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STATUTORY INSTRUMENTS

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**1997 No. 1179**

**The Property (Northern Ireland) Order 1997**

**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<sup>F1</sup>... 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.

**F1** 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<sup>F2</sup>... 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.

**F2** 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<sup>F3</sup>... 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<sup>F3</sup>... sum in question, or the time of any other act done under that Part, that the facts represented were true.

**F3** 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<sup>F4</sup>... 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.

**F4** 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<sup>F5</sup> Part III<sup>F5</sup> 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<sup>F5</sup> Part III<sup>F5</sup> 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,<sup>F5</sup> ...

(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<sup>F5</sup> ... III or this Part to be lodged or delivered or is deemed by rules to be that document.

**F5** 2001 c. 5 (NI)

### Application to the Crown

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

**Changes to legislation:**

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