
STATUTORY INSTRUMENTS

1997 No. 1179

The Property (Northern Ireland) Order 1997

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Property (Northern Ireland) Order 1997.

(2) This Order shall come into operation on such day or days as the Head of the Department of Finance and Personnel may by order appoint.

General interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 applies to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Act of 1971” means the Leasehold (Enlargement and Extension) Act (Northern Ireland) 1971;

“the appointed day” means a day appointed under Article 1(2); and, if different days are appointed for different provisions of this Order or for different purposes of the same provision, any reference in such a provision to the appointed day is a reference to the day appointed for the coming into operation of that provision or its coming into operation for the purpose in question;

“building lease” means a lease of land made for the purposes of having buildings erected thereon (and a lease is deemed to be made for those purposes if, at the time when it is made, planning permission has been applied for, or is in force, for those purposes);

“business purposes” means purposes other than the purposes of a private dwelling; and, for the purposes of this Order, land is used for business purposes if it is not a dwelling-house;

“certificate of redemption” is to be construed in accordance with Article 16(4);

“costs”, in any connection, means reasonable costs properly incurred in that connection;

“counter-notice” has the meaning given by Article 9;

“covenant” (except where that expression last occurs in Article 25(5) and where it occurs in Article 34) includes a promise in writing which is not a deed, an agreement to make a covenant, a proviso, a declaration and a condition and, so far as it makes a provision that could have been framed as a covenant, a limitation;

“dwelling-house” has the meaning given by Article 4;

“equity-sharing lease” means a lease of land, the general effect of which is to provide—

- (a) that, in consideration for the granting of the lease, the lessee shall pay a capital sum, representing a part payment in respect of the cost of acquisition of the premises demised, and a rent; and

(b) that the lessee may make additional part payments towards the said cost of acquisition and may exercise an option to purchase the whole or part of the lessor's reversion in the premises demised;

"fee farm grant" means a grant of a fee simple reserving or charging a perpetual rent (whether or not the relation of landlord and tenant subsists between the person entitled to receive the rent and the person liable to pay it) and includes a sub-fee farm grant;

"fee farm rent", without prejudice to any provision of Article 36 or Schedule 2, means the rent payable under a fee farm grant;

"fee simple" means a legal fee simple absolute in possession;

"ground rent" has the meaning given by Article 3;

"instalments", in relation to redemption money, means instalments under paragraph 3(4) of Schedule 1;

"land", in relation to a rent-payer, means land held by him subject to a ground rent; and, in relation to a ground rent or a superior rent, "the land" means the land subject to the ground rent or superior rent or, in relation to a redeemed ground rent or superior rent, means the land formerly subject to it;

"the Land Registration Act" means the Land Registration Act (Northern Ireland) 1970;

"lease" includes a sub-lease;

"leasehold estate" means a legal estate for a term of years absolute;

"lessor" and "lessee" include the successors in title to, respectively, the original lessor and the original lessee;

"mortgage" includes a charge, and "mortgagor" and "mortgagee" include respectively a person who is entitled to land which is subject to a charge and the person in whose favour a charge is created, and the successors in title to, respectively, the original mortgagor and the original mortgagee;

"the National Trust" means the National Trust for Places of Historic Interest or Natural Beauty;

"modify" includes making additions, omissions, amendments, extensions, restrictions and substitutions; and

"modifications" is to be construed accordingly;

"notice" means notice in writing;

"obligation" includes an obligation under any agreement, whether enforceable at law or not;

"prescribed" (but not in Article 19(2) and not "prescribe" in Article 46(1)) means prescribed by rules;

"redemption", in relation to a ground rent, means the discharge of land from the ground rent as mentioned in Article 16(6); and "redeem" is to be construed accordingly; and those expressions, in relation to a superior rent, have corresponding meanings;

"the redemption date", subject to Articles 14(4) and 42(5), has the meaning given by Article 8(2) and, in relation to any redemption notice, means the redemption date specified in that notice or in an order under Article 42(5) relating to that notice;

"redemption money", in relation to a ground rent, is the redemption money appropriate to that ground rent determined as mentioned in Article 15;

"redemption notice" means a notice served under Article 8(1);

"registered", in relation to an estate, means registered under the Land Registration Act;

"rentcharge" means any annual or periodic sum charged on or issuing out of land, except—

- (a) a fee farm rent;
- (b) rent reserved by a lease (including an oral lease or an implied lease);
- (c) interest;

“rent-owner” means, without prejudice to Article 32, the person to whom a ground rent is, or before redemption of the ground rent was, payable by virtue of his being entitled to the next superior estate to the rent-payer’s in the land, or, where the ground rent is or was a fee farm rent the person who is or was entitled to receive it from the rent-payer; “rent-payer” means, without prejudice to Article 32, a person entitled to an estate in land by virtue of which he is liable to pay a ground rent, and

“the rent-payer”, in relation to any ground rent or any land, means the person who is, or before redemption of the ground rent was, liable to pay that ground rent or a ground rent to which that land is or was subject;

“rules” means Land Registry Rules made in pursuance of Article 46(2) to (6);

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“successor in title” includes a personal representative, that is to say, the executor (including an executor by representation) or administrator of the estate of a deceased person, and also includes such a successor at any remove;

“superior owner” means a rent-owner who is, or before , redemption of a ground rent was, entitled to a superior rent;

“superior rent”, in relation to a ground rent which is to be or has been redeemed, means a ground rent which is, or before redemption of the first-mentioned ground rent was, payable to a person entitled to an estate in land superior to that of the rent-owner of the first-mentioned ground rent, or, where the second-mentioned ground rent is or was a fee farm rent, was created before the first-mentioned ground rent.

(3) Without prejudice to Article 8(5) or 26 and subject to Article 12(3), references in this Order to a rent-owner, a rent-payer or a superior owner include references to their respective successors in title. .

(4) In this Order any reference to the giving of security includes a reference to the finding of satisfactory sureties.

(5) For the purposes of this Order, except Article 37 and Schedule 3, a lease which is, by virtue of that Article and that Schedule, to be construed as a lease for a term of any period is deemed to have been originally granted for a term of that period and the fact (if it is the case) that the lease is determinable after any event is to be ignored.

(6) Without prejudice to any other provision of this Order, expressions used in this Order which are defined in the Land Registration Act, but not in this Order, have the same meaning in this Order as in that Act.

Interpretation: “ground rent”

3.—(1) In this Order “ground rent” means—

- (a) a fee farm rent; or
- (b) the rent payable under a lease granted for a term of more than 50 years.

(2) For the purposes of this Order—

- (a) where a ground rent is of a yearly amount of less than £1 or is a peppercorn or other rent having no money value, it shall be treated as a yearly amount of £1;

(b) where a ground rent is payable if demanded (however expressed), it shall be treated as payable even though there is no demand.

(3) Where the amount of a ground rent is subject to alteration in consequence of a breach of covenant (whether it is to be increased from a lower amount to a higher amount in the event of a breach or is subject to reduction from a higher amount to a lower amount so long as there is no breach), for the purposes of this Order the amount of the ground rent is the lower amount.

Interpretation: “dwelling-house”

4.—(1) In this Order “dwelling-house” means land used wholly for the purposes of a private dwelling (and, for the purposes of this Order, land is so used if it comprises or includes a building constructed or adapted for those purposes and (subject to paragraph (2)) is not used for any other purpose).

(2) For the purposes of this Order land is not to be treated as used otherwise than wholly for the purposes of a private dwelling by reason only of one or more than one of the following circumstances—

- (a) that one or more than one room on the land suitable for being used for letting singly for residential purposes is so let, whether by way of a tenancy or of a licence and whether with or without board or other services or facilities (so long as all, or substantially all, such rooms are not so let);
- (b) that the land includes a garage, outhouse, garden, yard, court, forecourt or other appurtenance which is not used, or not used wholly, for the purposes of a private dwelling;
- (c) that part of the land, not being a garage, outhouse, garden, yard, court, forecourt or other appurtenance, is used partly for the purposes of a private dwelling and partly for other purposes, unless that part was constructed, or has been adapted, for those other purposes;
- (d) that a person who resides on the land, or part of it, is required or permitted to reside there in consequence of his employment or of holding an office.

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 subparagraph (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).

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).

The redemption of certain other periodic payments

Application of certain provisions of Order to certain other periodic payments

27.—(1) In this Article “periodic payment” means—

- (a) a quit rent;
- (b) a tithe rentcharge;
- (c) any other rentcharge except a rentcharge such as is mentioned in Article 29(3)(b) to (e).

(2) The following provisions of this Order (and no others) apply to a periodic payment so far as they are applicable, namely Articles 2, 3, 5, 8 to 17, 21, 22, 24(2), 32, 39(1) 40 to 44, 46 and 47

and paragraphs 1 and 2 of Schedule 1, as if the periodic payment were a ground rent, and with any necessary consequential modifications.

Prohibition of transactions giving rise to, or to increases in, ground rents

Fee farm grants

28.—(1) Subject to paragraph (3), on and after the appointed day a fee farm grant is incapable of being made at law or in equity.

(2) In relation to any land, any agreement made on or after the appointed day to make a fee farm grant, or any instrument made on or after that day which purports to make a fee farm grant the making of which is prohibited by this Article, operates as, respectively, an agreement to convey or conveyance of a fee simple in the land subject to any fine specified in the agreement or instrument but free from the fee farm rent so specified and any covenants or other provisions which are connected with the rent or are for the benefit of the intended rent-owner as such.

(3) This Article does not prohibit the making of a fee farm grant in pursuance of an obligation assumed before the appointed day, nor does it prejudice Article 36(4) or (7).

(4) For the purposes of paragraph (2) provisions are connected with the 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.

Rentcharges

29.—(1) Subject to paragraph (3), on and after the appointed day a rentcharge is incapable of being created at law or in equity.

(2) Any agreement made on or after the appointed day, and any instrument made on or after that day, is void to the extent that it provides for the creation of, or purports to create, a rentcharge the creation of which is prohibited by this Article.

(3) This Article does not prohibit the creation of a rentcharge—

- (a) in pursuance of an obligation assumed before the appointed day;
- (b) as an annuity;
- (c) which is payable under an agreement of indemnity to the owner of a legal estate in land contingently upon his being made to pay the whole or part of a rent in respect of all or part of that land or in respect of a larger area of land of which that land forms or formed part;
- (d) under any statutory provision;
- (e) by, or in accordance with the requirements of, any order of a court.

Long leases of dwelling-houses

30.—(1) Without prejudice to Article 36(1)(c) and (2) or Article 37(3), and subject to paragraph (5), on and after the appointed day a lease of a dwelling-house for a term of more than 50 years (“a long lease”) is incapable of being created at law or in equity.

(2) In relation to any land, any agreement made on or after the appointed day to grant a long lease the creation of which is prohibited by this Article, and any instrument made on or after that day which purports to be such a lease, has effect (in either case) as an agreement with the prospective or purported lessee binding the prospective or purported lessor—

- (a) to acquire a fee simple in the land (if he does not already own such a fee) at no expense to the intended lessee (that is to say, the person designated in the agreement or instrument as the prospective or purported lessee); and

(b) to convey the fee simple to the intended lessee at no expense to the intended lessee (but without prejudice to the intended lessee's liability for his own costs) and without any consideration (save any fine specified in the agreement or instrument).

(3) Where the leasehold estate purported to be created by an instrument such as is mentioned in paragraph (2) purports to be subject to a mortgage, the mortgage binds the fee simple, when conveyed, 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 an assignment of the 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 lessor's duty to acquire and convey the fee simple is enforceable by the mortgagee, whether he is in possession or not, as though the mortgagee were a party to the agreement second-mentioned in paragraph (2) (and, accordingly, that paragraph applies as if references in it to the intended lessee, except the first reference in sub-paragraph (b), included the mortgagee).

(4) For the purposes of this Article a lease is for a term of more than 50 years if (although expressed to be for a term of or less than that period) it is, by virtue of any provision of the lease or of a collateral agreement, capable of being extended or renewed for any period or periods which, taken with the original term, in the aggregate exceed the period of 50 years (ignoring any part of the term falling before the date of the grant of the lease).

(5) This Article does not prohibit—

(a) the grant of a long lease in pursuance of an obligation assumed before the appointed day;

(b) the grant of a concurrent lease;

(c) the grant of a long lease by way of mortgage;

(d) the grant of an equity-sharing lease;

(e) the grant of a long lease of a flat;

(f) the grant of a long lease by the National Trust.

(6) In paragraphs (2) and (3) references to the prospective lessor or the purported lessor and to the intended lessee include, as the case requires, their respective successors in title or the persons who would have been their respective successors in title if the agreement or instrument had had the effect intended (and similarly in relation to a mortgagee); and in paragraph (5)(e) "flat" has the same meaning as in Article 7(7).

Avoidance of provisions for increase or review of ground rent

31.—(1) Subject to paragraphs (3) and (4), this Article applies to any of the following instruments executed on or after the appointed day, that is to say—

(a) a fee farm grant;

(b) a lease of a dwelling-house originally granted for a term of more than 50 years;

(c) an agreement collateral to any instrument mentioned in sub-paragraph (a) or (b).

(2) Any provision of an instrument to which this Article applies for the increase or review of a ground rent on one or more than one occasion is of no effect.

(3) Nothing in this Article affects section 18(3) of the Act of 1971 (which allows the rent fixed on the extension of a lease under that Act to be made subject to revision).

(4) This Article does not apply to a building lease or to a fee farm grant for purposes corresponding to those of a building lease merely because provision is made for increases in the ground rent which are related to periods or events in the progress of building or related activities.

*Supplementary***Settled land**

32.—(1) In the application of this Part to settled land which is subject to or includes or comprises a ground rent—

- (a) subject to the following sub-paragraphs, the limited owner is to be treated as the rent-payer or, as the case requires, the rent-owner;
- (b) where the limited owner is treated as the rent-payer—
 - (i) references (however expressed) to an estate of the rent-payer in the land or to his title are to be read as including references to the estate in the settled land which is the subject of the settlement or the title to that estate;
 - (ii) where a certificate of redemption is completed or sealed, (c) (4) all estates in the land arising under the settlement (whether legal or equitable) are converted, in accordance with their nature, to take into account the consequences of that certificate;
- (c) where the limited owner is treated as the rent-owner, a counter-notice served by him shall specify the trustees of the settlement as the persons to whom the redemption money is to be paid;
- (d) where the settled land is registered land, the powers of the Registrar for the purposes of this Part extend to making such entries, changes, cancellations or notes in the register, in relation to the settled land, as the case requires.

(2) Capital money of a settlement, and any personal estate held on the same trusts as the settled land, may be applied in payment of redemption money or of any costs incurred for the purposes of this Part (and, accordingly, the limited owner may look to the trustees of the settlement for reimbursement of redemption money paid by him, other than money raised by him on the security of the settled land or part of it).

(3) Redemption money receivable is capital money for the purposes of a settlement.

(4) The payment of redemption money is included among the purposes for which a limited owner or the trustees of a settlement may raise money.

(5) In this Article—

“limited owner” means a tenant for life of settled land or a person who has the powers of a tenant for life under the Settled Land Acts 1882 to 1890;

“settled land” means land which is or is deemed to be the subject of a settlement;

and “settlement” and “capital money” have the same meaning as in those Acts.

Cesser of Act of 1971 as to enlargement of leases to which this Part applies

33. On or after the appointed day no notice of a proposal to acquire the fee simple shall be served under section 2 of the Act of 1971 in respect of any land subject to a ground rent which may be redeemed under Article 5.

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.

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 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 no superior rent (other than a nominal rent, that is to say, a rent of a yearly amount of £1 or less, or a peppercorn or other rent having no money value) 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 Article 18(1) if a ground rent to which the land was subject had been redeemed under Article 5 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 Article 20(7) to (10) and Articles 23 to 26 as if the leasehold estate had yielded a rent which had been redeemed (and the leasehold estate consequently enlarged into a fee simple) under Part II; and, accordingly, for the purposes of this Article those Articles 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.

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).

PART IV

PROVISIONS SUPPLEMENTARY TO PARTS II AND III

Avoidance of certain agreements and powers

39.—(1) Except so far as expressly provided by this Order, so much of any agreement as provides that any provision of Part II or III or this Part shall not apply in relation to a person or any land or that the application of any such provision shall be modified in relation to a person or any land is void.

(2) Where immediately before the appointed day a power to create a lease to which Article 36 or 37 applies was in existence, that power ceases to have effect on that day save to the extent necessary to give effect to an agreement in accordance with Article 36(7) or Article 37(4).

(3) Where immediately before the appointed day a power either to make a fee farm grant the making of which is prohibited by Article 28 or to create a rentcharge or a long lease the creation of which is prohibited by Article 29 or 30 was in existence, that power ceases to have effect on that day save to the extent necessary to give effect to an obligation in accordance with Article 28(3), Article 29(3) or Article 30(5), as the case may be.

(4) Any power is void to the extent that, where it is purported to be conferred on or after the appointed day,—

- (a) it purports to empower the making of a fee farm grant the making of which is prohibited by Article 28 or to empower the creation of a rentcharge or a long lease the creation of which is prohibited by Article 29 or 30 respectively; or
- (b) it purports to empower the creation of a lease to which Article 36 or 37 applies.

Mental patients

40. Without prejudice to the powers of a person appointed attorney under an enduring power of attorney which has taken effect, where a rent-payer, a rent-owner or a superior owner is incapable, by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986, of managing and administering his property and affairs, his controller or (if no controller is acting for him) any person authorised in that behalf under an order of the High Court may represent him for all or any of the purposes of Part II and this Part.

Service of documents

41.—(1) Any document permitted or required by Part II to be served on a rent-owner is duly served on him if it is served—

- (a) on any person who acts as agent for the rent-owner in respect of the land in question; or
- (b) on the person who last demanded or received ground rent for the land.

(2) Any document permitted or required by Part II to be served on a rent-owner or a rent-payer may, where joint tenants or tenants in common are the rent-owners or rent-payers of any ground rent, be served on any one of them in respect of that rent, and such service is deemed to be service on both or all of them.

(3) Where the estate of a rent-owner is subject to a mortgage and either the mortgagee is in possession or a receiver is in receipt of the rents and profits, any document required or permitted by Part II to be served on the rent-owner may, instead, be served on the mortgagee or the receiver, as the case may be.

(4) Paragraphs (1) to (3) apply to a notice permitted under Part III to be served on a lessor as if references to a rent-owner and a ground rent included references to a lessor and a rent.

Disputes

42.—(1) Any question arising as to the matters mentioned in paragraph (4) may be referred to the Registrar in accordance with rules.

(2) On a reference under paragraph (1), the Registrar may, after or without holding a hearing (as he sees fit),—

- (a) determine the question; or
- (b) refer the question to the Lands Tribunal for determination by it.

(3) A person aggrieved by a determination of a question by the Registrar under paragraph (2)(a) may appeal to the Lands Tribunal, and on such an appeal, or on a reference under paragraph (2)(b), the Tribunal may determine the question.

(4) The matters referred to in paragraph (1) are—

- (a) the applicability of Article 5 or Article 6 in a particular case;
- (b) the amount of redemption money;
- (c) the adequacy of any security for future instalments of redemption money (Article 9(2)(a));
- (d) the amount of arrears of ground rent or apportioned ground rent (Article 9(2)(b));
- (e) the amount of any costs specified in a counter-notice;
- (f) what abatement is appropriate for the purpose of sub-paragraph (3) of paragraph 3 of Schedule 1 and what instalments and intervals are appropriate for the purposes of sub-paragraph (4) of that paragraph;
- (g) the yearly amount of a ground rent which is subject to a future increase or a periodic review (Schedule 1, paragraph 4 or 5);
- (h) the date on which a fine is to be taken to be payable (as mentioned in paragraph 7(2)(c) of Schedule 2);
- (i) the amount of, and any other matter affecting, the additional rent payable under paragraph 7 of Schedule 2;
- (j) any other difference arising under Part II or Schedule 2 (but not a difference as to a matter which may be subject to proceedings in a court other than the Lands Tribunal).

(5) Where a question arising as to a matter such as is mentioned in paragraph (4)(a) to (g), or in paragraph (4)(j) as arising under Part II, is the subject of a reference or appeal under this Article, the Registrar or, as the case may be, the Lands Tribunal may by order direct that the redemption date (including a date already past) be postponed, or further postponed, to such date as the Registrar or the Tribunal specifies in the order.

(6) On determining a question arising as to a matter such as is mentioned in paragraph (4)(b), (c), (d) or (e), or in paragraph (4)(j) as arising under Part II, the Registrar or, as the case may be, the Lands Tribunal may direct a redemption notice or counter-notice to be corrected by attaching a copy of his or its order, or otherwise as may be directed by him or it.

(7) In determining any question as to the amount of the instalments of the additional rent payable under paragraph 7 of Schedule 2, the Registrar or, as the case may be, the Lands Tribunal may take into account the loss of any right to refuse renewal of a lease which the former lessor (within the meaning of Schedule 2) would have had if this Order had not been made.

(8) Section 2 of the Land Registration Act (power of Registrar to summon witnesses) applies for the purposes of this Order as if the reference in subsection (1) of that section to any matter relating to registration under that Act included any question arising as mentioned in paragraph (1).

(9) Section 85(3)(m) of the Land Registration Act (rules about award of costs by Registrar) applies also to the costs incurred on, or subsequent to, a reference to the Registrar under this Article;

an appeal from an award of costs by the Registrar under this Article, or from his refusal to award costs, lies to the Lands Tribunal.

(10) An award of costs by the Registrar is a money judgment for the purposes of Article 4 of the Judgments Enforcement (Northern Ireland) Order 1981.

Offences

43.—(1) Without prejudice to section 82 of the Land Registration Act (penalties for fraud) or the Perjury (Northern Ireland) Order 1979, a person who, in any document made, served or lodged under Part II or III or this Part,—

- (a) makes a statement which he knows to be false; or
- (b) recklessly makes a statement which is false,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) For the purposes of paragraph (1) a statement is made recklessly if it is made regardless of whether it is true or false, whether or not the person making it had reasons for believing that it might be false; and in that paragraph and this paragraph “false” means false to a material degree.

Civil remedy for misstatement

44. Where in consequence of any misstatement made in any document made, served or lodged under Part II or III or this Part a person has suffered loss, the person who made the misstatement is liable to damages in respect of the misstatement notwithstanding that the misstatement was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time of payment of the redemption money or other sum in question, or the time of any other act done under that Part, that the facts represented were true.

Enforcement of covenants

45.—(1) The following remedies, namely,—

- (a) proceedings for an injunction (including a mandatory injunction) or other equitable relief;
 - (b) an action for sums due under the covenant;
 - (c) an action for damages (whether in respect of pecuniary or non-pecuniary kinds of damage),
- are available in the event of a breach, or, in the case of proceedings for an injunction, an anticipated or threatened breach, of a covenant to which Article 25(2) or Article 34 applies.

(2) Where, in the event mentioned in paragraph (1), any kind of damage other than personal injury or damage to property is caused, anticipated or threatened, no person is entitled to equitable relief or damages except in respect of the extent to which he is or may be materially prejudiced by the breach, or anticipated or threatened breach.

(3) In considering for the purposes of paragraph (2) whether a person is or may be materially prejudiced, a court shall have regard, in particular, to—

- (a) the nature of the estate (if any) by virtue of the ownership of which he is entitled to enforce the covenant; and
- (b) the location of the land in which that estate subsists.

(4) Where—

- (a) in breach of such a covenant there has been a failure to carry out any works, but
- (b) those works are carried out by a person entitled to enforce that covenant,

the damages in respect of the breach shall be, or, as the case requires, shall include, an amount equal to the costs incurred by that person in connection with the carrying out of those works less, where the case so requires, any amount which that person would have been required to pay in respect of the carrying out of the works by the person bound by the covenant.

(5) Where damages are awarded to any person in respect of a breach of a covenant requiring the carrying out of works, the amount of the damages is not to be reduced, by reference to any rule as to the mitigation of damages, on the ground that he has not carried out the works himself.

Fees and rules

46.—(1) An order under subsection (1) of section 84 of the Land Registration Act may prescribe the fees to be taken in the Land Registry for the purposes of Parts II and III and this Part as well as for the purposes of that Act, and accordingly the reference in that section to that Act includes a reference to those Parts and the reference to expenses of the Land Registry attributable to its registration functions includes a reference to expenses attributable to any function conferred by those Parts on the Registrar.

(2) Land Registry Rules under subsection (3) of section 85 of the Land Registration Act may be made for giving effect to Parts II and III and this Part as well as for giving effect to that Act, and accordingly in the introductory words of that subsection, and in paragraphs (a), (k) and (n) of that subsection, references to that Act include references to those Parts, and in paragraphs (c), (f) and (i) references to the register include the register kept under Article 22(1).

(3) Any express provision of this Order relating to rules does not prejudice the generality of paragraph (2) and the said section 85(3).

(4) For the purposes of this Order, the reference in section 85(3)(k) of the Land Registration Act to documents to be given includes documents to be served or lodged.

(5) Rules may make such provisions (including modifications of Part II) as are necessary or expedient to give effect to the purposes of that Part in cases falling within Article 32.

(6) Rules may require the authentication in a prescribed manner of a copy of a document, where the copy is permitted or required by or under Part II or III or this Part to be lodged or delivered or is deemed by rules to be that document.

Application to the Crown

47. Parts II and III and this Part bind the Crown.

PART V

MISCELLANEOUS AND GENERAL

Co-ownership

Enforcement of charge on estate of co-owner

48. The owner of a charge (including a charge under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981) on land in co-ownership (that is to say, held jointly or in undivided shares) may make a request under the Partition Act 1868 and the Partition Act 1876 (in this Article and Article 49 “the Partition Acts”) for an order for partition, or for sale and distribution in lieu of partition, and shall be treated as a party interested for the purposes of those Acts.

Power of court under Partition Acts

49. Without prejudice to Article 309 of the Insolvency (Northern Ireland) Order 1989, where on the request under the Partition Acts of a party interested (or a person treated as such under Article 48) a court makes an order for partition or sale, the court, on making the order or at any time before its enforcement, may also—

- (a) impose such stay or suspension; or
- (b) impose such conditions,

as, in the circumstances of the case, it thinks fit; and it may revoke or vary any such stay, suspension or conditions.

Severance of joint tenancy by charge

50. The creation of a charge on the estate or estates of one or more joint tenants (but not all of them) causes (and always has caused) a severance of the joint tenancy.

*Application of Act of 1971 to the National Trust***Amendment of Act of 1971 as to National Trust**

51.—(1) For section 27 of the Act of 1971 (saving for National Trust) there shall be substituted—

“27 Saving for National Trust.

27. This Act shall not apply to any land an estate in which is vested inalienably in the National Trust for Places of Historic Interest or Natural Beauty under section 21 of the National Trust Act 1907.”.

(2) The amendment of the Act of 1971 made by paragraph (1) does not affect the power under that Act to extend the term of a lease granted—

- (a) before the appointed day; or
- (b) on or after the appointed day in pursuance of an obligation assumed before that day.

*Compensation for compulsory acquisition***Compensation for compulsory acquisition: land subject to tenancy**

52.—(1) Article 6 of the Land Compensation (Northern Ireland) Order 1982 (rules for assessing compensation) shall be amended as follows.

(2) In paragraph (2) for sub-paragraph (d) (no account to be taken of certain matters in assessing compensation for compulsory acquisition where land subject to tenancy) substitute—

“(d) in a case where on the date on which the vesting order is made the land is subject to a tenancy, of any increase or diminution in the value of the land which is attributable to, or to the prospect of, the tenant giving up possession in consequence of being provided with other accommodation under Article 40(1)(a) of the 1973 Order (duty to rehouse residential occupiers where land acquired by authority possessing compulsory acquisition powers);”.

(3) For paragraph (3) (interpretation) substitute—

“(3) In this Article—

- (a) “development” in paragraph (2)(b) and (c) includes any building operations or rebuilding operations and any use of the land or any building on the land for a purpose which is different from the purpose for which the land or building was last being used;
- (b) the reference in paragraph (2)(d) to land being subject to a tenancy on the date on which the vesting order is made includes a reference to land which would have been subject to a tenancy on that date if the tenant had not given up occupation of a dwelling as mentioned in Article 30(3) of the 1973 Order (deemed displacement in consequence of compulsory acquisition of interest in dwelling where, in certain circumstances, person displaced gives up occupation by arrangement); and
- (c) “the 1973 Order” in paragraph (2)(d) and this paragraph means the Land Acquisition and Compensation (Northern Ireland) Order 1973.”.

General

Amendments and repeals

53.—(1) The statutory provisions specified in Schedule 4 have effect subject to the amendments there specified.

(2) The statutory provisions specified in Schedule 5 are repealed to the extent specified in the third column of that Schedule, but subject to the Notes in that Schedule.

N. H. Nicholls
Clerk of the Privy Council