
STATUTORY INSTRUMENTS

1997 No. 1179

The Property (Northern Ireland) Order 1997

PART III

FREEHOLD COVENANTS AND CERTAIN LEASES

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^{F1} or nominal] 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^[F1] no or nominal superior rent] 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^[F1] section 11(1) of the Ground Rents Act (Northern Ireland) 2001] if a ground rent to which the land was subject had been redeemed under^[F1] section 1 of that Act] 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^[F1] section 13(7), (8) and (10) and sections 14 to 17 of the Ground Rents Act (Northern Ireland) 2001] as if the leasehold estate had yielded a rent which had been redeemed (and the leasehold estate consequently enlarged into a fee simple) under^[F1] that Act]; and, accordingly, for the purposes of this Article those^[F1] sections] 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.

^[F1](11) In this Article “nominal rent” means—

- (a) a rent of a yearly amount of less than £1; or
- (b) a peppercorn or other rent having no money value.]

Annotations:

F1 2001 c. 5 (NI)

^[F2]Redemption of nominal ground rent

35A.—(1) Subject to paragraph (2), this Article applies where the rent payable under a fee farm grant is a nominal rent.

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

- (a) the land is used wholly for business purposes; or
- (b) the rent-payer is prohibited by any term of his title from using the land otherwise than wholly for business purposes;

but 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.

(3) The rent-payer may by deed (“the deed of declaration”) declare to the effect that the ground rent is discharged and may, in accordance with rules, make application to the Registrar for the purpose mentioned in paragraph (4)(a) or (b).

(4) On an application under paragraph (3)—

- (a) if the land is registered land, the deed of declaration is sufficient authority for the Registrar (subject to compliance with rules)—

- (i) to discharge any burden as is mentioned in paragraph 2 of Part I of Schedule 6 to the Land Registration Act; and
- (ii) to make such alteration in the class of title with which the land is registered as appears to him to be appropriate;
- (b) if the land is not registered, the Registrar may register the rent-payer's title with such class of title as appears to him to be appropriate (and until the rent-payer's title to the land is so registered, the deed of declaration has no effect);
- (c) in either case, the deed of declaration is sufficient authority (notwithstanding any caution or inhibition) for the Registrar to make in the register such consequential entries, changes, cancellations or notes as appear to him to be appropriate;

(5) Except where the Registrar is satisfied that the land was subject to no or nominal superior rent 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 section 11(1) of the Ground Rents Act (Northern Ireland) 2001 if a ground rent to which the land was subject had been redeemed under section 1 of that Act 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.

(6) Subject to paragraphs (4), (5) and (7), the deed of declaration operates by virtue of this paragraph to discharge the estate of the rent payer 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 the rent and to that extent those estates are extinguished.

(7) Where a ground rent is discharged under this Article, section 13(8) (read with subsection (10)) and sections 15(2), 16 and 17 of the Ground Rents Act (Northern Ireland) 2001 apply in relation to the land as if the ground rent had been redeemed under that Act; and, accordingly, for the purposes of this Article those sections shall be read with the necessary modifications.

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

(9) In this Article “nominal rent” has the same meaning as in Article 35.]

Annotations:

F2 2001 c. 5 (NI)

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).

Changes to legislation:

There are currently no known outstanding effects for the The Property (Northern Ireland) Order 1997, Cross Heading: Leases.