
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^{F1}.

F1 partly exercised by SR 1997/328; 1999/461; 2002/252

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;

Definition rep. by 2001 c. 5 (NI)

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

Definition rep. by 2001 c. 5 (NI)

“covenant”^{F2} (except in Article 34)^{F2} 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;

Definition rep. by 2001 c. 5 (NI)

“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”^{F2} (except in Article 46(1))^{F2} means prescribed by rules;

Definitions rep. by 2001 c. 5 (NI)

“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^{F2}... 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^{F2}... 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) ^{F2}... References in this Order to a rent-owner, a rent-payer or a superior owner include references to their respective successors in title.

Para. (4) rep. by 2001 c. 5 (NI)

(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.

F2 2001 c. 5 (NI)

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—

Sub#para. (a) rep. by 2001 c. 5 (NI)

- (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

Arts. 5#27 rep. by 2001 c. 5 (NI)

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^{F3} section 3(7) of the Ground Rents Act (Northern Ireland) 2001^{F3}.

F3 2001 c. 5 (NI)

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

Arts. 32, 33 rep. by 2001 c. 5 (NI)

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^{F4} section 16 of the Ground Rents Act (Northern Ireland) 2001^{F4} 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.

F4 2001 c. 5 (NI)

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^{F5} or nominal^{F5} 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^[F5] no or nominal superior rent^[F5] 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^[F5] section 11(1) of the Ground Rents Act (Northern Ireland) 2001^[F5] if a ground rent to which the land was subject had been redeemed under^[F5] section 1 of that Act^[F5] 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^[F5] section 13(7), (8) and (10) and sections 14 to 17 of the Ground Rents Act (Northern Ireland) 2001^[F5] as if the leasehold estate had yielded a rent which had been redeemed (and the leasehold estate consequently enlarged into a fee simple) under^[F5] that Act^[F5]; and, accordingly, for the purposes of this Article those^[F5] sections^[F5] 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.

^[F5](11) In this Article “nominal rent” means—

- (a) a rent of a yearly amount of less than £1; or
- (b) a peppercorn or other rent having no money value.^{F5]}

F5 2001 c. 5 (NI)

^[F6]Redemption of nominal ground rent

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

- (2) This Article does not apply at a time when—
- (a) the land is used wholly for business purposes; or
 - (b) the rent-payer is prohibited by any term of his title from using the land otherwise than wholly for business purposes;

but land is not prevented from being used wholly for business purposes by reason only of the fact that part of it is occupied as a dwelling by a person who is required or permitted to reside there in consequence of his employment or of holding an office.

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

- (4) On an application under paragraph (3)—
- (a) if the land is registered land, the deed of declaration is sufficient authority for the Registrar (subject to compliance with rules)—
 - (i) to discharge any burden as is mentioned in paragraph 2 of Part I of Schedule 6 to the Land Registration Act; and
 - (ii) to make such alteration in the class of title with which the land is registered as appears to him to be appropriate;
 - (b) if the land is not registered, the Registrar may register the rent-payer's title with such class of title as appears to him to be appropriate (and until the rent-payer's title to the land is so registered, the deed of declaration has no effect);
 - (c) in either case, the deed of declaration is sufficient authority (notwithstanding any caution or inhibition) for the Registrar to make in the register such consequential entries, changes, cancellations or notes as appear to him to be appropriate;

(5) Except where the Registrar is satisfied that the land was subject to no or nominal superior rent on the date of execution of the deed of declaration, the Registrar shall enter on the register a note to the effect that the fee simple estate is subject to a rentcharge of so much (if any) of any superior rent as would have been redeemed by virtue of section 11(1) of the Ground Rents Act (Northern Ireland) 2001 if a ground rent to which the land was subject had been redeemed under section 1 of that Act on that date; and such a note may be discharged in accordance with rules, and it is sufficient to satisfy the Registrar as to the matter mentioned at the beginning of this paragraph that he is furnished by a solicitor with a certificate to that effect.

(6) Subject to paragraphs (4), (5) and (7), the deed of declaration operates by virtue of this paragraph to discharge the estate of the rent payer from all estates in the land of the rent-owner and any superior owners to the extent that those estates carry entitlement to ground rent or a superior rent or relate to matters connected with the rent and to that extent those estates are extinguished.

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

(8) For the purposes of paragraph (6) matters are connected with rent if they are concerned with the amount of the rent or its payment or recovery or are otherwise concerned (directly or indirectly) with the rent.

- (9) In this Article “nominal rent” has the same meaning as in Article 35.^{F6]}

F6 2001 c. 5 (NI)

Perpetually renewable leases

36.—(1) This Article applies to—

- (a) a lease for a life or lives renewable for ever;
- (b) a lease for a life or lives with any concurrent or reversionary term of years, renewable for ever;
- (c) a lease for a term of years renewable for ever.

(2) On and after the appointed day, a lease to which this Article applies is incapable of being created at law or in equity.

(3) Any agreement made on or after the appointed day to grant a lease to which this Article applies is void; any instrument made on or after that day which purports to be such a lease is void; and any agreement to assign, or any purported assignment, of such a lease made on or after that day has effect as an agreement to convey, or a conveyance of, a fee simple.

(4) Subject to paragraph (5), where immediately before the appointed day any lease to which this Article applies was subsisting and would have continued to subsist apart from the provisions of this Article and Schedule 2, the estate created by the lease is, on that day, converted by virtue of this paragraph into an estate in fee simple subject to a fee farm rent.

(5) Where a lease coming within paragraph (4) was subject to one or more than one sub-lease (other than a sub-lease by way of mortgage) which also (by virtue of the definition of “lease” in Article 2(2)) comes within that paragraph, the reference in that paragraph to the estate created by the lease is, to the extent of the land which is the subject of the sub-lease, to be construed as a reference to the estate created by the sub-lease (or the more or most subordinate sub-lease, if more than one).

(6) For the purposes of paragraphs (4) and (5), Schedule 2 contains provisions subject to which the estate in fee simple is held and provides for the amount of the fee farm rent; and the other provisions of that Schedule also have effect.

(7) Where immediately before the appointed day an agreement to grant a lease to which this Article applies was subsisting, the agreement continues to have the effect provided for in section 37 of the Renewable Leasehold Conversion Act, notwithstanding the repeal by this Order of that Act, (that is to say, it is deemed to be an agreement for a conveyance of the land concerned at a fee farm rent).

(8) A mere covenant for renewal on the same terms in any lease is not to be taken to require the inclusion of another covenant for renewal in the renewed lease, unless the contrary intention is expressed or implied in the original lease.

(9) For the purposes of this Article a lease is subsisting so long as the rent provided for by it is being paid, notwithstanding that the lease has fallen due for renewal but has not been renewed or that a fine payable on renewal has not been paid; and for this purpose rent is being paid if no rent is in arrear.

Leases for lives, etc.

37.—(1) This Article applies to a lease at a rent or in consideration of a fine—

- (a) for a life or lives; or
- (b) for a life or lives with a concurrent term of any period; or
- (c) for a life or lives with a reversionary term of any period; or
- (d) for a term of any period determinable with a life or lives or on the marriage of a specified person (including the lessee) or on the happening of any other event.

(2) On and after the appointed day, a lease to which this Article applies is incapable of being created at law or in equity.

(3) Any agreement made on or after the appointed day to grant a lease to which this Article applies is void; any instrument made on or after that day which purports to be such a lease is void; and any agreement to assign, or any purported assignment, of such a lease made on or after that day has effect as an agreement to assign, or an assignment, of the lease into which the lease which is the subject of the agreement or purported assignment was converted by paragraph (4) and Schedule 3.

(4) Where immediately before the appointed day any lease to which this Article applies, or any agreement to grant such a lease, was subsisting and would have continued to subsist apart from the provisions of this Article and Schedule 3, the lease or agreement has effect on and after that day in accordance with the provisions of Schedule 3, and the other provisions of that Schedule have effect.

Repeal of statutory provisions relating to agricultural tenancies

38.—(1) The statutory provisions relating to agricultural tenancies cease to have effect, except in relation to existing tenancies (that is to say, tenancies to which they applied immediately before the appointed day which continue to subsist on that day).

(2) In this Article “the statutory provisions relating to agricultural tenancies” means—

the Landlord and Tenant (Ireland) Act 1870;

the Landlord and Tenant (Ireland) Act 1871;

the Landlord and Tenant (Ireland) Act 1872;

the Notices to Quit (Ireland) Act 1876;

the Land Law (Ireland) Act 1881;

the Purchase of Land (Ireland) Act 1885, sections 4, 8, 12, 15, 16, 25 and 26;

the Land Law (Ireland) Act 1887, Part I, section 26, Part III and in section 34 the definitions of “judgment” and “landlord”;

the Land Law (Ireland) Act 1896 (except Part II so far as relating to the Land Purchase Acts, Part III and, in Part VI, in section 48(1) the definitions of “Land Purchase Acts”, “prescribed”, and “Receiver Judge”, section 48(3), section 50(4) and (5) and section 51); and

the Irish Land Act 1903, Part III and, in Part V, in section 98(1) the definitions of “the Land Law Acts” and “the Act of 1887” and section 100(3).

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—
Sub#paras. (a)#(g) rep. by 2001 c. 5 (NI)

- (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^{F7}... Schedule 2 (but not a difference as to a matter which may be subject to proceedings in a court other than the Lands Tribunal).

Paras. (5)(6) rep. by 2001 c. 5 (NI)

(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.

F7 2001 c. 5 (NI)

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^{F8}... 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.

F8 2001 c. 5 (NI)

Civil remedy for misstatement

44. Where in consequence of any misstatement made in any document made, served or lodged under Part^{F9}... 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^{F9}... sum in question, or the time of any other act done under that Part, that the facts represented were true.

F9 2001 c. 5 (NI)

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^{F10} ... 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.

F10 2001 c. 5 (NI)

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^{F11} Part III^{F11} 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^{F11} Part III^{F11} 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,^{F11}...

(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.

Para. (5) rep. by 2001 c. 5 (NI)

(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^{F11}... III or this Part to be lodged or delivered or is deemed by rules to be that document.

F11 2001 c. 5 (NI)

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—

“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

Art. 53—Amendments and repeals

Changes to legislation:

There are currently no known outstanding effects for the The Property (Northern Ireland) Order 1997.