
STATUTORY INSTRUMENTS

1997 No. 1179 (N.I. 8)

The Property (Northern Ireland) Order 1997

- - - - - 8th April 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—