notice, request, application, consent or other instrument required or authorised by this Order to be served by or on, made by, or given by or to any person shall be in writing and, without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954, the person by or on whom it is to be served, made or given shall include any agent of that person.

### **Enforcement of orders of Lands Tribunal**

**42.**—(1) Where, under Article 11(4), 18(5), 21 (1), 26(7), 27(1) or (2) or 29(6)(b) or paragraph 3(4) of Schedule 1, the Lands Tribunal orders payment of any sum, the order shall be a money judgment for the purposes of Article 4 of the Judgments Enforcement (Northern Ireland) Order 1981.

(2) Where the Lands Tribunal makes an order under Article 29(6)(a) and the defaulter fails to comply with it, a member of the Lands Tribunal may certify the failure to the High Court which may deal with the defaulter as if the order of the Lands Tribunal had been an order of the High Court.

### **The Crown**

**43.**—(1) Subject to Articles 12(1)(i) and 23(7), this Order binds the Crown and, consequently, the Order applies where there is an estate belonging to Her Majesty in right of the Crown or belonging to a department of the Government of the United Kingdom or of the Government of Northern Ireland or held on behalf of Her Majesty for the purposes of any such department, in like manner as if that estate were an estate not so belonging or held.

(2) Where a tenancy is held by or on behalf of a department of the Government of the United Kingdom or of the Government of Northern Ireland and the property comprised therein is or includes premises occupied for any purposes of any such department, the tenancy is one to which this Order applies; and for the purposes of any provision of this Order which is applicable only if either or both of the following conditions are satisfied, that is to say—

- (a) that the premises have during any period been occupied for the purposes of the tenant's business;
- (b) that on any change of occupier of any premises the new occupier succeeded to the business of the former occupier,

those conditions are to be deemed to be satisfied respectively, in relation to such a tenancy, if during that period or, as the case may be, immediately before and immediately after the change, the premises were occupied for the purposes of any such department.

### **Transitional provisions and savings, amendments and repeals**

**44.**—(1) The transitional and saving provisions in Schedule 2 shall have effect.

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(2) The statutory provisions specified in Schedule 3 shall have effect subject to the amendments there specified.

(3) The statutory provisions specified in columns 1 and 2 of Schedule 4 are hereby repealed to the extent specified in column 3, but subject to the provisions of Schedule 2.