



Law of Property Act 1925

1925 CHAPTER 20 15 and 16 Geo 5

PART II

CONTRACTS, CONVEYANCES AND OTHER INSTRUMENTS

Covenants

84 Power to discharge or modify restrictive covenants affecting land.

- (1) [^{F1}The [^{F2}Upper Tribunal]] shall (without prejudice to any concurrent jurisdiction of the court) have power from time to time, on the application of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction ^{F3} . . . on being satisfied—
- (a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which [^{F1}the [^{F2}Upper Tribunal]] may deem material, the restriction ought to be deemed obsolete, or
 - [^{F4}(aa) that [^{F5}in a case falling within subsection (1A) below] the continued existence thereof would impede [^{F1}some reasonable user] of the land for public or private purposes ^{F6} . . . or, as the case may be, would unless modified so impede such user; or]
 - (b) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified; or
 - (c) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction:

[^{F7}and an order discharging or modifying a restriction under this subsection may direct the applicant to pay to any person entitled to the benefit of the restriction such sum by way of consideration as the Tribunal may think it just to award under one, but not both, of the following heads, that is to say, either—

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- (i) a sum to make up for any loss or disadvantage suffered by that person in consequence of the discharge or modification; or
- (ii) a sum to make up for any effect which the restriction had, at the time when it was imposed, in reducing the consideration then received for the land affected by it.]

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[F8(1A) Subsection (1) (aa) above authorises the discharge or modification of a restriction by reference to its impeding some reasonable user of land in any case in which the [F2Upper Tribunal] is satisfied that the restriction, in impeding that user, either—

- (a) does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them; or
- (b) is contrary to the public interest;

and that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the discharge or modification.]

[F8(1B) In determining whether a case is one falling within subsection (1A) above, and in determining whether (in any such case or otherwise) a restriction ought to be discharged or modified, the [F2Upper Tribunal] shall take into account the development plan and any declared or ascertainable pattern for the grant or refusal of planning permissions in the relevant areas, as well as the period at which and context in which the restriction was created or imposed and any other material circumstances.]

[F9(1C) It is hereby declared that the power conferred by this section to modify a restriction includes power to add such further provisions restricting the user of or the building on the land affected as appear to the [F2Upper Tribunal] to be reasonable in view of the relaxation of the existing provisions, and as may be accepted by the applicant; and the [F2Upper Tribunal] may accordingly refuse to modify a restriction without some such addition.]

- (2) The court shall have power on the application of any person interested—
 - (a) To declare whether or not in any particular case any freehold land is [F10or would in any given event be] affected by a restriction imposed by any instrument; or
 - (b) To declare what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed and whether the same is [F10or would in any given event be] enforceable and if so by whom.

[F11Neither subsections (7) and (11) of this section nor, unless the contrary is expressed, any later enactment providing for this section not to apply to any restrictions shall affect the operation of this subsection or the operation for purposes of this subsection of any other provisions of this section.]

- (3) The [F2Upper Tribunal] shall, before making any order under this section, direct such enquiries, if any, to be made of any [F10government department or] local authority, and such notices, if any, whether by way of advertisement or otherwise, to be given to such of the persons who appear to be entitled to the benefit of the restriction intended to be discharged, modified, or dealt with as, having regard to any enquiries notices or other proceedings previously made, given or taken, [F12the [F2Upper Tribunal]] may think fit.

[F13(3A) On an application to the [F14Upper Tribunal] under this section the [F14Upper Tribunal] shall give any necessary directions as to the persons who are or are not to be admitted (as appearing to be entitled to the benefit of the restriction) to oppose the application,

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and no appeal shall lie against any such direction; but ^{F15}Tribunal Procedure Rules] shall make provision whereby, in cases in which there arises on such an application (whether or not in connection with the admission of persons to oppose) any such question as is referred to in subsection (2) (a) or (b) of this section, the proceedings on the application can and, if the rules so provide, shall be suspended to enable the decision of the court to be obtained on that question by an application under that subsection, ^{F16} . . . or otherwise, as may be provided by those rules or by rules of court.]

^{F17}(4)

(5) Any order made under this section shall be binding on all persons, whether ascertained or of full age or capacity or not, then entitled or thereafter capable of becoming entitled to the benefit of any restriction, which is thereby discharged, modified, or dealt with, and whether such persons are parties to the proceedings or have been served with notice or not ^{F18}

(6) An order may be made under this section notwithstanding that any instrument which is alleged to impose the restriction intended to be discharged, modified, or dealt with, may not have been produced to the court or the ^{F2}Upper Tribunal], and the court or ^{F12}the ^{F2}Upper Tribunal]] may act on such evidence of that instrument as it may think sufficient.

(7) This section applies to restrictions whether subsisting at the commencement of this Act or imposed thereafter, but this section does not apply where the restriction was imposed on the occasion of a disposition made gratuitously or for a nominal consideration for public purposes.

(8) This section applies whether the land affected by the restrictions is registered or not ^{F19}

(9) Where any proceedings by action or otherwise are taken to enforce a restrictive covenant, any person against whom the proceedings are taken, may in such proceedings apply to the court for an order giving leave to apply to the ^{F2}Upper Tribunal] under this section, and staying the proceedings in the meantime.

^{F17}(10)

(11) This section does not apply to restrictions imposed by the Commissioners of Works under any statutory power for the protection of any Royal Park or Garden or to restrictions of a like character imposed upon the occasion of any enfranchisement effected before the commencement of this Act in any manor vested in His Majesty in right of the Crown or the Duchy of Lancaster, nor ^{F20}subject to subsection (11A) below] to restrictions created or imposed—

(a) for Naval, Military or Air Force purposes,

^{F21}(b) for civil aviation purposes under the powers of the Air Navigation Act 1920, of section 19 or 23 of the Civil Aviation Act 1949 or of section 30 or 41 of the Civil Aviation Act 1982.]

^{F22}(11A) Subsection (11) of this section—

(a) shall exclude the application of this section to a restriction falling within subsection (11)(a), and not created or imposed in connection with the use of any land as an aerodrome, only so long as the restriction is enforceable by or on behalf of the Crown; and

(b) shall exclude the application of this section to a restriction falling within subsection (11)(b), or created or imposed in connection with the use of any

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land as an aerodrome, only so long as the restriction is enforceable by or on behalf of the Crown or any public or international authority.]

- (12) Where a term of more than [^{F23}forty] years is created in land (whether before or after the commencement of this Act) this section shall, after the expiration of [^{F23}twenty-five] years of the term, apply to restrictions affecting such leasehold land in like manner as it would have applied had the land been freehold:

Provided that this subsection shall not apply to mining leases.

^{F17}(13)

Textual Amendments

- F1** Words substituted by [Law of Property Act 1969 \(c. 59\), s. 28\(1\)\(a\)\(2\)\(b\)](#)
- F2** Words in s. 84 substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order (S.I. 2009/1307), art. 5(1)(2), {Sch. 1 para. 5(a)} (with Sch. 5)
- F3** Words and proviso repealed by [Law of Property Act 1969 \(c. 59\), s. 28\(3\)](#)
- F4** So much of s. 84(1)(a) as follows words “obsolete, or” amended and incorporated in para. (aa) by [Law of Property Act 1969 \(c. 59\), s. 28\(1\)\(a\)](#)
- F5** Words inserted by [Law of Property Act 1969 \(c. 59\), s. 28\(2\)\(a\)](#)
- F6** Words repealed by [Law of Property Act 1969 \(c. 59\), s. 28\(2\)\(c\)](#)
- F7** Words added by [Law of Property Act 1969 \(c. 59\), s. 28\(3\)](#)
- F8** S. 84(1A)(1B) added by [Law of Property Act 1969 \(c. 59\), s. 28\(2\)](#)
- F9** S. 84(1C) added by [Law of Property Act 1969 \(c. 59\), s. 28\(2\)](#)
- F10** Words inserted by [Law of Property Act 1969 \(c. 59\), s. 28\(4\)\(5\)](#)
- F11** Words added by [Law of Property Act 1969 \(c. 59\), s. 28\(4\)](#)
- F12** Words substituted by [Law of Property Act 1969 \(c. 59\), s. 28\(1\)\(a\)\(7\)](#)
- F13** S. 84(3A) added by [Law of Property Act 1969 \(c. 59\), s. 28\(6\)](#)
- F14** Words in s. 84(3A) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order (S.I. 2009/1307), art. 5(1)(2), {Sch. 1 para. 5(b)(i)} (with Sch. 5)
- F15** Words in s. 84(3A) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order (S.I. 2009/1307), art. 5(1)(2), {Sch. 1 para. 5(b)(ii)} (with Sch. 5)
- F16** Words in s. 84(3A) omitted (1.6.2009) by virtue of The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order (S.I. 2009/1307), art. 5(1)(2), {Sch. 1 para. 5(b)(iii)} (with Sch. 5)
- F17** S. 84(4)(10)(13) repealed by [Lands Tribunal Act 1949 \(c. 42\), Sch. 2](#)
- F18** Words repealed by [Lands Tribunal Act 1949 \(c. 42\), Sch. 2](#)
- F19** Words in s. 84(8) repealed (13.10.2003) by [Land Registration Act 2002 \(c. 9\), ss. 133, 135, 136\(2\), Sch. 11 para. 2\(5\), Sch. 13](#) (with ss. 129, 134, Sch. 12 para. 1); S.I. 2003/1725, [art. 2](#)
- F20** Words inserted by [Law of Property Act 1969 \(c. 59\), s. 28\(9\)](#)
- F21** S. 84(11) para. (b) substituted by [Civil Aviation Act 1982 \(c. 16, SIF 9\), s. 109\(2\), Sch. 15 para. 1](#)
- F22** S. 84(11A) added by [Law of Property Act 1969 \(c. 59\), s. 28\(9\)](#)
- F23** Words substituted by [Landlord and Tenant Act 1954 \(c. 56\), s. 52\(1\)](#)

Modifications etc. (not altering text)

- C1** S. 84 applied with modifications by [Landlord and Tenant \(War Damage\) Act 1939 \(c. 72\), s. 18](#); restricted by [Requisitioned Land and War Works Act 1945 \(c. 43\), s. 38\(3\)](#); amended by [Lands Tribunal Act 1949 \(c. 42\), s. 1\(4\)](#) (a); saved by [Leasehold Reform Act 1967 \(c. 88\), Sch. 4 para. 1\(5\)](#); excluded by [Forestry Act 1967 \(c. 10\), s. 5\(2\)\(b\)](#) and [Countryside Act 1968 \(c. 41\), s. 15\(4\)](#)
- C2** S. 84 as amended by [Lands Tribunal Act 1949 \(c. 42\), Sch. 2](#), [Landlord and Tenant Act 1954 \(c. 56\), s. 52\(1\)](#) and [Law of Property Act 1969 \(c. 59\), s. 28](#), is set out in [Law of Property Act 1969 \(c. 59\), Sch. 3](#)

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- C3** S. 84 (except s. 84(2)) excluded (1.3.1993) by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1, SIF 21:8), **ss. 22(7), 23**; Archbishops' Instrument dated 16.2.1993
- C4** S. 84 excluded: (25.11.1991) by Town and Country Planning Act 1990 (c. 8, SIF 123:1), **s. 106A(10)** (as substituted (25.11.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:1), **s. 12(1)**; S.I.1991/2728, **art. 2**); and (30.10.1994) by S.I. 1994/2716, **reg. 16(4)**
- C5** S. 84 excluded in part (E.) (1.7.2012) by Mission and Pastoral Measure 2011 (No. 3), **ss. 75(3), 112(3)** (with **ss. 79, 100, 105(4), 107, 108(6), Schs. 8**); 2012 No. 1, **art. 2**
- C6** S. 84 excluded by 1990 c. 9, s. 26B(6) (as inserted (25.4.2013 for specified purposes, 6.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 60(2), 103(1)(i), 103(3)**; S.I. 2014/416, **art. 3(a)**)
- C7** S. 84 excluded in part (E.) (1.9.2018) by Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (No. 3), **ss. 92(8), 99(2)** (with s. 93, Sch. 4 Pt. 1); S.I. 2018/720, **art. 2**
- C8** S. 84 excluded (11.8.2022) by The Sizewell C (Nuclear Generating Station) Order 2022 (S.I. 2022/853), **arts. 1, 11(10)** (with **arts. 62, 76, 87**)
- C9** S. 84(11) saved by Requisitioned Land and War Works Act 1945 (c. 43), **s. 38(3)**; extended by S.I. 1965/1536
- C10** Functions of Commissioners of Works now exercisable by Secretary of State: S.R. & O. 1945/991 (Rev.XV, p. 232: 1945 I, p. 1414), S.I. 1962/1549 and 1970/1681

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