



Department of
**Finance and
Personnel**
www.dfpni.gov.uk

REVIEW OF THE OPERATION OF THE GROUND RENTS ACT (NI) 2001

Discussion Paper 1/05
November 2005

Comments on this paper should be submitted by 28th February
2006.

**This discussion paper was produced by the Office of Law Reform
and is also available on the OLR website at www.olrni.gov.uk.**

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Introduction

What is this discussion paper about?

This discussion paper seeks views on the operation of the Ground Rents Act (Northern Ireland) 2001.

Who is being invited to comment?

It is important that people of all ages and from all walks of life, with experience of or interest in this topic, have an opportunity to comment on the issues raised in this discussion paper. Copies are being sent to the people/organisations listed in Annex A.

However, this list is not meant to be exhaustive or exclusive and we would welcome responses from anyone with an interest in, or views on, the issues raised.

How to respond

If you are submitting a response on behalf of a group, please give a brief description of the group (e.g. voluntary organisation, academic organisation, statutory body etc.) and a short summary of the people/organisations it represents.

By Post

If you send your response by post please address it to:

The Director of Law Reform
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By E'mail

If you wish to send your response by e'mail, please send it to:
info@olrni.gov.uk.

Other formats

Replies in other formats, such as audio tapes, will be very welcome. Please let the Office of Law Reform know about any ways in which it can make it easier for you to respond.

Closing date for responses

All responses must be received by 5.00 pm on 28th February 2006.

Handling of responses

With the coming into operation of the Freedom of Information Act 2000, we have to release information to interested parties unless we can justify withholding the information in the particular circumstances.

If you do not want your views or the fact that you replied to the discussion paper to be made public, please make this clear in your response. If an information access request is received, the information provided must be assessed to determine if a disclosure exemption applies. Otherwise we must disclose all material in accordance with the Freedom of Information Act 2000.

Additional copies

Further copies of this discussion paper can be obtained from the address listed in the “How to respond” section (page 2).

This discussion paper is also available on-line at www.olrni.gov.uk and a summary document may be available, on request, in a range of languages and formats.

Complaints

If you have any complaints or comments about the publication of this paper or the discussion process please send them to the address listed in the “How to respond” section of this paper (page 2).

Background to the discussion exercise

The Ground Rents Act (Northern Ireland) 2001 (“the Act”) received Royal Assent on 20th March 2001 and all of its provisions, except section 2, came into operation on 29th July 2002.

The primary objective of the Act is to eliminate the ground rents on residential property in Northern Ireland, thereby simplifying title ownership and the conveyancing process.

Originally, ground rents were designed to provide income for rent-owners, whilst allowing them to retain residual rights in relation to the development of the land (that is, by their holding the freehold ownership of the land and enforcing covenants against certain types of use of the land). However, the ground rent system created further difficulties in a conveyancing process which was already complicated by the complex pyramid titles prevalent in the urban areas of Northern Ireland.

The Act replaced Part II of the Property (Northern Ireland) Order 1997 (“the 1997 Order”) on the statute book. That legislation contained an intricate and costly scheme for the redemption of ground rents on residential properties. However, the scheme was never commenced because it became apparent, during further consultation, that it contained fundamental flaws (for example, cumbersome notice provisions). It was also suggested that it was incompatible with Article 1 of the 1st Protocol to the European Convention on Human Rights which protects a person’s right to the peaceful enjoyment of his property subject to certain exceptions.

The main provisions in the Act are as follows:

Section 1 provides for a voluntary scheme which allows the owners of a residential property¹ subject to an annual ground rent to enlarge their title to the property to a fee simple or a freehold title.

¹ Most applications are from owner occupiers, but, as discussed below, Land Registry will accept applications from intermediate rent owners.

The process involves the rent-payer making an application to Land Registry on a prescribed form to redeem the ground rent. The rent-payer is required to lodge the following with the Land Registry (“LRNI”):

- a certified copy of the lease/ fee farm grant under which the property is held;
- the redemption money payable to the rent-owner;
- a receipt for the last payment of ground rent or payment necessary to discharge any arrears due;
- a sum of money to discharge any apportionment of the ground rent for the period from the date of the last payment of ground rent until the date of application.

The rent-payer must also give notice of his application on a prescribed form to the rent-owner. The rent-owner (ground landlord) cannot object to the rent-payer redeeming the rent. However, the Act does make provision for the rent-owner to receive compensation to reflect the loss of his future entitlement to the ground rent on the property. The level of the compensation (“the redemption money”) is calculated by multiplying the amount of the annual ground rent by a fixed number of years. Schedule 1 to the Act provides for the Department of Finance and Personnel (“DFP”) to fix the number of years by Order subject to negative resolution.

Section 2 provides for a compulsory redemption scheme which requires a purchaser of residential property to redeem the ground rent before his title to the property is registered in LRNI. As with the voluntary scheme, the rent-owner will receive compensation to reflect the loss of future entitlement to ground rent. However, s/he cannot object to the redemption process.

As mentioned previously, the voluntary redemption scheme came into operation on 29th July 2002. To date LRNI have received 2972 requests for redemption of ground rents and 885 requests from rent-owners claiming monies. The majority of ground rents redeemed are between £10 and £75.

It was agreed, when the legislation was introduced, that the compulsory redemption scheme would not commence until the operation of the voluntary scheme had been reviewed.

That review is being conducted in part via this paper, which —

- identifies the issues which have been raised during the initial phase of the voluntary redemption scheme;
- explains the background to those issues; and
- seeks views on the points raised.

For ease of reference the subordinate legislation which underpins the voluntary redemption scheme is listed in Annex B. The relevant LRNI fees are set out in Annex C and are also available at: www.lrni.gov.uk.

Issues raised

MULTIPLIER

Schedule 1 to the Act provides for the calculation of the redemption money payable under the voluntary redemption scheme and allows DFP to make an Order fixing the number of years purchase applicable to ground rents or to ground rents of a particular class or description.

The Order-making power has been exercised and the Ground Rents (Multiplier) Order (Northern Ireland) 2002 (“the Multiplier Order”) currently provides for a multiplier of 9 years.

Representatives from the Royal Institute of Chartered Surveyors (“RICS”), property consultants, charitable trusts and individual members of the public have raised concerns about the level of the multiplier.

On the one hand, it has been suggested that the multiplier was fixed without adequate consultation and that the consequences of moving from a multiplier of 12 (as per the 1997 Order) to a multiplier of 9 (as per the Multiplier Order) were not fully explored.

Critics of the present multiplier have suggested that a multiplier of 9 will not provide rent-owners with a fair return on their investment

or secure adequate compensation for the loss of their annual income after redemption. This is said to be particularly so where there is a single rent or the collection of ground rents is the only source of income for an organisation (e.g. some charitable trusts).

It has also been said that the multiplier is disproportionately low in relation to the costs associated with the redemption process and that the redemption money is often “eaten up”.

On the other hand, it has been suggested that the value of the multiplier is too high for individual rent-payers to redeem their ground rent.

Background to the choice of multiplier

During the drafting of the revised redemption scheme, the Office of Law Reform (“OLR”) consulted on an appropriate value for the multiplier and sought the views of a range of interested parties and professional organisations, including the General Consumer Council for Northern Ireland, the National Association of Estate Agents, the Council of Mortgage Lenders, Northern Ireland Co-Ownership Housing Association, the Northern Ireland Housing Executive and Land Registry. Expert advice was also obtained from the Valuation and Lands Agency.

The reduction in the multiplier was effected after strong representations that a multiplier of 12 (as set out in the 1997 Order) was too high.

The following considerations were taken into account when setting the multiplier:

- that a multiplier of 9 would yield an income of approximately 11%, which was not unfavourable, taking account of possible difficulties when collecting the rents and the high void value;
- that the Act is designed to achieve the wider public policy aim of simplifying a very complex, cumbersome and outdated conveyancing system, rather than a full and accurate market value return for investors;
- the need for a fair balance between rent-owners (be they commercial enterprises or single rent-owners) and rent-payers;

- that the Trustee Act (Northern Ireland) 2001 (which also came into effect on 29 July 2002) would provide charitable trusts with greater default investment powers (which could yield a larger investment income than investments in Government stock).

Ultimately, it was concluded that a multiplier of 9 would produce a sum at the upper end of the current market values for ground rents and would, therefore, satisfy human rights law and jurisprudence.

However, assurances were given that the adequacy of the multiplier would be kept under review, particularly in relation to its impact on charitable trusts.

QUESTION 1: DO YOU BELIEVE THAT A MULTIPLIER OF 9 IS APPROPRIATE, TAKING ACCOUNT OF THE TWIN NEEDS TO COMPENSATE RENT-OWNERS FOR THE LOSS IN ANNUAL RENTAL INCOME AND TO ENCOURAGE RENT- PAYERS TO REDEEM THEIR GROUND RENTS?

IF NOT, WHY NOT?

COST OF REDEMPTION

The redemption process gives rise to a number of costs for both the rent-payer and rent-owner.

Rent-payer costs:

The costs for the rent-payer are likely to be as follows:

- LRNI application fee for certificate of redemption - £50.00
- Solicitor fee for making the application (if applicable);
- Lending institution's fee for production of the original lease/fee farm grant (if applicable);
- Solicitor/estate agent fee for certification of a copy of the lease/fee farm grant (if original unavailable);
- Cost of an affidavit setting out the history of the rent-payer's title to the property (where the lease/fee farm grant cannot be traced)

- Potentially LRNI fee (£150.00) to apply for merger of the leasehold and freehold estates.

Rent-owner costs:

The costs for the rent-owner will include:

- LRNI application fee for certificate of entitlement - £25.00;
- Lending institution's fee for production of the original lease/fee farm grant (if applicable);
- Solicitor/estate agent fee for certification of a copy of the lease/fee farm grant (if original unavailable);
- Solicitor's fee for certificate/ estate agent's fee for statutory declaration validating the rent-owner's entitlement to the payment of the redemption money.

The LRNI fees, which were introduced 18 months after the redemption scheme had commenced, have prompted a number of complaints and resulted in a decrease in applications, both to redeem ground rents and to recover the redemption money. One commentator has suggested that in many cases, the costs of obtaining the redemption money will eat into, if not completely eradicate, the actual sum of the redemption money.²

It has also been suggested that the Act is deficient because it does not address the question of costs.

Individual rent-owners and practitioners have also queried the levels of solicitor and estate agent fees associated with the voluntary scheme.

Background to the fee structure

It had been envisaged that the rent-payer would defray the application costs of a rent-owner obtaining a certificate of entitlement (see section 4(2)(e) of the Act). However, in January 2005 LRNI advised that, whilst they would accept fees from rent-owners wishing to claim certificates of entitlement, they could not accept "lodgements to reimburse" from rent-payers. It is the view

² John G Neill article – "Ground Rent Redemption – An Unwanted Premature Baby Prodigy" (The Writ – Dec 2002)

of LRNI that it would be operating ultra vires by accepting monies from a rent-payer in respect of possible costs which may arise in respect of a future service which may or may not be provided. The Act is, therefore, not operating as intended.

With regard to the level of LRNI fees, these are set at a rate which will cover the costs of administering the redemption scheme.

On the issue of solicitor and agent/ lending institutions' fees, these are private contractual matters between the parties involved and cannot, therefore, be provided for in the Act.

QUESTION 2: HAVE YOU ANY COMMENTS WITH REGARD TO THE COSTS ISSUE?
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APPORTIONMENT PROVISIONS

Section 11 of the Act provides that, if a ground rent is redeemed, any superior rents to which the land is subject will also be redeemed.

This means that, if there is a superior rent-owner(s), the redemption money will have to be shared or apportioned. Section 6(4) of the Act provides that, in such a case, the redemption money will not be released unless the person collecting the money enters into such arrangements and complies with such other conditions as may be prescribed. The aim here is to ensure that each person receives his appropriate share of the money and the person who recovers the redemption money must account to others further up the chain.

Rule 222I(b) of the Land Registration Rules (Northern Ireland) 1994 (as inserted by the Land Registration (Amendment) Rules (Northern Ireland) 2002) provides for a declaration that the money will be held on trust for others.

It has, however, been suggested that the legislation is deficient because it does not provide for the recording of apportionments in respect of superior interests (either in terms of the amount or how the apportionment has been effected). The costs of apportionment have also been raised.

One particular concern is that the Act does not provide for the amendment of title deeds where apportionment has occurred.

We are aware of some practitioners' reservations about the operation of the apportionment provisions. It has been suggested that, because apportionment can be complicated and difficult, the immediate rent-owner might find it easier to retain all of the redemption money, but continue to pay the rent to the superior rent-owner, who will have no idea that the rent has been redeemed.

QUESTION 3: DO YOU THINK FURTHER PROVISION SHOULD BE MADE WITH REGARD TO THE RECORDING OF APPORTIONMENTS OR THE ENDORSEMENT OF TITLE DEEDS?

EFFECT OF REDEMPTION

Section 7 of the Act provides that the sealing of a certificate of redemption operates as a full and final discharge of the land from the ground rent (although the certificate can be cancelled if there is evidence of fraud) and section 13 of the Act sets out the effect of redemption on titles.

If the land was held by the rent-payer for an estate in fee simple, the certificate of redemption will 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. If the land was held by the rent-payer for a leasehold estate, the certificate of redemption operates to enlarge the leasehold estate into an estate in fee simple.

Clearly, the title of the rent-owner to the fee simple estate is extinguished upon redemption. However, whilst the rent-owner no longer has any entitlement to collect ground rent, he may still have a residual interest in the property: the right to enforce certain covenants in accordance with sections 16 and 17 of the Act.

OLR has received a number of individual queries which reveal continuing uncertainty about the effect of redemption and the

operation of certain covenants. In particular, it has been suggested that section 16 of the Act contains contradictory provisions, saying on the one hand that certain covenants survive (see section 16(2)), but then going on to say that a covenant will only apply if it binds the covenantor (see section 16(4)).

Practitioners have suggested that rent-payers who redeem their ground rents —

- are generally unaware that they are obtaining “a freehold” (which may be subject to covenants), rather than “the freehold”; and
- may not keep the certificate of redemption with their title deeds and may forget to advise their solicitor of the redemption when they sell the property on.

In light of the above, it has been proposed that the Act be amended to clarify the position with regard to covenants and to provide for the registration of the rent-owner’s residual interest (i.e. the right to enforce restrictive covenants). This would, it is said, reflect the fact that such covenants constitute valuable property interests.

Professional organisations have also suggested that the Act should make provision in relation to the freehold reversion (i.e. where the rent-payer’s title is enlarged into an estate in fee simple and any mortgage is converted to a mortgage or charge against the new fee simple estate).

Background to the retention of covenants

As stated earlier, the Act attempts to find some balance between the interests of the rent-payer and the rent-owner and it was, therefore, considered appropriate for rent-owners to retain the right to enforce certain covenants post-redemption.

The 1997 Order also provided for the retention of certain covenants, reflecting those which appear in a “standard lease”.

It is worth noting that a rent-payer who has redeemed his ground rent and obtained a freehold (subject to the subsistence of certain covenants) may dispose of the surviving covenants by way of a private contractual arrangement with the rent-owner.

It is also worth noting that section 16(4) of the Act only relates to personal covenants, which, regardless of redemption, would be unenforceable against successors in title. There is, therefore, no justification for continuing their operation after redemption has taken place.

QUESTION 4: DO YOU HAVE ANY COMMENTS TO MAKE WITH REGARD TO COVENANTS AND/OR THE EFFECTS OF REDEMPTION?

IN PARTICULAR, DO YOU THINK THE ACT SHOULD PROVIDE FOR ENFORCEABLE COVENANTS TO BE REGISTERED IN LRNI'S REGISTER OF SUBSIDIARY INTERESTS OR THAT SECTIONS 16 AND 17 OF THE ACT SHOULD BE CLARIFIED?

INTERMEDIATE RENT-OWNERS

Section 1 of the Act provides that a rent-payer may redeem the ground rent to which his land is subject.

A number of people have asked if section 1 applies to intermediate rent-owners (i.e. those who are part of a chain, collecting rent from people below them, but also paying rent to people above them).

It has been suggested that the Act is aimed at owner-occupiers and that intermediate rent-owners, who may wish to buy out their entire head rents, cannot avail of the statutory right to redeem because they do not have an interest in possession.

However, in practice, applications to redeem intermediate ground rents are being accepted by LRNI and the definition of rent-payer in section 27 of the Act is considered sufficiently wide to accommodate such applications.

QUESTION 5: SHOULD SECTIONS 1 & 2 OF THE ACT BE AMENDED TO CLARIFY THE POSITION WITH REGARD TO INTERMEDIATE RENT-OWNERS?

50 YEAR RULE

Individual rent-payers have asked why a lease with an unexpired term of 50 years or less is excluded from the redemption process (see section 3 of the Act).

In this regard, it is worth noting that rent-payers who are not covered by the Act may enlarge their leasehold estate into an estate in fee simple (freehold) by availing of the provisions in the Leasehold (Enlargement and Extension) Act (Northern Ireland) 1971 or by private contract and conveyance.

QUESTION 6: DO YOU AGREE THAT LEASEHOLD ESTATES WITH A SHORT RESIDUARY TERM SHOULD REMAIN OUTSIDE THE REMIT OF THE LEGISLATION?

OTHER ISSUES

Apart from the specific issues examined in this paper, individuals with experience or interest in the redemption process may wish to comment on other aspects of the Ground Rents Act (NI) 2001. OLR would welcome any such contributions.

QUESTION 7: DO YOU HAVE ANY ADDITIONAL COMMENTS OR QUERIES IN RELATION TO THE OPERATION OF THE GROUND RENTS ACT (NI) 2001?

Summary

This paper seeks views on the operation of the Ground Rents Act (NI) 2001.

OLR would welcome any comments you would wish to make, either generally or in response to the following questions:

QUESTION 1: DO YOU BELIEVE THAT A MULTIPLIER OF 9 IS APPROPRIATE, TAKING ACCOUNT OF THE TWIN NEEDS TO COMPENSATE RENT-OWNERS FOR THE LOSS IN ANNUAL RENTAL INCOME AND TO ENCOURAGE RENT- PAYERS TO REDEEM THEIR GROUND RENTS?

IF NOT, WHY NOT?

QUESTION 2: HAVE YOU ANY COMMENTS WITH REGARD TO THE COSTS ISSUE?

QUESTION 3: DO YOU THINK FURTHER PROVISION SHOULD BE MADE WITH REGARD TO THE RECORDING OF APPORTIONMENTS OR THE ENDORSEMENT OF TITLE DEEDS?

QUESTION 4: DO YOU HAVE ANY COMMENTS TO MAKE WITH REGARD TO COVENANTS AND/OR THE EFFECTS OF REDEMPTION?

IN PARTICULAR, DO YOU THINK THE ACT SHOULD PROVIDE FOR ENFORCEABLE COVENANTS TO BE REGISTERED IN LRNI'S REGISTER OF SUBSIDIARY INTERESTS OR THAT SECTIONS 16 AND 17 OF THE ACT SHOULD BE CLARIFIED?

QUESTION 5: SHOULD SECTIONS 1 & 2 OF THE ACT BE AMENDED TO CLARIFY THE POSITION WITH REGARD TO INTERMEDIATE RENT-OWNERS?

QUESTION 6: DO YOU AGREE THAT LEASEHOLD ESTATES WITH A SHORT RESIDUARY TERM SHOULD REMAIN OUTSIDE THE REMIT OF THE LEGISLATION?

QUESTION 7: DO YOU HAVE ANY ADDITIONAL COMMENTS OR QUERIES IN RELATION TO THE OPERATION OF THE GROUND RENTS ACT (NI) 2001?

Name of person
responding: _____
Date: _____
Organisation: _____
Address: _____

If you are submitting a response on behalf of a group, please give a brief description of the group (e.g. voluntary organisation, academic organisation, statutory body etc.) and a short summary of the people/organisations it represents.

Do you agree to your response being made public?

Please send your completed response to:

The Director of Law Reform
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5 Linenhall Street
Belfast
BT2 8AA

Tel: 028 9054 2900

Fax: 028 9054 2909

E'mail: info@olrni.gov.uk

Annex A

List of consultees

Academics in the field

Belfast City Council

Brown McConnell Clark Chartered Surveyors and Property Consultants

Citizens' Advice Bureau

Consumer Council for Northern Ireland

Council of Mortgage Lenders

Grent Trust Ltd

Law Society of Northern Ireland

Bar Council of Northern Ireland

Major Banking Institutions

Manaus Charity

Northern Ireland Co-Ownership Association

Northern Ireland Federation of Housing Associations

Northern Ireland Housing Executive

Royal Institute of Chartered Surveyors – John Frazer, Ian Murray

Local Solicitor Associations

Valuation and Lands Agency

Individual professional practitioners or other persons who have expressed an interest in the 2001 Act

Annex B

Relevant subordinate legislation

- **Ground Rents (Multiplier) Order (Northern Ireland) 2002 SR No. 228**

This Order fixes 9 as the number of years purchase applicable to the redemption of all ground rents under the 2001 Act. It also makes provision in relation to the yearly amount of ground rents which are subject to a future increase within 9 years from the date of application to redeem.

- **Land Registration (Amendment) Rules (Northern Ireland) 2002 SR No. 229**

These Rules inserted new rules into the Land Registration Rules (Northern Ireland) 1994 for the purpose of facilitating the redemption of ground rents in the Land Registry. These rules also make provision for the making of entries and cancellations on the Title Register, searches in the register of monies connected with redemption, and the disposal of money lodged with the Land Registry.

- **Ground Rents (2001 Act) (Commencement No. 1) Order 2002 SR 251 (C. 22)**

This Order commenced the provisions of the Ground Rents Act (Northern Ireland) 2001, except for section 2 which makes provision for the compulsory redemption of ground rents.

- **Property (1997 Order) (Commencement No. 3) Order (Northern Ireland) 2002 SR 252 (C. 23)**

This Order brought into operation provisions of the 1997 Order which deal with the enlargement of a leasehold estate subject to no or a nominal rent (Article 35), and associated repeals (Sch 5 – Repeals of the Conveyancing Act).

- **Land Registry (Fees) (Northern Ireland) Order 2003 SR No. 506**

Schedule 1 Part II of this Order sets out the fees payable to the Land Registry in respect of the redemption of ground rents.

Annex C

LRNI fees relating to redemption of ground rents

- Application by rent-payer to redeem ground rent : £50.00
- Application by rent-owner for a certificate of entitlement to money lodged under Act: £25.00
- Reference to the Registrar in relation to a dispute under section 23 of the Act: £25.00
- Personal search in register kept under Act: £2.00
- Official search in register kept under Act : £15.00
- Application to have 2 estates merged: £150.00