
STATUTORY INSTRUMENTS

1997 No. 1179

The Property (Northern Ireland) Order 1997

PART II

GROUND RENTS AND CERTAIN OTHER PAYMENTS

The redemption of ground rents

Power of certain rent-payers to redeem ground rent

5.—(1) Subject to paragraph (2) and Article 7, a rent-payer may redeem the ground rent to which his land is subject by paying the redemption money appropriate to the ground rent in accordance with the provisions of this Order and otherwise complying with the requirements of this Order.

(2) Subject to paragraph (4), paragraph (1) does not empower a rent-payer to redeem a ground rent at a time when—

- (a) the land is used wholly for business purposes; or
- (b) the rent-payer is prohibited by the terms of his title 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) Paragraph (2) does not apply to the use of land for the purposes of a building lease or of a fee farm grant for purposes corresponding to those of a building lease.

Compulsory redemption in case of dwelling-house

6.—(1) Subject to paragraphs (3) and (5) and Article 7, a conveyance of a dwelling-house to be held for an estate in fee simple or for a leasehold estate, subject (in either case) to a ground rent, is ineffective to pass such an estate.

(2) Paragraph (1) does not affect any right arising in equity.

(3) Where a conveyance to which paragraph (1) applies is a purported conveyance of a fee simple, it has effect as an agreement with the purported grantee binding the purported grantor to redeem the ground rent at no expense to the purported grantee; and upon the redemption of the ground rent the conveyance has effect, and is deemed always to have had effect, in accordance with its terms but subject to the provisions of this Order, as if paragraph (1) had not been applicable.

(4) Where a conveyance to which paragraph (1) applies is a purported assignment of a lease, the conveyance has effect as an agreement with the purported assignee binding the purported assignor—

- (a) to acquire the fee simple in the dwelling-house, free from any ground rent, at no expense to the purported assignee; and
- (b) to convey the fee simple to the purported assignee without any consideration beyond that specified in the purported assignment.

(5) Paragraph (1) does not apply to a conveyance made on or after the appointed day in pursuance of an obligation assumed before that day (and a recital to that effect in such a conveyance is, for the purposes of this paragraph, conclusive evidence of that fact).

(6) An agreement made on or after the appointed day—

(a) where it is an agreement to make a conveyance to which paragraph (1) applies of a fee simple, has effect as an agreement to redeem the ground rent, at no expense to the person to whom the conveyance is to be made, and to convey the fee simple free from the ground rent;

(b) where it is an agreement to make a conveyance to which paragraph (1) applies of a leasehold estate, has effect as an agreement such as is mentioned in paragraph (4) (references to the purported assignee or assignor and the consideration specified in the purported assignment being read as references to the intended assignee or assignor and the consideration intended to be specified in the intended assignment).

(7) Where the estate purported to be conveyed by a conveyance to which paragraph (1) applies purports to be subject to a mortgage, the mortgage binds the fee simple, when the conveyance is validated under paragraph (3) or when the fee simple is conveyed as mentioned in paragraph (4), 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 a lease or an assignment of a 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 grantor's or assignor's duty to implement the agreement imported by paragraph (3) or (4) is enforceable by the mortgagee, whether he is in possession or not, as though the mortgagee were a party to the imported agreement (and, accordingly, those paragraphs apply as if references in them to the purported grantee or assignee, except the reference in paragraph (4)(b) to a conveyance to the purported assignee, included the mortgagee).

(8) Where a conveyance such as is mentioned in paragraph (1) is a transfer of registered land, the Registrar shall refuse to accept the conveyance unless he is satisfied either—

(a) that the conveyance is one to which paragraph (1) does not apply; or

(b) that the conveyance falls within paragraph (3) and the ground rent has been redeemed.

(9) It is sufficient to satisfy the Registrar as to the matter mentioned in paragraph (8)(a) or (b) that he is furnished by a solicitor with a certificate to that effect stating the grounds on which the certificate is based.

(10) Where a dwelling-house is held in undivided shares, the conveyance of such a share is, for the purposes of this Article, a conveyance of the dwelling-house.

(11) In this Article—

“conveyance” means a conveyance or other assurance of land for value in money or money's worth and includes—

(a) an assignment of a lease; and

(b) a transfer of registered land (and, accordingly, references to a conveyance or assignment are to be read, where appropriate, as including references to a transfer),

but does not include a grant of a lease (where not prohibited by Article 30), the surrender of a lease or the grant of a mortgage;

references to the purported grantor, the purported grantee, the purported assignor and the purported assignee include, as the case requires, references to their respective successors in title or the persons who would have been their respective successors in title if the conveyance had had the effect intended (and similarly in relation to a mortgage).

Exceptions to, or restrictions on, Articles 5 and 6

7.—(1) Article 5 does not apply where—

- (a) the ground rent is payable under a lease which has been the subject of a notice of a proposal to acquire the fee simple, or to obtain an extension, under section 2 of the Act of 1971, and
- (b) the notice is capable of being withdrawn, but has not been withdrawn, under section 7 of that Act.

(2) Articles 5 and 6 do not apply where the ground rent is payable under a lease the term of which has been extended under the Act of 1971.

(3) Articles 5 and 6 do not apply where the ground rent is payable under a lease which has a short residuary term, except, in the case of Article 5, where the ground rent is sought to be redeemed for the purposes of—

- (a) Article 6(4) in consequence of the operation of Article 6(1) on a purported assignment executed before the date when the residuary term of the lease became short; or
- (b) sub-paragraph (b) of Article 6(6) in consequence of the application by that sub-paragraph of Article 6(4) to an agreement made before that date,

and this is stated in the redemption notice.

(4) For the purposes of paragraph (3) a lease has a short residuary term where the unexpired residue of the term of the lease is 50 years or less on—

- (a) in the case of Article 5—
 - (i) the date of service of the redemption notice, or
 - (ii) where Article 14(1)(a) applies, the date of lodgment referred to in Article 14(4); or
- (b) in the case of Article 6, the date of execution of a conveyance such as is mentioned in paragraph (1), or an agreement such as is mentioned in paragraph (6), of that Article;

and the residuary term becomes short when that unexpired residue becomes 50 years.

(5) Articles 5 and 6 do not apply where a ground rent is payable under a lease, and—

- (a) the lease is an equity-sharing lease; or
- (b) the lease is of agricultural land within the meaning of section 43(1) of the Agriculture Act (Northern Ireland) 1949 (whether or not including farm houses and farm buildings); or
- (c) the rent-owner or a superior owner is the National Trust and the Trust's estate in the land is vested in it inalienably under section 21 of the National Trust Act 1907;

nor does Article 6 apply to a conveyance from the lessor to the lessee upon the termination of an equity-sharing lease.

(6) Articles 5 and 6 do not apply where the ground rent is payable under a lease and proceedings, otherwise than by the rent-payer, in any court for recovery of possession of the land, begun before the service of a redemption notice, are pending.

(7) Articles 5 and 6 do not apply to a flat, that is to say, a unit of accommodation in a development containing two or more such units, where—

- (a) each such unit is dependent to a substantial degree on one or more than one other such unit for support or shelter; and
- (b) the boundary, or part of the boundary, between at least two such units is horizontal; and
- (c) the owners or occupiers of such units, or any of them share or may share in the enjoyment of common parts.

(8) In paragraph (7)—

“common parts” means any parts of the development or facilities therein not included in a lease or grant of a unit which, in consideration of a periodic payment which is not merely nominal, are provided or used for the accommodation (direct or indirect) of the rent-payers or their tenants or licensees or any of them or members of their households or their visitors, and includes (where relevant, having regard to the terms of the lease or grant) boundary walls or fences, gardens, roads, paths, parking or drying areas, areas for waste storage or disposal, play areas, rooms or areas reserved for the use of the manager of the development or his staff, sewers, drains, watercourses, water tanks, pipes, gutters, cables, wires, ducts, utility rooms, forecourt, steps, staircases, passages, lifts and the structure and exterior of buildings (but does not include any sewer, drain, watercourse, pipe, cable, wire, duct or installation which is vested in a government department or a body established under a statutory provision or for purposes of public utility);

“development” means land comprising units of accommodation together with common parts and includes a distinct part of a development;

“unit of accommodation” means a part of a building which is leased or granted to a rent-payer subject to a ground rent.

Initiation of redemption procedure

8.—(1) A rent-payer who wishes to redeem his ground rent shall serve on the rent-owner a notice (a “redemption notice”) of his intention to do so.

(2) A redemption notice must specify—

- (a) where the redemption money is not payable by instalments, the date on which the ground rent is to be redeemed; or
- (b) where that money is payable by instalments, the number of instalments and the dates on which they are to be payable,

intended by the rent-payer, and that specified date, or, in the case of sub-paragraph (b), the first of those specified dates, (or the date to which, in either case, it is varied under paragraph (4)), is the redemption date.

(3) The specified redemption date must be not less than 6 weeks nor more than 8 weeks after the date of service of the redemption notice.

(4) The specified redemption date and the specified number of instalments and other specified dates referred to in paragraph (2)(b) may be varied by agreement in writing between the rent-payer and the rent-owner; and such an agreement may be made—

- (a) before the specified redemption date; or
- (b) after that date, so long as—
 - (i) the redemption notice has neither been withdrawn nor ceased to have effect under Article 11, and
 - (ii) no lodgment has been made with the Registrar under Article 14.

(5) Except where it is withdrawn or ceases to have effect under Article 11, a redemption notice served by a rent-payer enures for his benefit and the benefit of his successors in title, whether or not there is any change in the rent-owner.

(6) Where two or more lands held under different titles subject to ground rents payable to the same rent-owner are contiguous (or, in the case of more than two, every one is contiguous to some other) and are occupied by the same rent-payer, they may, for the purposes of this Order, be treated as one land and the aggregate of the ground rents may be treated as one ground rent.

(7) Where land comprised of two or more parcels vested in separate persons is subject to a single ground rent, both or all of those persons may combine to redeem the ground rent.

(8) In this Article “specified” means specified in a redemption notice.

Procedure where all other interests concur: the counter-notice

9.—(1) Where during the period beginning with the service of a redemption notice and ending one week before the redemption date, there is served on the rent-payer a notice (a “counter-notice”) complying with paragraph (3) which—

- (a) requires payment to a specified person of a specified sum as, or as the first instalment of, the redemption money; and
- (b) contains a certificate that, on such payment and on complying with any requirements mentioned in paragraph (2) which are specified, the ground rent will be redeemed,

the rent-payer may obtain the redemption of the ground rent in accordance with Article 16 by paying that sum and by complying with the specified requirements (if any).

(2) The requirements referred to in paragraph (1)(b) are—

- (a) the giving of a prescribed security for the payment of any remaining instalments where the redemption money is so payable;
- (b) the payment of any specified arrears of ground rent due and recoverable at the redemption date and any specified apportionment of ground rent for the period from the last day for payment of ground rent before the redemption date to the redemption date;
- (c) the payment of any specified costs in connection with the redemption.

(3) As well as requiring the payment and containing the certificate referred to in paragraph (1), a counter-notice must—

- (a) purport to be signed by or on behalf of the rent-owner; and
- (b) state either—
 - (i) that the land is subject to no superior rent; or
 - (ii) that every superior owner has agreed to the terms of the counter-notice; and
- (c) state either—
 - (i) that there is no mortgage of the rent-owner’s estate or of any superior owner’s estate; or
 - (ii) that every mortgagee of any such estate has agreed to the terms of the counter-notice.

(4) Failure of a counter-notice to specify any arrears of ground rent, any apportionment of ground rent or any costs in connection with the redemption does not affect the right of the rent-owner to recover them, and, if not specified, they are (without prejudice to any right of set-off or counterclaim) recoverable by him in proceedings in any court of competent jurisdiction, but not otherwise.

(5) For the purposes of this Article, a superior owner or a mortgagee has agreed to the terms of a counter-notice if it complies with the terms of a general authorisation in writing given by him.

(6) In this Article “specified” means specified in a counter-notice.

Correction of counter-notice where money cannot be paid in accordance with it

10.—(1) Where—

- (a) the redemption money cannot, or cannot conveniently, be paid in accordance with the counter-notice, by reason of the absence, incapacity or death of a person named in the counter-notice as the person to whom the redemption money is to be paid or for any other sufficient reason; and

- (b) a notice purporting to be signed by or on behalf of the rent-owner stating that reason and giving other directions for the payment of the redemption money is served on the rent-payer before the redemption date,

the notice mentioned in sub-paragraph (b) is, for the purposes of this Order, deemed to form part of the counter-notice.

(2) In paragraph (1) “death” includes, in relation to a body corporate or unincorporate, dissolution.

(3) Where redemption money is payable by instalments, references in paragraph (1) to the redemption money include references to any instalment (including future instalments), and the reference in sub-paragraph (b) of that paragraph to the redemption date includes, in relation to any instalment (and also in relation to any future instalment, so long as the notice is not superseded by a subsequent notice under that sub-paragraph), a reference to the date on which that instalment will fall due.

Termination of redemption procedure

11.—(1) Where the rent-payer—

- (a) has served a redemption notice on the rent-owner; and
- (b) has not, in response, been served with a counter-notice,

he may withdraw the redemption notice by a notice served on the rent-owner before the redemption date.

(2) Where—

- (a) the rent-payer has not, before the expiration of a period of 6 weeks from the redemption date—
 - (i) paid the redemption money (or, where that money is payable by instalments, the first instalment of it), together with any arrears, apportionment and costs specified in the counter-notice, to a person specified in a counter-notice; or
 - (ii) lodged the redemption money with the Registrar under Article 14(1); and
- (b) no question as to a matter such as is mentioned in Article 42(4)(a) to (g), or in Article 42(4)(j) as arising under this Part, is pending before the Registrar or on appeal from or reference by him or on a case stated by the Lands Tribunal,

the redemption notice ceases to have effect on the expiration of the period mentioned in sub-paragraph (a).

Recommencement of redemption procedure following termination under Article 11

12.—(1) Where a redemption notice in respect of a ground rent has been withdrawn under paragraph (1) of Article 11 or has ceased to have effect under paragraph (2) of that Article, no subsequent redemption notice in respect of that ground rent may be served by the same rent-payer within the period of 6 months from the date of withdrawal or cesser, without the consent of the Registrar.

(2) The Registrar’s consent under paragraph (1) may be given subject to conditions, including a condition that the rent-payer defrays such of the costs incurred by the rent-owner, or any superior owner or mortgagee, in consequence of the earlier redemption notice, as the Registrar directs.

(3) Notwithstanding Article 2(3), for the purposes of this Article a successor in title of a rent-payer is not the same rent-payer.

Exclusion of re-possession of land while redemption is pending

13.—(1) Without prejudice to any other civil remedy of the rent-owner's or a superior owner's, while the redemption of a ground rent is pending—

- (a) any covenant giving the rent-owner or a superior owner a right to enter or re-enter the land when ground rent or a superior rent is in arrear, or in the event of any other breach of covenant, is not enforceable;
- (b) section 52 of the Landlord and Tenant Law Amendment Act, Ireland, 1860 (proceedings for ejectment when year's rent in arrear) does not apply to the land.

(2) For the purposes of this Article redemption of a ground rent is pending between the service of a redemption notice and—

- (a) the completion or sealing of a certificate of redemption; or
- (b) the withdrawal of the redemption notice under Article 11(1); or
- (c) the redemption notice's ceasing to have effect under Article 11(2). Procedure where a redemption notice cannot be served, all other interests do not concur or payment cannot be made in

accordance with counter-notice

14.—(1) Where—

- (a) the rent-payer cannot serve a redemption notice because he does not know the name and address of the rent-owner or his agent or a notice sought to be served by post has been returned undelivered; or
- (b) the rent-payer has served a redemption notice on the rent-owner but a counter-notice has not been served on him in accordance with Article 9 and the redemption notice has neither been withdrawn nor ceased to have effect under Article 11; or
- (c) a counter-notice has been so served but the rent-payer is unable to make payment to the person specified in the counter-notice in accordance with the counter-notice and the period mentioned in Article 11(2)(a) has not expired,

and—

- (i) the redemption money is not payable by instalments, and
- (ii) no question as to a matter such as is mentioned in Article 42(4)(a) to (g), or in Article 42(4)(j) as arising under this Part, is pending before the Registrar or on appeal from or reference by him or on a case stated by the Lands Tribunal,

the rent-payer may lodge with the Registrar the redemption money together with the documents and particulars mentioned in paragraph (2).

(2) Those documents and particulars are such documents and particulars as may be prescribed, and also—

- (a) where paragraph (1)(b) applies, a copy of the redemption notice together with evidence of its service;
- (b) where paragraph (1)(c) applies, copies of the redemption notice and the counter-notice together with particulars of the reasons why payment cannot be made.

(3) The lodgment of redemption money with the Registrar does not affect the liability of the rent-payer to pay any arrears of the ground rent due and recoverable at the redemption date, any apportionment of the ground rent for the period from the last day for payment of ground rent before the redemption date to the redemption date and any costs in connection with the redemption (but not costs in relation to a claim under Article 21(2) or (3)), and any such arrears, apportionment and

costs are (without prejudice to any right of set-off or counterclaim) recoverable by the rent-owner in proceedings in any court of competent jurisdiction, but not otherwise.

(4) Where the rent-payer cannot serve a redemption notice for any of the reasons mentioned in paragraph (1)(a), for the purposes of this Order the redemption date is the date on which the rent-payer lodges the redemption money under paragraph (1).

The redemption money

15. The redemption money appropriate to any ground tent is to be determined in accordance with Schedule 1, and the other provisions of that Schedule have effect.

Certificate of redemption

16.—(1) Where, before the expiration of the period mentioned in Article 11(2)(a), a rent-payer pays a sum in respect of redemption money (or a first instalment of redemption money) to a person specified in a counter-notice, that person is under an obligation to give the rent-payer a receipt for the sum, and that obligation is deemed to be a covenant contained in the instrument which created the ground rent.

(2) The receipt mentioned in paragraph (1) shall be entered on the counter-notice; but, without prejudice to Article 26(1), rules may make provision about the circumstances in which a receipt not so entered is deemed to be so entered, in which other evidence of payment is deemed to be a receipt, and in which a copy of a counter-notice is deemed to be the counter-notice.

(3) Where redemption money is lodged with the Registrar in accordance with Article 14 and paragraphs (1) and (2) of that Article have been complied with, the Registrar shall prepare and seal with the seal of the Land Registry a certificate that the ground rent has been redeemed and send the certificate to the person who lodged the redemption money.

(4) A counter-notice in relation to which paragraph (2) has been or is deemed to have been complied with or a certificate which has been sealed under paragraph (3) is, for the purposes of this Order, a certificate of redemption.

(5) In this Order a certificate of redemption is said to be completed when a receipt is entered on or deemed to be entered on a counter-notice as mentioned in paragraph (2), and is said to be sealed when it is sealed by the Registrar under paragraph (3) with the seal of the Land Registry.

(6) The completion or sealing of a certificate of redemption operates as a full and final discharge of the land from the ground rent (but without prejudice to Article 9(4) or 14(3), or Article 17(2), and subject to registration in accordance with Article 20(4) where the land is registered land).