
STATUTORY INSTRUMENTS

1997 No. 1179

The Property (Northern Ireland) Order 1997

PART II

GROUND RENTS AND CERTAIN OTHER PAYMENTS

Consequences of redemption

Effect of certificate of redemption

17.—(1) Subject to paragraph (2), a certificate of redemption is conclusive evidence—

- (a) of the redemption of the ground rent to which it relates (and of the right of the rent-payer to that redemption); and
- (b) of the operation in relation to the land, and any other parcel or parcels of land affected, of Articles 18, 19, 20, 23, 24, 25 and 26 so far as those Articles are applicable and subject to their terms.

(2) Where the court is satisfied that a certificate of redemption has been obtained by fraud and that the certificate can be cancelled without hardship to a purchaser of the land in good faith for value, the court may order the certificate to be cancelled and, where the certificate relates to registered land, may order the register to be rectified accordingly.

(3) In paragraph (2) “the court” has the meaning given by section 4 of the Land Registration Act (references in that section to that Act being read as including references to this Order).

Superior rents

18.—(1) When a ground rent is redeemed, all superior rents (if any) to which the land is subject are also redeemed or, where they are charged on other land as well as the land, are redeemed to the extent that they are charged on the land.

(2) For the purposes of this Article that extent is to be taken to be a fraction equivalent to the ratio which the redeemed ground rent bears to the aggregate of that ground rent and the ground rents charged on the other land which are payable to the rent-owner.

(3) Where there is one or more than one superior rent, when the rent-owner receives from the rent-payer a sum in connection with the redemption of the ground rent, he may retain—

- (a) his share of the redemption money;
- (b) any amount paid by the rent-payer in respect of arrears and apportionment of ground rent;
- (c) any amount paid by the rent-payer in respect of the rent-owner’s costs,

and (without prejudice to any right of set-off or counterclaim) shall pay the balance to the superior, or immediate superior, owner.

(4) A rent-owner’s share of the redemption money is the product of his profit rent and the number of years purchase applicable to the redemption; and for this purpose “profit rent” means the amount by which the amount of ground rent payable to him exceeds the amount of superior rent payable by

him, or, where the superior rent is charged on other land as well as the land, the amount of superior rent which is redeemed in accordance with paragraphs (1) and (2).

(5) Where there is no profit rent, the rent-owner shall pay to the superior, or immediate superior, owner, the whole amount of the redemption money paid by the rent-payer to him together with any money so paid in respect of superior owners' costs.

(6) Where there are more superior owners than one, paragraphs (3) to (5) apply to the respective superior owners, in due order, with the necessary modifications (but with the fraction mentioned in paragraph (2) remaining constant for all superior rents), as they apply to the redeeming rent-payer, his rent-owner and the rent-owner's immediate superior.

(7) Where the balance or amount payable by the rent-owner to a superior owner or by one superior owner to another (ignoring any superiors' costs) is less than the redemption money appropriate to the superior rent (or the amount of the superior rent which is redeemed in accordance with paragraphs (1) and (2)) at the redemption date of the ground rent, the person liable to pay that superior rent has, in addition, a duty to pay the person to whom that rent is payable so much of the redemption money appropriate to that rent (or the amount of that rent which is redeemed) at that date as exceeds that balance or amount.

(8) There is recoverable in proceedings in any court of competent jurisdiction (but without prejudice to any right of set-off or counterclaim), and not otherwise—

- (a) any balance payable under paragraph (3) or (6);
- (b) any amount payable under paragraph (5) or (6);
- (c) any excess under paragraph (7);
- (d) any arrears of a superior rent due and recoverable at the redemption date of the ground rent and any apportionment of a superior rent for the period from the last day for payment of the superior rent before the redemption date to the redemption date.

(9) The provisions of paragraphs (2) to (7) may be modified by an agreement between the rent-owner and his superior, or immediate superior, owner or (as the case may be) between one superior owner and another, provided that the agreement has the concurrence of all superior owners (if any) who are superior to the parties to the agreement and of the mortgagees (if any) of the estates of those parties and of every such superior owner.

Lands in separate occupation subject to single ground rent

19.—(1) Where land comprised of two or more parcels vested in separate persons is subject to a single ground rent and the rent-payers do not combine under Article 8(7) to redeem the ground rent, the payment of the redemption money by a rent-payer entitled to any parcel or parcels frees all the parcels from the ground rent, and at the request of the person entitled to any other parcel or parcels the rent-payer or, where the certificate of redemption has been sealed, the Registrar on being satisfied of the facts shall deliver to that person a copy of the certificate of redemption.

(2) Where the rent-payer delivers a copy of the certificate of redemption under paragraph (1), he may, as a condition of delivering it, require the person making the request to pay not more than the appropriate sum to cover the cost of preparing and, where necessary, posting the copy; and for this purpose the appropriate sum is a sum equivalent to that prescribed under Article 46(1) as the fee payable to the Registrar for a similar service.

(3) A rent-payer entitled to any parcel or parcels who pays redemption money or money representing arrears or apportionment of ground rent or costs may require reimbursement of all or an appropriate part (as the case may be) of that money and of his costs in connection with the redemption—

- (a) where he has been indemnified against payment of the ground rent or any part of it, from the indemnifier; or

(b) where he has not been so indemnified, from the person entitled to any other parcel, unless he himself has indemnified that person against any demand for ground rent;
and any such money and costs (without prejudice to any right of set-off or counterclaim) may be recovered by him in proceedings in any court of competent jurisdiction.

Effect of redemption on titles

20.—(1) Subject to paragraph (3), where, immediately before the date of the completion or sealing of a certificate of redemption, the land was held by the rent-payer for an estate in fee simple, the certificate of redemption operates by virtue of this provision on that date (or on the date of reclassification of the rent-payer's title under paragraph 3(i) of Schedule 3 to the Land Registration Act, where the rent-payer's estate is registered land) to discharge that estate from all estates in the land of the rent-owner and any superior owners to the extent that those estates carry entitlement to ground rent or a superior rent or relate to matters connected with any such rent (and to that extent those estates are extinguished).

(2) Subject to paragraph (3), where, immediately before the date of the completion or sealing of a certificate of redemption, the land was held by the rent-payer for a leasehold estate, the certificate operates by virtue of this provision on that date (or on the date of registration of the rent-payer's title in the Land Registry, or, as the case requires, reclassification of his title, where the estate of the rent-payer or of the rent-owner or of any superior owner is registered land) to enlarge the rent-payer's estate into an estate in fee simple and, accordingly—

- (a) the title of the rent-owner or any superior owner to the fee simple; and
- (b) all other estates in the land of the rent-owner or any superior owners to the extent that those estates carry entitlement to ground rent or a superior rent, or relate to matters connected with any such rent,

are extinguished.

(3) Paragraphs (1) and (2) do not prejudice Article 21, and paragraph (2) does not prejudice Article 23; nor do paragraphs (1) and (2) affect the power of the rent-owner or a superior owner to enforce a covenant enforceable by him which is continued by paragraph (2) of Article 25 or any liability of his to have a covenant to which that paragraph applies enforced against him.

(4) In the case of registered land, a certificate of redemption (including one sealed by the Registrar) is sufficient authority for the Registrar (subject to compliance with rules)—

- (a) where the rent-payer's estate in the land is a registered freehold estate, to discharge any burden such as is mentioned in paragraph 2 of Part I of Schedule 6 to the Land Registration Act and make such alteration in the class of title with which the land is registered as appears to him appropriate;
- (b) where the rent-payer's estate in the land is a registered leasehold estate and an application is made under subsection (1) of section 27 of the Land Registration Act, to cancel the entry relating to the title to that estate and register the estate in fee simple vested in the rent-payer by virtue of paragraph (2) in accordance with that section with such class of title as appears to him appropriate (the references in that section to the leasehold estate's being converted or not having been converted being read as including references to that estate's being or not having been the subject of a certificate of redemption);
- (c) where the rent-payer's estate in the land is an unregistered leasehold estate registered as a burden on a superior registered freehold or leasehold estate, to cancel the entry or entries relating to the title to the superior estate or estates so far as that title relates to the land and falls to be extinguished by virtue of paragraph (2) and register the estate in fee simple vested in the rent-payer by virtue of that paragraph with such class of title as appears to him appropriate,

and (notwithstanding any caution or inhibition) to make in the register such consequential entries, changes, cancellations or notes as appear to him appropriate.

(5) The cancellation referred to in paragraph (4)(c) and the consequential entries, changes, cancellations and notes referred to in the final words of paragraph (4) may be made at any time after the Registrar becomes aware of the necessity or desirability to make them and without any application to him.

(6) A certificate of redemption is a conveyance for the purposes of the Registration of Deeds Acts and, for those purposes,—

- (a) where the certificate is completed, the rent-payer and the rent-owner are the grantors;
- (b) where the certificate is sealed, the rent-payer is the grantor.

(7) The enlargement of a leasehold estate effected by virtue of paragraph (2)—

- (a) operates as a grant by the rent-owner and any superior owner to the rent-payer of all easements, rights and privileges in or over land of, respectively, the rent-owner and the superior owner (and, so far as it is within the power of the rent-owner or superior owner to grant, in or over any other land) which existed and were enjoyed, or were prospectively capable of being enjoyed, by the rent-payer immediately before the time when the enlargement took effect;
- (b) operates to make the land of the rent-payer continue to be subject to all easements, rights and privileges enjoyed by the rent-owner or any superior owner in or over that land which existed immediately before the time mentioned in sub-paragraph (a), so far as those easements, rights or privileges are not extinguished by virtue of paragraph (2)(b);
- (c) does not affect any easement, right or privilege in or over land of a third person which had been granted by that person, or a predecessor in title of his, to the rent-payer in right of the rent-payer's land and which existed and was enjoyed, or was prospectively capable of being enjoyed, by the rent-payer immediately before the time mentioned in sub-paragraph (a), but without affecting the duration of any such easement, right or privilege where it is of limited duration (that duration being measured as if the leasehold estate had not been enlarged).

(8) Save as provided in paragraph (9), this Article does not affect the rights of a third person, and, in particular,—

- (a) so far as any such rights consist of an easement, right or privilege in or over land, they are exercisable to the same extent as they would have been if the ground rent had not been redeemed (but no further); and
- (b) so far as such rights consist of a right to payment of a sum of money charged on or issuing out of the land, that sum continues to be charged or to issue as theretofore.

(9) So far as the rights of a third person consist of a right to payment of a sum of money charged on or issuing out of a ground rent or superior rent that is redeemed, that sum becomes charged on or payable out of the redemption money (or the portion of the redemption money to which the person liable to pay that sum is entitled), and is recoverable as a debt.

(10) For the purposes of paragraphs (7) to (9) a third person is a person other than—

- (a) the rent-payer; or
- (b) the rent-owner or a superior owner.

(11) For the purposes of paragraphs (1) and (2), matters are connected with 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.

Disposal of redemption money lodged with the Registrar: claims thereto

21.—(1) Redemption money permitted to be lodged with the Registrar under Article 14 shall be lodged in accordance with rules and paid into the Consolidated Fund.

(2) Where the Registrar receives a claim from any person that he is entitled to payment of money so lodged, the Registrar shall proceed as follows—

- (a) where he is satisfied in accordance with rules that the person is entitled to the payment of the whole of the money so lodged, he shall certify accordingly;
- (b) where he is so satisfied that the person is entitled to a proportion of the money so lodged, he shall apportion the money between the person and any other persons appearing to be entitled in so far as it is practicable to make such an apportionment and shall certify accordingly;
- (c) where—
 - (i) he is not so satisfied that the person is so entitled to the payment of money so lodged;
or
 - (ii) he is of the opinion that it is not practicable for him to make a just apportionment,
he shall refuse so to certify.

(3) A person aggrieved by the Registrar's certificate under paragraph (2), or by his refusal of a certificate, may appeal to the Lands Tribunal and, if the Lands Tribunal is satisfied that the appellant is entitled to payment of such money, whether as to the whole or to a proportion of it, or is not satisfied that the appellant is so entitled, it shall order accordingly.

(4) Rules made for the purposes of paragraph (2) may define circumstances in which the Registrar may be satisfied as mentioned in that paragraph.

(5) On receipt of a certificate of the Registrar, or an order of the Lands Tribunal under paragraph (3), that a person is entitled to payment of money, the Department of Finance and Personnel ("the Department") shall issue out of the Consolidated Fund such sum as is necessary to provide for the payment so certified or ordered, and shall make such payment.

(6) Where the Department pays any money to a person in pursuance of a certificate under paragraph (2) or an order under paragraph (3), the Department shall pay to him interest upon that money from the date of its transfer to the Consolidated Fund under paragraph (1) until the time of the payment of the money and interest to the person entitled thereto and shall issue out of the Consolidated Fund such sum as is necessary to provide for that interest.

(7) The rate of interest payable under paragraph (6) shall be such rate (or such rates for such periods) as may be determined Department.

Register of redemption moneys

22.—(1) The Registrar shall keep in the prescribed form—

- (a) a register of redemption moneys which have been with him under Article 14; and
- (b) such indexes to the register as may be prescribed. by the lodged

(2) Section 81 of the Land Registration Act (searches) applies for the purposes of this Order as if—

- (a) "register" included the register kept under paragraph (1) and "the land" included the land in relation to which redemption money has been lodged with the Registrar and that money;
- (b) subsections (3) and (4) were omitted.

Continuance of rights and equities affecting leasehold estate

23.—(1) The fee simple estate into which a leasehold estate is enlarged by virtue of Article 20(2) is for all purposes (except as provided in Article 25(1)) a graft on the leasehold estate and is subject to any rights or equities arising from its being such a graft.

(2) Without prejudice to the generality of paragraph (1), that paragraph applies to rights and equities which had been created or had come into existence in relation to a superior estate, and which bound the leasehold estate, notwithstanding the extinguishment of the superior estate.

(3) Any provision of a will in respect of such a leasehold estate operates instead on the fee simple.

Mortgages and leases

24.—(1) Where by virtue of Article 20(2) a certificate of redemption operates to enlarge a leasehold estate into a fee simple,—

- (a) any mortgage of the leasehold estate continues to have effect as if it were, and had originally been created as, a mortgage of the fee simple, and, in particular—
 - (i) where the instrument creating the mortgage was an assignment of the leasehold estate, it has effect as if it were a conveyance of the fee simple;
 - (ii) where the instrument creating the mortgage was a sub-lease, it has effect as if it were a lease for a term equivalent to the term of the sub-lease;
- (b) any sub-lease of the land granted by the rent-payer or a predecessor in title of his has effect as if it were a lease for a term equivalent to the term of the sub-lease, and any mortgage of the estate created by such a sub-lease has effect as if it were a mortgage of the estate created by such a lease.

(2) Where the land is subject to a mortgage by the terms of which the mortgagee is entitled to possession of the documents relating to the mortgagor's title to the land, there is deemed to be included in the instrument or agreement containing the terms of the mortgage a covenant binding the mortgagor to deliver the certificate of redemption to the mortgagee as soon as reasonably practicable after the redemption date.

(3) A mortgagee to whom a certificate of redemption is delivered under paragraph (2) is under an obligation to submit the certificate for registration in the Registry of Deeds if it has not already been registered there or, as the case requires, to lodge it in the Land Registry in order to permit the Registrar to take any action provided for in Article 20(4) if the necessary action has not already been taken (and may charge to the mortgagor his costs in connection therewith); and such an obligation is deemed to be included in the instrument or agreement containing the terms of the mortgage.

(4) This Article does not prejudice the generality of Article 23.

Covenants

25.—(1) Except as provided by this Article, in the following event, that is to say,—

- (a) upon the completion or sealing of, a certificate of redemption, where the land is unregistered land; or
- (b) upon the making of any relevant alteration, cancellation or entry in the register (in accordance with Article 20(4)), where the land is registered land,

all covenants concerning the land by virtue of the rent-payer's fee farm grant or lease, or any superior fee farm grant or lease, or any collateral instrument, cease to have effect.

(2) Covenants of the following kinds continue to benefit or, as the case may be, burden the land, that is to say,—

- (a) covenants for title, including—

- (i) a covenant that a former vendor had a good right to convey, or lease, the whole property and interest he had agreed to sell;
 - (ii) covenants for quiet enjoyment, freedom from incumbrances and further assurance;
 - (iii) covenants by a former assignor of a lease that the lease was valid and in full force and that the rent had been paid and the covenants in the lease duly performed;
- (b) the covenant to give a receipt which is imported by Article 16(1);
 - (c) covenants for indemnities (except indemnities relating to a ground rent or superior rent which has been redeemed);
 - (d) covenants categorizing boundary walls or fences as party walls or fences or in respect of the maintenance, repair or renewal of walls or fences or the preservation of boundaries;
 - (e) 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 for the benefit of other land;
 - (f) covenants to do, or to pay for, or contribute to the cost of, works done on other land where the works benefit the land;
 - (g) covenants to reinstate in the event of damage or destruction;
 - (h) 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 for specified purposes or otherwise than for the purposes of a private dwelling;
 - (ii) covenants against causing nuisance, annoyance, damage or inconvenience to neighbours;
 - (iii) covenants against interfering with facilities which benefit neighbours;
 - (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;
 - (i) covenants in relation to a body corporate formed for the management of land;
 - (j) any covenants which were reciprocally enforceable between the rent-payer and his neighbours immediately before the redemption of the ground rent by virtue of a building scheme (that is to say, a scheme (express or implied) under which land (whether freehold or leasehold) is divided into two or more parcels subject to obligations which are reciprocally enforceable (whether at law or in equity) between owners of the parcels).
- (3) After the event mentioned in sub-paragraph (a) or (b) (whichever is applicable) of paragraph (1) (whether that event occurs in relation to both parties or only one party), a covenant categorizing a boundary wall or fence as a party wall or fence has effect as a covenant by each party to contribute one-half of the cost of maintaining, repairing or renewing the wall or fence.
- (4) Paragraph (2) does not apply to any covenant which is expressed to bind only the covenantor.
- (5) Where a covenant to which paragraph (2) applies is framed in terms of a condition or limitation, it has effect following the redemption of the ground rent as though it were framed as a covenant (in the strict sense).
- (6) In paragraph (2)(h) and (j) “neighbours” means other participants in a building scheme which includes the land or which is taken to subsist by virtue of Article 26(6).

Enforceability of covenants

26.—(1) A covenant to which Article 25(2)(a) or (b) applies is enforceable by the covenantee and his successors in title but only against the person against whom the covenant was enforceable immediately before the event mentioned in sub-paragraph (a) or (b) of Article 25(1) (and, in the case of a covenant to which Article 25(2)(b) applies, is so enforceable notwithstanding that a receipt is deemed, under Article 16(2), to be entered on the counter-notice).

(2) A covenant to which Article 25(2)(c) applies is enforceable by the covenantee and his successors in title against the covenantor and his successors in title.

(3) A covenant to which Article 25(2)(d) applies (with or without Article 25(3)) is enforceable by each party and his successors in title against the other party and his successors in title.

(4) Subject to paragraph (6), a covenant to which Article 25(2)(e), (f), (h) or (i) applies is enforceable by or against the same person as it would have been enforceable by or against had the ground rent not been redeemed (and for this purpose a person taking conveyance of the estate in fee simple which is vested in a rent-payer following redemption of the ground rent payable under a lease is in the same position as an assignee of the lease would have been in had there been no redemption).

(5) A covenant to which Article 25(2)(g) applies is enforceable against the person who is or was the rent-payer in relation to the property which has been damaged or destroyed, and his successors in title, by any other person who is or was a rent-payer in relation to the same rent-owner in respect of land the value or amenities of which have been affected by the damage or destruction, or by the successors in title of such another person.

(6) For the purposes of the enforcement of the covenants for the protection of amenities to which Article 25(2)(h) applies, after the first operation of Article 25 in respect of a parcel of any land there is to be taken to subsist (if it does not subsist apart from this provision) a building scheme in respect of the land in which all the persons holding parcels under dispositions in substantially similar terms from the same rent-owner, and the successors in title of those persons, are participants, and accordingly—

- (a) not only do those covenants continue to be enforceable by and against the rent-owner and his successors so long as he or they continue as such in relation to any participant, but
- (b) the covenants are also enforceable by and against each of the various participants among themselves, whether or not their ground rents have been redeemed;

and a covenant to which Article 25(2)(h)(iv) applies is also, so far as it relates to the tending of vegetation, enforceable by any such participant against the covenantor and his successors in title.

(7) A covenant to which paragraph (4) or (6) applies which is restrictive in substance or relates to permission is also enforceable by any person by whom it is enforceable under that paragraph against any person occupying or using the land.

(8) For the purposes of paragraph (6)—

- (a) a rent-owner and his predecessors and successors in title are to be taken to be the same rent-owner;
- (b) a mortgagee in possession of land in which a building scheme subsists or is taken to subsist, or a person acting as a receiver appointed by a mortgagee, is to be taken to be a participant in the building scheme.

(9) A covenant to which Article 25(2)(i) applies continues to be enforceable by each participant in the building scheme against every other participant and by and against their respective successors in title.

(10) In this Article “building scheme” has the same meaning as in Article 25(2)(j).