
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.