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**AN BILLE UM THIARNAÍ TALÚN AGUS TIONÓNTAÍ
(BUNCHÍOSANNA A CHEALÚ), 1997
LANDLORD AND TENANT (GROUND RENT ABOLITION)
BILL, 1997**

*Mar a tionscnaíodh
As initiated*

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| Landlord and Tenant (Ground Rents) Act, 1967 | 1967, No. 3 |
| Landlord and Tenant (Ground Rents) (No. 2) Act, 1978 | 1978, No. 16 |
| Landlord and Tenant (Reversionary Leases) Act, 1958 | 1958, No. 2 |
| Local Government (Planning and Development) Act, 1963 | 1963, No. 28 |
| Registration of Title Act, 1964 | 1964, No. 16 |



AN BILLE UM THIARNAÍ TALÚN AGUS TIONÓNTAÍ
(BUNCHÍOSANNA A CHEALÚ), 1997
LANDLORD AND TENANT (GROUND RENT ABOLITION)
BILL, 1997

5 BILL

entitled

AN ACT TO PROVIDE FOR THE ABOLITION OF GROUND
RENTS AND TO PROVIDE COMPENSATION TO THOSE
WHOSE INTERESTS ARE AFFECTED AS AFORESAID,
10 TO PROVIDE FOR THE APPORTIONMENT OF CER-
TAIN RENTS, TO MAKE PROVISION IN RELATION TO
THE WAIVER AND RELAXATION OF CERTAIN
RESTRICTIVE COVENANTS IN LEASES, TO PROVIDE
FOR THE ARBITRATION OF DISPUTES ARISING OUT
15 OF THE TITLES OF PERSONS WHOSE INTERESTS ARE
HEREBY ENLARGED TO THE FEE SIMPLE, TO PRO-
VIDE FOR THE REGISTRATION OF TITLES
ENLARGED TO THE FEE SIMPLE, TO AMEND IN
OTHER RESPECTS THE LAW OF LANDLORD AND
20 TENANT, AND TO PROVIDE FOR OTHER MATTERS
CONNECTED TO THE MATTERS AFORESAID.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

25 1.—This Act may be cited as the Landlord and Tenant (Ground Rents Abolition) Act, 1997. Short title.

2.—This Act shall come into operation on such day as shall be appointed by the Minister and the said day shall be the “appointed day” as hereinafter referred to. Commencement.

30 3.—(1) In this Act— Interpretation.
“the Act of 1931” means the Landlord and Tenant Act, 1931;

“the Act of 1958” means the Landlord and Tenant (Reversionary Leases) Act, 1958;

35 “the Act of 1978” means the Landlord and Tenant (Ground Rents) (No. 2) Act, 1978;

“the Act of 1980” means the Landlord and Tenant (Amendment) Act, 1980;

“business” means any trade, profession or business, whether carried on for gain or reward or not, in the service of the public;

“the Court” means the Circuit Court; 5

“development” has the meaning assigned to it by the Local Government (Planning and Development) Act, 1963;

“dwelling” does not include a separate and self-contained flat in premises divided into two or more such flats;

“fee simple” does not include the interest in land of a person holding the land under a fee farm grant; 10

“immediate lessor” means the person for the time being entitled to the next superior interest in land held by any person whether under a lease or under other contract of tenancy;

“lessee” includes the personal representatives and successors in title of a lessee; 15

“lessor” includes the personal representatives and successors in title of the lessor;

“the Minister” means the Minister for Equality and Law Reform;

“planning authority” has the meaning assigned to it by the Local Government (Planning and Development) Act, 1963; 20

“prescribed” means prescribed by regulations made by the Minister under this Act, and cognate words shall be construed accordingly;

“statutory tenancy” means the entitlement to retain possession of a dwelling by virtue of the provisions of section 9 of the Housing (Private Rented Dwellings) Act, 1982; 25

“superior lessor” in relation to a lessee or a yearly tenant means any person entitled to an interest in land held by a lessee or tenant superior to the interests of a person from whom the lessee holds the land; 30

“used for the purpose of business” means used wholly or in part for the purpose of business.

(2) References in this Act to a covenant, condition, or agreement in a lease include references to a reservation, stipulation, or proviso, or to any other similar provision in the lease. 35

(3) Reference in this Act to the County Registrar for the area in which any land is situated, shall where the land is situated in the areas of two or more County Registrars, be construed as references to the County Registrar for the area in which the larger or largest portion of the land is situated. 40

(4) References in this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment.

4.—(1) The Minister may make regulations for the purpose of giving full effect to the provisions of this Act including the prescribing of forms. Regulations.

(2) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the regulations were laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

5.—The expenses incurred by the Minister in the administration of this Act, shall, to the extent as it may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas. Expenses.

6.—The Landlord and Tenant (Ground Rents) Act, 1967, the Landlord and Tenant (Ground Rents) (No. 2) Act, 1978 and sections 7, 8, 9, 10, 11, 12 and 13 of the Landlord and Tenant (Amendment) Act, 1984 are hereby repealed. Repeals.

PART II

The right to the fee simple

7.—From the appointed day a person to whom this Part applies shall, subject to the provisions of this Part, have the right as incident to his existing interest in land, to have that interest enlarged into the fee simple, and for that purpose any intermediate interests in the land shall be extinguished. General right to the fee simple.

8.—(1) This Part applies to a person who holds land under a lease if the following conditions are complied with: Lessees.

(a) that there are permanent buildings on the land and that the portion of the land not covered by those buildings is subsidiary and ancillary to them;

(b) that the permanent buildings are not an improvement within the meaning of *subsection (2)*;

(c) that the permanent buildings were not erected in contravention of a covenant in the lease; and

(d) that one of the alternative conditions set out in Section 9 is complied with.

(2) In *subsection (1) (b)* of this section, “improvement” in relation to building, means any addition to or alteration of the buildings and includes any structure which is ancillary or subsidiary to these buildings, but does not include any alteration or reconstruction of the buildings so that they lose their original identity.

(3) Where it is claimed that a lease complies with this part of the Act on the ground that the permanent buildings were erected in pursuance of an agreement for the grant of a lease on their erection, but express evidence of the agreement is not available, the following provisions shall have effect—

(a) if it is proved that the buildings were erected by the person to whom the lease was subsequently granted, it shall be presumed until the contrary is proved, that the agreement was in fact made and the buildings were erected in accordance with it; 5

(b) in any other cases the Arbitrator may, if he thinks proper on hearing such evidence as is available and is adduced, presume that the agreement was in fact made and that the buildings were erected in accordance with it.

(4) Permanent buildings erected by a lessee in pursuance of a covenant in a lease to re-instate the buildings comprised in the lease, in the event of their destruction by fire or otherwise, shall be deemed to have been erected by the person who erected the original building. 10

(5) The Arbitrator may declare a person to be a person to whom this part applies, notwithstanding that the buildings were, in whole or in part erected in contravention of the covenant, if he is of the opinion that it would be unreasonable to do otherwise. 15

Alternative conditions of lessees.

9.—The following are alternative conditions one of which must be complied with in a case to which *section 8* relates:

(a) the permanent buildings were erected by the person who at the time of their erection was entitled to the lessee's interest under the lease, or were erected in pursuance of an agreement for the grant of a lease upon the erection of the permanent buildings; 20

(b) that the lease is for a term of not less than 50 years and the yearly amount of rent or the greatest rent reserved thereunder, (whether redeemed at any time or not), is of an amount that is less than the amount of the rateable valuation of the property on the appointed day, and the permanent buildings on the land demised by the lease were not erected by the lessor or any superior lessor or any of their predecessors in title. 25 30

Provided that it shall be presumed until the contrary is proved that the buildings were not so erected;

(c) that the lease was granted by a lessor to the nominee of a person (in this paragraph referred to as "the builder") to whom land was demised for the purpose of erecting buildings thereon in pursuance of an agreement between the lessor and the builder, that the builder having contracted to sell the buildings would surrender his lease in consideration of the lessor granting new leases to the builder's nominees; 35 40

(d) that the lease was granted by a lessor to the nominee of a person (in this paragraph referred to as "the builder") in pursuance of an agreement between the lessor and the builder that the lessor, upon the erection of the buildings by the builder, would grant leases to the builder's nominee; 45

(e) that the lease was granted either at the time of the expiration or surrender of a previous lease or subsequent to such expiration or surrender— 50

(i) at a rent less than the rateable valuation of the property at the date of the grant of the lease, or,

(ii) to the person entitled to the lessee's interest under the previous lease provided that the previous lease expired or was surrendered before the 31st day of March, 1931, and that it would have been a lease to which this Part applied, this Act being then in force and provided that it shall be presumed until the contrary is proved, that the person to whom the lease was granted was so entitled.

(f) that the lease is a reversionary lease granted after the 31st day of March, 1931, to a person entitled thereto under Part V of the Act of 1931, or the Act of 1958, or the Act of 1980, or granted on terms settled by the courts or negotiated between the parties;

(g) that the lease being for a term of not less than 50 years was made—

(i) partly in consideration of the payment of a sum of money (other than rent) by the lessee to the lessor at or immediately before the grant of the lease, and for this purpose, any money paid in redemption of any part of the rent reserved by the lease (while the money was paid in pursuance of a covenant in the lease or in pursuance of an agreement made between the lessee and the lessor during the currency of the lease) shall be deemed to be part of the consideration, or

(ii) partly in consideration of the expenditure (otherwise than on decoration) of a sum of money by the lessee on the premises demised by the lease, or

(iii) partly in consideration of both that payment and that expenditure where the sum so paid or expended or the total of these sums was not less than 15 times the yearly amount of the rent or the greatest rent reserved by the lease, which ever is the lesser.

10.—If on the appointed day two or more persons would, having regard to the provisions of this Part be entitled to have their interests in the same land enlarged to the fee simple, only that person whose interest in the said land is the lowest estate of those so entitled therein shall be entitled to have his interest enlarged to the fee simple.

Interest enlarged to fee simple.

11.—In determining for the purpose of *section 9*, the greatest rent reserved by a lease, the following provisions shall have effect:

Greatest rent reserved.

(a) where during the currency of a lease part of the rent is redeemed by a capital sum payment, the reduced rent shall be deemed to be the greatest rent reserved by the lease;

(b) a penal rent payable for any breach of covenant and any exceptional rent reserved for a specified period not exceeding 5 years shall be disregarded.

Extension of
section 9.

12.—A lease for a term of not less than 50 years shall be deemed to comply with *paragraph (g) of section 9*, if—

- (a) the lease was granted partly in consideration of an undertaking by the lessee to carry out specified works on the premises demised by the lease, 5
- (b) the amount to be expended on the works was not specified,
- (c) the works were carried out by the lessee, and
- (d) it is proved that the reasonable cost of the works taken either alone or together with any fine or other payment mentioned in that paragraph was not less than 15 times 10
the yearly amount of the rent or the greatest rent reserved by the lease, which ever is the lesser.

Right of lessee
under expired lease.

13.—Where—

- (a) a lease expired within twenty years before the appointed day, and 15
- (b) the lessee is on the appointed day in possession of the land comprised in the expired lease under yearly tenancy arising by implication from the acts of the parties or as a tenant at will or otherwise, without having obtained a new tenancy from the lessor or acquired the lessor's 20
interest in the land, and
- (c) where no other person was immediately before the appointed day entitled to be granted a lease under Part III of the Act of 1980,

the lessee shall have the same right to have his interest enlarged to 25
the fee simple as he would have, had his lease not expired and had he complied with *section 8* and one of the conditions set out in *section 9* of this Act.

Expiry of section 73
of Act of 1980.

14.—Where a person would upon the appointed day be entitled to have his interest in land enlarged to a fee simple but for the fact that, that interest in land has by virtue of section 73 of the Act of 1980 30
expired, the said person shall be entitled to hold the land until it is declared that his interest in the said land had it not expired on or before the appointed day, did not entitle him to have said interest enlarged to a fee simple, provided that— 35

- (a) the said interest in the said land did not expire earlier than one year before the appointed day, and
- (b) there is within one year after the appointed day initiated the appropriate proceeding to enable the aforesaid declaration to be made or for it to be declared that the said 40
person was on the appointed day entitled to have his interest enlarged to a fee simple, and in the event that it is declared that he is not entitled to have his interest enlarged to a fee simple he shall have held the land during 45
the period from the expiration of his aforesaid interest up to the time of the making of the aforesaid declaration, on the same terms as far as applicable, on which he previously held subject to all proper recoupments or adjustments.

15.—(1) Where a person, on the appointed day holds land under a lease (in this section referred to as “a partly built lease”), which would entitle him to have his interest in the said land enlarged to a fee simple, but for the fact that the proportion of the land which is not covered by the permanent buildings is not wholly subsidiary and ancillary to those buildings the following provisions of this section shall have effect. Partly built lease.

(2) The partly built lease, shall for the purpose of this Act be deemed to comprise two separate leases as follows—

(a) one lease (in this section referred to as “the built on lease”), comprising that portion of the land demised by the partly built lease which is covered by the permanent buildings, together with so much of the land as is subsidiary and ancillary to those buildings, and

(b) the other lease (in this section referred to as “the vacant lease”) comprising the residue of the said land.

(3) For this purpose of the division of the partly built lease, such portion of the rent reserved by that lease as is fairly attributable to the land comprised in the built on lease shall be apportioned to the built on lease and the remainder of the said rent shall be apportioned to the vacant lease, and the covenants on the lessee’s part and the conditions contained in the partly built lease shall be apportioned likewise so as to relate separately to the land comprised in the built on lease and to the land comprised in the vacant lease.

(4) The built on lease shall be the lease to which this Part applies, provided that on the appointed day the interest of the lessee is one which would otherwise under the provisions of this part, be enlarged to the fee simple.

16.—(1) This part also applies to a person who holds land in the following circumstances— Right of yearly tenant.

(a) that the land is on the appointed day covered wholly or partly by permanent buildings and any land not so covered is subsidiary land and ancillary to those buildings;

(b) that the land is held, on the appointed day, under a contract of yearly tenancy or under a yearly tenancy arising by operation of law or by inference on the expiration of a lease or under a statutory tenancy implied by holding over property on the expiration of a lease, which reserves a yearly rent;

(c) that the land has been continuously held under any one or more of the tenancies referred to in *paragraph (b)* (including any expired lease) by the person or his predecessors in title for a period of not less than 25 years prior to the appointed day;

(d) that either—

(i) the yearly rent is less than the rateable valuation of the property on the appointed day, or

(ii) it is proved that the permanent buildings were erected by the tenant or a predecessor in title;

(e) that the permanent buildings were not erected by the immediate lessor or any superior lessor or any of their predecessors in title provided however that it shall be presumed until the contrary is proved that the permanent buildings were not so erected; 5

(f) that the contract of tenancy is not a letting which is made and expressed to be for the temporary convenience of the immediate lessor or of the person holding under the contract and, if the letting was made after the passing of the Act of 1931, stating the nature of the temporary convenience; and 10

(g) that the contract of tenancy is not a letting which is made for or dependant on the continuance of the person holding under the contract in any office, employment or appointment. 15

(2) Where land (in this subsection referred to as “the partly built holding”) would be land in relation to which this section applies but for the fact that the portion of the land which is not covered by the permanent buildings is not wholly subsidiary and ancillary to those buildings subsections (3), (4) and (5) shall have effect. 20

(3) The partly built holding shall for the purpose of this Part be deemed to comprise separate holdings as follows—

(a) one holding (in this section referred to as “the built on holding”) comprising that portion of the land which is covered by the permanent buildings, put together with so much of the land as is subsidiary and ancillary to those buildings, and 25

(b) the other holding (in this section referred to as “the vacant holding”) comprises the residue of the land.

(4) For the purpose of the division of the partly built holding such portion of the rent for the holding as is fairly attributable to the land comprised in the partly built on holding shall be apportioned to the built on holding and the remainder of the rent shall be apportioned to the vacant holding, and the covenant on the part of the person holding the land and the conditions attached likewise so as to relate separately to the land comprised in the built on holding and to the land comprised in the vacant holding. 30 35

(5) The built on holding shall be land in relation to which this section applies.

Restrictions on rights to acquire the fee simple.

17.—(1) *Section 7* does not apply in relation to any land or to a person who has been declared by virtue of section 33 of the Act of 1980 not to be entitled to a reversionary lease of the land under that Act and who is in possession of the land under a lease or tenancy or by virtue of subsection 4 of that section of the Act of 1980. 40

(2) A person shall not be entitled to have his interest in land enlarged to a fee simple under this Part if the lease on which such a right is based is— 45

(a) a lease of land which is used for the purpose of business or includes a building divided into not less than four separate and self-contained flats being a lease which contains 50

provisions enabling the amount of the rent reserved by the lease to be altered within 26 years from the commencement of the lease (not being provisions enabling such rent to be altered once only and within five years from such commencement or upon the erection after such commencement of any buildings upon the land or upon the breach of any covenant in the lease), provided however, that a right to have an interest in land enlarged to a fee simple under *Part II* of this Act, on the appointed day, shall not be excluded by reason only of any provision in a reversionary lease granted after the appointed day, for a review of the rent reserved by the lease, or

- (b) a lease granted before the commencement of the Act of 1967 of land which is used for the purpose of business, being a lease which contains provisions requiring the lessee to carry on business on the land which is restricted in whole or in part of dealing commodities or supplied by the lessor, or
- (c) a lease of land containing a covenant by the lessee to erect a building or buildings or carry out development on the land if and so long as the covenant has not been substantially complied with, or
- (d) a lease made by the Commissioner of Irish Lights, or
- (e) a lease made by Harbour Authorities, within the meaning of the Harbours Act, 1946, whether before or after the passing of the Act.

PART III

Compensation

18.—(1) This section applies to the compensation to be paid to those persons whose interests in land have been extinguished as a consequence of the enlargement to a fee simple of the interest of persons to whom *Part II* of this Act applies.

Determining compensation on arbitration.

(2) In this section, “the relevant date” in relation to any land means the date of the appointed day.

(3) Subject to the provisions of this section the compensation shall be such that in the opinion of the Arbitrator, a willing purchaser would give and a willing vendor would accept for the fee simple or other interest at the relevant date having regard to—

- (a) the rent payable for the land by the person acquiring the fee simple,
- (b) where at the relevant date the land is held under a lease which provides for an increased rent payable within 15 years after that date, the amount of that increase and the time it becomes payable, or
- (c) the current interest yields on securities that the Government issue for subscription in the State,
- (d) if the land is used for the purpose of business, or exceeds one acre and is not used for the purpose of business, the

nature of the land, its location and user and the state of repair of any buildings or structures thereon,

- (e) the price paid for the fee simple or any other interest in the land, on a sale taking place on or after the 22nd day of May, 1964, 5
- (f) any mortgage or other charge on the interest in the land of any person from whom, immediately the person, whose interests is on the appointed day enlarged to the fee simple holds the land,
- (g) the costs and expenses which in the opinion of the Arbitrator would be reasonably incurred, by the persons whose interests are extinguished on the appointed day investing the compensation, and the costs and expenses which in the opinion of the Arbitrator have been incurred by a person whose interest has been enlarged to the fee simple on the appointed day, who prior to the appointed day held the land under lease, by reason of the failure of the lessor to maintain any amenities which he was required to maintain under a covenant in the lease, 10 15
- (h) the value on the relevant date, of the immediate lessor's interest in land held under a lease or yearly tenancy similar to the lease or yearly tenancy, as the case may be under which the land was on the appointed day held by the person whose interest is on the appointed day enlarged to the fee simple, and 20 25
- (i) such other matters as are, in the opinion of the Arbitrator, relevant to the determination of the compensation.

(4) If the land—

- (a) is not used for the purpose of business,
- (b) is held by the person whose interest is on the appointed day enlarged to the fee simple, under a yearly tenancy or under a statutory tenancy implied by holding over property on the expiration of a lease, which reserved a yearly rent, or under a lease which will expire within 20 years after the appointed day, or 30 35
- (c) does not exceed one acre in area,

then subject to the subsequent provisions of this section, the compensation shall not exceed an amount, which if invested on the appointed day in the security which was issued last before the date for subscription in the State, and is redeemable not less than 15 years after that date, would produce annually in gross interest an amount equal to the amount of the rent payable under the lease or yearly tenancy, as the case may be, in the year immediately preceding the appointed day. 40

(5) Where the cost of extinguishing rent or charge out of, or on, land to which *Part II* of this Act applies is fixed by statute, allowance shall be made for such cost in determining the compensation under the section. 45

(6) *Subsection (4)* shall not apply to a case where, under a lease or by virtue of the operation of a statute an increased rent is or may be payable and a rent is subject to review within 15 years after the appointed day.

5 (7) If the land—

(a) is not used for the purpose of business,

(b) is held by the person whose interest is on the appointed day enlarged to the fee simple under a lease that—

(i) will expire within 20 years after the appointed day,

10 (ii) is subject to review in that period under the lease by virtue of any statute,

(iii) does not exceed one acre in area,

15 the compensation shall not exceed the amount which would be determined under *subsection (4)* if the land to which that subsection applied, together with, in respect of each year by which the unexpired term falls short of 15 years, one-fifteenth of the difference between that compensation and the compensation that would be determined under *subsection (4)* if the lease has expired.

20 (8) The Arbitrator shall, if so required by a party to the arbitration, specify the matters, if any, to which he has had regard under *subsection (3) (i)*.

PART IV

Charge on new fee simple

25 **19.—**(1) From the appointed day, the compensation as provided for in *section 18* shall be deemed to be charged upon the interest which has been enlarged to the fee simple. The charge.

30 (2) For the purpose of the said charge the amount of the said compensation shall be a multiple, fixed from time to time by order of the Minister, of the rent reserved under the lease or yearly tenancy under which the person whose interest is enlarged to the fee simple, held the land, unless and until the amount of the compensation is agreed between the relevant parties, or is determined by the Arbitrator.

35 (3) Where the compensation has been paid to the persons entitled thereto, the charge created by this section shall be vacated. The receipt in writing executed by the person or persons entitled to receive the aforesaid compensation shall, be sufficient proof of the vacating of the aforesaid charge.

40 (4) Where the relevant parties agree on the amount or amounts of compensation, or the Arbitrator makes an award for compensation to one or more persons, the amount or amounts so agreed, or the said award shall be deemed to vacate a charge created by *subsection (1)* of this section from the time of the making of the said award.

45 (5) From the time of the making of the said agreement or agreements or the award or awards, the amount or amounts agreed, or the award or awards shall be deemed to be charged upon the interest

enlarged to the fee simple, and where there is more than one award, the charges thereby created shall rank in such priority to each other as the Arbitrator shall decide. Where there is agreement to pay compensation in relation to the extinguishment of more than one interest in the same property, in the absence of agreement between all relevant parties to such agreements as to the priority between each other of the charges created by this section, the said charges shall rank in priority, with the charge in respect of compensation for the extinguishment of the highest estate ranking in priority to all other estates extinguished and each other estate ranking accordingly, so that the charge in respect of the compensation for the extinguishment of the lowest estate extinguished shall rank after all the other estates so extinguished.

(6) The said charge or charges shall be vacated in like manner as provided for in *subsection (3)* of this section.

(7) Any charge created by this section shall be in favour of the person or persons who are entitled to receive the compensation as provided for in this Act.

Deposit of compensation.

20.—The person or persons whose interest in land has been enlarged to the fee simple by virtue of this Act may deposit the amount of the compensation as provided for in this Act with the County Registrar of the county where the land is situated or where the said land is a dwelling house, with the Registrar of Titles and the deposit of the said compensation, as aforesaid, shall vacate any charge created by *section 19* of this Act and a receipt in writing executed by the relevant County Registrar or the Registrar of Titles as the case may be, shall be sufficient proof of the vacating of any such charge.

Entitlement to compensation.

21.—Where a person or persons are entitled, as the owners of any estate or interest (or encumbrances) extinguished under *section 7* of this Act, to compensation and the amount of the compensation as provided for in *section 19 (1)* has been deposited with the County Registrar or the Registrar of Titles, and in any arbitration under the provisions of this Act where the amount of the compensation has been determined by the Arbitrator and where appropriate, apportioned between the persons entitled to the same, the amount of the compensation deposited shall be apportioned in like manner and the person whose interest has been enlarged to the fee simple shall be given credit for the amount of the compensation and interest deposited, and if the amount so deposited is greater than the amount of compensation and interest awarded to all the persons entitled to receive compensation, the amount in excess shall be repaid to the person whose interest has been enlarged to the fee simple.

Right to accept statutory compensation.

22.—Where all those persons entitled to any estate or interest (or encumbrance) extinguished by *section 7*, by a notice in writing addressed to the person whose interest has been enlarged to the fee simple state that they accept in full discharge of the compensation and interest they are entitled to in respect of such estates or interest (or encumbrance) as have been extinguished by *section 7*, the amount of compensation as has been provided for in *section 19 (2)*, and further state in the said notice or notices, the person or persons to whom such compensation or interest is to be paid and where appropriate the portions of such compensation to be paid to such person or persons, the person whose interest is enlarged to the fee simple shall forthwith pay the amount of compensation provided for in

sections 19 (2), in the portions requested, to the persons nominated to receive such portions in the said notice or notices and on making the said payment in this manner the obligation of the person whose interest is enlarged to the fee simple to pay compensation under this Act shall be fully discharged, and any charge created by subsection (1) of section 19 shall be vacated, and the receipt in writing executed by a person or persons entitled to receive the said compensation and each portion thereof shall be sufficient proof of the full discharge of the aforesaid obligation to pay compensation and of the vacating of the said charge.

23.—(1) A person who on or before the appointed day was entitled to the fee simple interest in land, wishes to obtain compensation in respect of the fee simple, shall serve notice in the prescribed form upon each of the following persons who can be found and ascertained, that is to say, a person entitled to have his interest enlarged to the fee simple, any other person or persons who were entitled to any intermediate interest in the said land on or before the appointed day and every person who is the owner of an encumbrance thereon.

(2) Where a person who was, on or before the appointed day, entitled to an intermediate interest in land wishes to obtain compensation in respect of the extinguishment of the said interest pursuant to section 7 of this Act, he shall serve notice in the prescribed form on each of the following persons who can be found and ascertained, that is to say, the person entitled to interest enlarged to fee simple, the person who was on or before the appointed day entitled to the fee simple, any other persons entitled to any other intermediary interest in the said land and every person who was the owner of an encumbrance thereon.

24.—(1) Where, after the appointed day, upon the enlargement of an interest to the fee simple, agreement is reached between all necessary persons for the payment of compensation to the person who was before the appointed day entitled to the fee simple in the land, or to a person or persons who were on or before the appointed day entitled to any intermediate interest in the land or to the owner of any encumbrance thereon by all necessary parties thereto, and any other ancillary matters, the said agreement shall be void unless all the necessary persons to the said agreement complete a freehold certificate in the prescribed form.

(2) Where, after the appointed day, upon the enlargement of an interest to the fee simple, the person or persons, who before the appointed day were entitled to the fee simple or any intermediate interest in the said land, indicate by a notice under section 19 that they accept the compensation, as provided for in section 19 the said persons shall in addition to the notice pursuant to section 19, complete a freehold certificate as provided for in section 24, or such portions thereof as are within the knowledge of that person, and the completion of the said certificate by the said persons shall be a condition precedent to the entitlement of the said person or persons to receiving the said compensation.

25.—“The freehold certificate” shall be in the prescribed form and shall include the following information—

(a) the name of the person entitled to the fee simple;

- (b) the name of each and every person entitled to any intermediate interest in the said land;
- (c) the name of the person entitled to have his interest enlarged in fee simple;
- (d) the name of every person who is the holder of an encumbrance; 5
- (e) a description of each and every intermediate interest in the said land;
- (f) a description of each and every encumbrance thereon;
- (g) an exact description of the land in respect of which an interest is enlarged in fee simple; 10
- (h) the amount of compensation in respect of the fee simple;
- (i) the amount of compensation in respect of each and every intermediate interest; and
- (j) the amount of compensation in respect of an encumbrance thereon. 15

Arbitration.

26.—(1) For the purpose of securing the agreement of all necessary parties to the payment of compensation and interest and/or the freehold certificate and/or the joiner of all necessary parties to an arbitration as provided for, the person who was on or before the appointed day entitled to the fee simple may serve a notice in the prescribed form upon his lessee or tenant, requiring information as to the length or duration of any sub-lease in the land and the existence of any encumbrances thereon, the name and address of the person for the time being entitled to the tenant's interest under the said sub-lease and the name of the owner of any such encumbrances and any other information which may be necessary for the purpose as aforesaid, and may serve a similar notice upon any other person holding the said land under the aforesaid lessee or tenant— 20 25

(2) The person who was on or before the appointed day entitled to an intermediate interest in the land may serve a notice in the prescribed form on the immediate lessor in relation to the land requiring information as to the nature and duration of his reversion in the land and the existence and nature of any encumbrance thereon. The name and address of the person for the time being entitled to the next superior interest in the land and of the owner of any encumbrances and any other information reasonably necessary for the purpose aforesaid and may serve a similar notice upon each person having a superior interest in the land and may serve a notice in the prescribed form upon a lessee or tenant or person holding under him in relation to the said land requiring information as to the nature and duration of any sub-lease or sub-tenancy and the existence and nature of any encumbrance thereon, the name and address of the person entitled to the sub-lease or sub-tenants interest in the land, and of the owner of any such encumbrance, and any other information reasonably necessary for the purpose of the aforesaid and, may serve a similar notice on each other person holding the land under the said sub-lease or sub-tenant. 30 35 40 45

(3) Where a person upon whom a notice may be served under *subsection (1)* of this section in relation to land cannot be found or ascertained, a notice in the prescribed form may be served upon the person receiving the rent in respect of land requiring the name and address of the person to whom the rent is paid by the person upon whom the notice is served and any other information reasonably necessary for the purpose specified in *subsection (1)* of this section, or on the person paying the rent in respect of the land, requiring the names and addresses of any persons holding the land under that person and any other information reasonably necessary for the purpose specified in *subsection (1)* of this section.

(4) A person upon whom a notice is served under this section shall within one month of such service give so much of the information required by the notice as is within his knowledge to the person by whom the notice is served.

(5) Where a person on whom a notice is served under this section refuses or fails to provide the information as required by this section, the person who served the notice may apply to the Court which may make such order as justice may require to compel the person on whom the notice was served to provide the information.

27.—(1) Where a person who is required by this Act to join in an agreement for the payment of compensation or the execution of a freehold certificate or to provide a receipt as required by *section 19* or to serve the notice as required by *section 23* or to be a party to an arbitration under this Act, is by reason of having a fiduciary capacity or a limited estate, or by reason of restrictive covenant in a lease, incapable in law of doing any of the aforesaid acts, the County Registrar for the area in which the land is situated or in the case of the other dwelling house, the Registrar of Titles may on the application of any person concerned empower the person so required to perform any act provided for in this Act.

Powers of County Registrar/Registrar of Titles in relation to payment of compensation or the execution of a freehold certificate.

(2) Where the person is required by this Act to do any of the aforesaid acts as enumerated in *subsection (1)* is an infant or person of unsound mind, or cannot be found, the County Registrar for the area in which the land is situated or where the land is a dwelling house, the Registrar of Titles, may on the application of any person concerned appoint an officer of the Court to do any of the aforesaid acts for and in the name of the person so required and to represent such a person in all proceedings in connection with any matters arising under this Act.

(3) Where any person who is required by this Act to do any of the aforesaid acts enumerated in *subsection (1)* is unknown or unascertained, the County Registrar for the area in which the land is situated, and where the said land is a dwelling house the Registrar of Titles, may on the application of any person concerned appoint an officer of the Court to do any of the aforesaid acts as provided for in this Act and to represent the said unknown or unascertained person in all proceedings arising out of the provisions of this Act.

(4) Where under *subsection (2)* or *(3)* of this section a County Registrar or Registrar of Titles appoints a person to do any of the aforesaid acts enumerated in *subsection (1)* or to represent a person or any proceedings under this Act, the County Registrar or the Registrar of Titles may order that any monies which then became payable to that person shall be paid into Court, and the Court may make such order or give such direction for the disbursement of the money and any interest or dividends thereon as it may deem proper.

(5) The power conferred on a County Registrar or Registrar of Titles by this section or by *section 20* of this Act shall be exercised in relation to an infant or a person of unsound mind who is a ward of court only by leave of the court to which he is a ward and the power conferred on the Court by *subsection (4)* of this section shall be exercised in relation to any such ward who is a ward of the High Court in accordance with the directions of the High Court. 5

Apportionment of rent.

28.—(1) Where land demised by a lease (being a building lease or a proprietary lease) is held by more than one person each of whom is a lessee under a building lease or a proprietary lease or an assignee from any such lessee of part of such land or a successor in title of any such assignee and where the rent reserved by the first-mentioned lease is being paid to the lessor by one only of the said persons, that person shall be entitled to have the rent apportioned between the part of the land held by him and the part of the land held by each such person. 10 15

(2) Where a rent reserved by a lease is apportioned under this Act between different parts of the land demised by the lease—

(a) any such part shall be subject to the payment to the lessor only of the proportion of the rent apportioned in respect thereof and shall not be subject to the payment to any other person of any portion of the rent, and 20

(b) any such part shall be subject only to the performance and observance of the covenants and conditions contained in the lease as far as they are applicable to that part in the same manner as if that part only were demised by the lease subject to the apportioned rent and subject to the performance and observance of covenants and conditions aforesaid. 25

(3) Where a rent reserved by a lease is apportioned under this Act— 30

(a) a fine or payment in the nature of a fine, shall not be charged or payable for or in respect of the apportionment,

(b) the total of the rents payable as a result of the apportionment shall not exceed the amount of the rent reserved by the lease together with the estimated additional cost (if any) attributable to the apportionment or collecting the apportioned rents, 35

(c) the estimated additional cost (if any) of collecting the apportioned rents shall be determined at the time of the apportionment and shall be included in the apportioned rent payable by the person by whom the notice under *section 29* of this Act relating to the lease was served, 40

(d) in an arbitration under the provisions of this Act, where, by reason of the enlargement of an interest to the fee simple on the appointed day, the Arbitrator deems it necessary to apportion rent, the Arbitrator may apportion the said rent in accordance with the provisions of this section. 45

29.—A person who proposed to have a rent reserved by a lease
apportioned under this section shall serve a notice in the prescribed
form upon such persons as can be found to ascertain the person to
whom the rent is payable and any person who holds any of the land
5 demised by a lease as lessee under a building lease or proprietary
lease as assignee from any such lessee or as a successor entitled of
any such assignee.

Service of notice for
reservation of rent.

30.—Where, in relation to a rent which is proposed to be
apportioned under this Act, notices under *section 29* of this Act were
10 served and the person by whom they are served and the persons
upon whom they are served shall without unreasonable delay take
all necessary steps to effect an apportionment of the rent to which
the notices relate.

Service of notice
under *section 29*.

31.—(1) Where a person who is required by this Act to join in the
15 apportionment of any rent is by reason of having a fiduciary capacity
or a limited estate or by reason of restrictive covenants in the lease
under which he holds, is incapable in law of joining in the apportion-
ment, the County Registrar for the area in which the land as respects
which the rent is payable is situated on the application of any person
20 concerned, may empower the person so required to join in the
apportionment.

Power of County
Registrar in relation
to the
apportionment of
rent.

(2) Where a person who is required by this Act to join in the
apportionment of a rent is an infant or a person of unsound mind or
cannot be found or fails to execute any relevant document, the
25 County Registrar for the area in which the land in respect of which
the rent is payable is situated, on the application of any person con-
cerned may appoint an officer of the courts to execute such a docu-
ment for and in the name of the persons required and thereupon the
execution of such a document by such an officer for and in the name
30 of such a person shall for all purposes be as effectual as the execution
thereof by such a person.

(3) Where any person who is required by this Act to join in the
apportionment of rent is unknown, or unascertained, the County
Registrar for the area in which the land in respect of which the rent
35 is payable is situated may, on the application of the person seeking
the apportionment of the rent, appoint any person who is receiving
the rent in respect of the interest in the land of the person making
the application, or such other person as the County Registrar may
see fit to appoint, to represent such unknown or unascertained per-
40 son in all proceedings in connection with the apportionment, and
may at the same time or subsequently appoint an officer of the courts
to execute any relevant document for and on behalf of the person so
required and unknown or unascertained and thereupon the
execution of such document by such officer for and on behalf of such
45 person shall for all purposes be as effectual as the execution thereof
by such unknown or unascertained person.

(4) Where a person upon whom a notice under *section 29* of this
Act in relation to rent is required to be served cannot be found or
ascertained, the person shall be deemed for the purpose of this
50 section to be a person who is required by this Act to join in the
apportionment of the rent.

Costs and expenses incurred in apportionment of rent.

32.—(1) A person (in this section referred to as “the applicant”) who proposes to have a rent apportioned under this Act shall be liable for the payment of the reasonable costs and expenses actually and necessarily incurred in complying with the provisions of this Act by a person upon whom a notice under *section 29* of this Act, in relation to the apportionment of rent has been served, but if a notice under *section 22* of this Act in relation to the rent is served upon a person, the applicant shall not be liable for any such costs or expense incurred by the person after the service of the latter notice. 5

(2) This section shall not apply where the apportionment of rent arises by reason of the enlargement of an interest to the fee simple under *section 7* of this Act. 10

Discontinuing apportionment.

33.—Where a notice under *section 29* of this Act in relation to a rent is served by a person, the person may at any time before the apportionment of the rent, discontinue the apportionment by serving a notice in the prescribed form upon each person upon whom a notice under the said *section 29* was served stating that he is withdrawing the said notice and does not intend to have the rent apportioned. 15

Sale of interest in land.

34.—Upon a sale after the appointed day of an interest in land which upon the appointed day is enlarged to the fee simple, and where a freehold certificate has not already been executed by all necessary parties, the vendor shall furnish to the purchaser on closing the said sale a certificate in writing completed by his solicitor certifying the matters set out at *section 24* and the said sale shall be void unless the said certificate is given by the vendor and accepted by the purchaser and the said certificate shall be a “freehold certificate” for the purpose of this Act. 20 25

PART V

Arbitration 30

Arbitrator.

35.—(1) The Arbitrator shall be either the County Registrar of the county in which the land was situated or where the land is a dwelling house the Registrar of Titles save that in any arbitration arising out of an apportionment of rent or a notice served under *section 30* of this Act the County Registrar for the area in which the land in respect of which the rent is payable is situated, shall be the Arbitrator. 35

(2) If the dispute, difficulty or question arises in regard to any matter arising out of this Act, any person concerned may apply to the Arbitrator to have the matter determined by his arbitration and the Arbitrator shall make such award as justice shall require. 40

(3) Without prejudice to the generality of *subsection (2)* of this section, an Arbitrator may in an arbitration under this Act make an award in relation to land—

(a) determining the person (if any) entitled to have his interest in the lands enlarged under *section 7* of this Act; 45

(b) determining the compensation to be paid by the person whose interest has been enlarged to the fee simple;

- (c) determining the person or persons entitled to receive compensation and the amount which each person is entitled to receive;
- 5 (d) determining if a person is entitled to have a rent apportioned, by virtue of the enlargement of an interest to the fee simple under *section 7* of this Act, under *section 29* of this Act;
- 10 (e) apportioning whether by reason of an enlargement of an interest to the fee simple or for the purpose of *section 29* or otherwise for the purpose of this Act any rent payable in respect of land, part of which is land in respect of which an interest has been enlarged to the fee simple under this Act; and
- 15 (f) determining the land in respect of which an interest has been enlarged to the fee simple.
- (4) Subject to the provisions of this section, the compensation to be paid by the person whose interest has been enlarged to the fee simple shall be such sum which, in the opinion of the Arbitrator, a willing purchaser would give and a willing vendor would accept for
20 the fee simple or other interest on the appointed day having regard to—
- (a) the rent payable for the land by the person whose interest is enlarged to the fee simple,
- 25 (b) where on the appointed day the land is held under a lease which provides for an increased rent payable within fifteen years after the appointed day, the amount of that increase and the time when it becomes payable,
- (c) the current interest yields on securities of the Government issued for subscription in the State,
- 30 (d) if the land is used for the purpose of business or exceeds one acre in area and is not used for business purposes, the area and nature of the land, its location and user and the state of repair of any buildings or structures thereon,
- 35 (e) the price paid for the fee simple or any interest in the land on a sale taking place on or after the 22nd day of May 1964,
- (f) any mortgage or other charge on the interest in the land of any person from whom, mediately or immediately, the person whose interest is enlarged to the fee simple holds the land,
- 40 (g) the costs and expenses which, in the opinion of the Arbitrator, would be reasonably incurred by the persons from whom mediately or immediately, the person whose interest is enlarged to the fee simple holds the land, in investing the compensation payable under this Act,
- 45 (h) the costs and expenses which, in the opinion of the Arbitrator have been incurred by the person whose interest is enlarged to the fee simple, who has held the land under a lease, by reason of the failure of the lessor to maintain any amenities which he is required to maintain under a covenant in the lease,
- 50

- (j) any site fine or premium paid by the person whose interest is enlarged to the fee simple prior to getting possession of the land.

(5) The Arbitrator shall have, for the purpose of and in relation to an arbitration under this Act, the same power for making Orders in respect of— 5

- (a) security for costs;
- (b) discovery and inspection of documents and interrogatories;
- (c) the giving of evidence by affidavit;
- (d) examination on oath of any witness; 10

as the Court has for the purpose of, and in relation to any action or matter in that Court.

(6) (a) Whenever it appears to the County Registrar for any county that he cannot properly deal with a matter falling to be determined by his arbitration under this Act by reason of the fact that he has a personal interest therein or such personal knowledge of the facts or of the parties as might prejudice his determination in the matter, he shall nominate the County Registrar for an adjoining county to hear and determine the matter, and, upon such nomination, the matter may be heard and determined accordingly. 15 20

(b) All or any of the powers and duties conferred upon the Registrar of Titles under this Act may be exercised and performed by such of his officers as the Minister may authorise in that behalf. 25

(7) Sections 29, 35, 36, 37 and 41 of the Arbitration Act, 1954 shall not apply in relation to an arbitration under this Act.

Determination of an arbitration.

36.—Upon the determining of an arbitration by an Arbitrator under this Act arising consequent upon the enlargement of any interest in land to the fee simple under *section 7* of this Act, the Arbitrator shall in addition to any award made complete a certificate which shall be a “freehold certificate” for the purpose of this Act which shall state and certify the information set out in *section 25* and shall be in the prescribed form. 30 35

Commission of Valuation.

37.—(1) An Arbitrator conducting an arbitration under this Act may, and if so requested by any party concerned, shall cause to be sent to the Commissioner of Valuation a request for a valuation, estimate or statement in respect of any particular matter relevant to the determination of the compensation provided for in this Act or the apportionment of rent under this Act and may for that purpose adjourn the arbitration. 40 45

(2) Upon receipt of a request under *subsection (1)* of this section the Commissioner of Valuation shall cause such valuation, estimate or statement as is mentioned in the request to be prepared and sent to the Arbitrator concerned, together with a statement of the fee calculated in accordance with Regulations made by the Minister for Finance, payable therefor.

5 (3) Any party concerned may obtain a copy of the valuation, estimate or statement furnished by the Commissioner of Valuation to him in pursuance of this section, subject to the payment at the rate for the time being charged by law for copies of documents obtained from a Circuit Court Office or from the Land Registry whichever is appropriate.

10 (4) The fee payable under this section for a valuation, estimate or statement sent by the Commissioner of Valuation to an Arbitrator in pursuance of this section shall be borne and paid to the Arbitrator by such party or parties and in such proportions as he shall direct and shall be paid by the Arbitrator into or disposed of by him for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.

15 (5) Where a request is sent under this section in relation to land to the Commissioner of Valuation at the request of a party, the Arbitrator concerned shall in determining the compensation as provided for in this Act, or in apportioning a rent payable as the case may be, have regard to the valuation, estimate or statement furnished by the said Commissioner.

20 **38.—**(1) A County Registrar and a Registrar of Titles shall keep—
Registers kept by
County Registrar
and Registrar of
Titles.

(a) a register in the prescribed form of all awards made by him in arbitration under this Act in relation to the compensation to be paid under this Act in relation to the enlargement of an interest in land to the fee simple;

25 (b) a register in the prescribed form of all other awards made by him in arbitration under this Act; and

(c) a register in the prescribed form of all freehold certificates completed by him under this Act.

30 (2) Registers kept under this section shall be made available for public inspection and copies of entries in the registers shall be made available to the public and the Minister may prescribe the places at which and the times during which the registers shall be so made available and, with the concurrence of the Minister for Finance, the fees to be charged for such inspection and for such copies.

35 (3) A copy of an entry in a register kept under this section by a County Registrar or by the Registrar of Titles purporting to be signed by the County Registrar or the Registrar of Titles shall, without proof of signature of the person purporting to sign the copy or that he was the County Registrar, be evidence until the contrary is
40 proved of the matters stated in the entry.

39.—(1) An appeal shall lie to the Court against an award, order, certificate or other decision of a County Registrar or Registrar of Titles in an arbitration under this Act. Appeals.

45 (2) The Court may remit, before giving its decision, any matter the subject of an appeal to it under this section to the reconsideration of the County Registrar or the Registrar of Titles who conducted the arbitration in question or remit the matter to the re-hearing of another County Registrar or where appropriate such of the officers of the Registrar of Titles as shall be nominated by the Minister for

that purpose. An award or order of a County Registrar or the Registrar of Titles in an arbitration under this Act may by leave of the Court, be enforced as a judgement or order to the same effect and, where leave is so given, judgement may be entered in the terms of the award. 5

Method of service
of notice.

40.—(1) The service of a notice under this Act may be effected by post and, if so effected, shall be by registered post.

(2) Service of notice under this Act on behalf of a person shall be deemed, for the purpose of this Act, to be service of the notice by a person. 10

PART VI

Housing Authority Dwelling

Leasing of housing
authority dwelling.

41.—(1) Where a housing authority has leased to a tenant a dwelling provided by it under statutory authority, the tenant shall upon the appointed day be entitled to have his interest in the said dwelling enlarged to the fee simple subject to the provisions of this section. 15

(2) The terms and conditions specified in the instrument by which the lease was effected (other than a condition for the payment of rent) shall continue to apply in relation to the dwelling for a period of twenty-five years from the date of the lease or for the period during which any part of the purchase price of the leasehold interest remains unpaid, whichever is the greater. 20

(3) Where the rent reserved by the lease contains an element in respect of the repayment of the purchase price of the leasehold interest, the housing authority shall certify the amount of the purchase price and the amount of the rent attributable to the repayment of that amount, and the amount of such purchase price shall stand charged on the property from the appointed day. 25

(4) Where a housing authority has leased a dwelling provided by it under statutory authority to a person other than a tenant thereof, the lessee shall, upon the appointed day be entitled to have his interest in the said dwelling house enlarged to the fee simple, and any conditions specified in the instrument by which the lease was affected in respect of the repayment of the price of the leasehold interest or in respect of the refund of a subsidy shall attach to the fee simple. 30 35

(5) The provision of this Act in relation to compensation shall apply to dwellings provided by a housing authority under statutory authority where, under this Act, an interest is enlarged to the fee simple. 40

(6) For the purpose of determining the compensation, the rent shall be taken as being the amount of the rent actually paid, less any amount attributable to the repayment of the purchase price of the leasehold interest.

(7) Every term or condition attaching to the enlargement of an interest to the fee simple pursuant to this section shall be binding upon the person whose interest is upon the appointed day enlarged to the fee simple, and on his personal representatives and successors in title. 45

(8) The provisions of *Part IV* of this Act shall apply to the enlargement of the fee simple of the interest of a person in a dwelling provided by a housing authority as provided for in this part of the Act.

(9) In this section references to a lease are to the grant of a leasehold interest in consideration of a purchase price.

PART VII

Registration of titles enlarged to the fee simple

42.—(1) This section shall come into effect on such day as the Minister may by order appoint.

Amendment of
section 23 (1) of
Registration of Title
Act, 1964.

(2) Section 23 (1) of the Registration of Title Act, 1964 is hereby amended by the insertion of the following paragraph:

“(d) after the appointed day as provided for in the *Landlord and Tenant (Ground Rent Abolition) Act, 1997* where an interest in lands was on the said appointed day enlarged to the fee simple, the ownership of the freehold, of the person whose interest was enlarged to the fee simple”.

(3) A “freehold certificate” as provided for in this Act shall be deemed to be a conveyance or sale for the purposes of sections 24 and 25 of the Registration of Title Act, 1964 (which provides for the extension of compulsory registration of ownership) and shall be deemed to be an instrument in the prescribed form for the purpose of section 51 of that Act.

43.—The Registrar of Titles shall upon being supplied with a “freehold certificate” as provided for in this Act and such further documents which he may require provide for the registration of title to an interest enlarged to the fee simple under *section 7* of this Act, under the Registration of Title Act, 1964.

Registration of title
under *section 7*.

PART VIII

Costs

44.—(1) The fee to be taken in the Land Registry in respect of the duties and obligations imposed on the Registrar of Titles under this Act shall be as follows—

Land Registry fees.

(a) an application under *section 35* for a “freehold certificate” or compensation on the consent of all necessary parties, the fee shall be £30, where a person whose interest is enlarged to the fee simple is in occupation of the dwelling house,

(b) for an arbitration under *section 35* where the person whose interest is enlarged to the fee simple is in occupation of the dwelling house the fee shall be £30.

(2) The Minister with the consent of the Minister for Finance may order the fees to be taken in the Land Registry for the purpose of this Part, other than the fees mentioned in *subsection (1)* and may revoke or amend any such order.

(3) With the exception of fees fixed in respect of the cases mentioned in *subsection (1)* the fees shall, so far as possible, be so fixed as to meet the full cost of dealing with the relevant application.

(4) The person whose interest is enlarged to the fee simple under *section 7* of this Act shall be liable for the fee incurred under the provisions of *subsection (1) (a)* of this section. The Arbitrator shall decide who shall be liable for the payment to be taken for the Arbitrator as provided at *subsection (1) (b)* of this section. 5

(5) Where an application under this Act to the Registrar of Titles relates to a dwelling house in respect of which an interest shall be enlarged to the fee simple, neither the applicant nor any other party shall be liable to make any payment apart from the fees fixed by or under this section, to the Registrar in respect of the arbitration, or the completion of a “freehold certificate” save where in the opinion of the Registrar any party to the arbitration has behaved unreasonably (whether by act or omission) or has, without reasonable cause— 10 15

(a) refused or failed to comply with a provision of this Act or delayed in so complying; or

(b) refused or failed to reach agreement or delayed in reaching agreement in relation to any matter under this Act, 20

and thereby occasioned the incurring of the whole or part of the costs for dealing with the arbitration, the Registrar may direct that the whole or a specified part of such costs shall be paid by that party.

(6) Section 14 (2) of the Registration of Title Act, 1964 shall not apply to the taking of fees in relation to the function of the Registrar of Titles under this action. 25

Burden of costs.

45.—(1) Where a person proposes to obtain compensation as provided for by this Act or proposes to obtain a “freehold certificate” as provided for in this Act, and serves the notice required by this Act on the necessary persons, the costs and expenses incurred in complying with the provision of this Act by the person serving the aforesaid notices or the persons upon whom they are served shall be borne by the person whose interest is enlarged to the fee simple. 30

(2) This section shall not apply where the person whose interest is enlarged to the fee simple is in occupation of a dwelling house to which that interest relates. 35

Payment of costs of arbitration.

46.—(1) Where an award or order is made or “freehold certificate” completed in an arbitration under this Act by a County Registrar, the County Registrar conducting the arbitration shall direct to and by whom and in what manner the costs of the arbitration shall be paid and shall tax or settle the amount of the costs to be paid. 40

(2) Notwithstanding any other provision of this Act, where in the opinion of the County Registrar a party to an arbitration under this Act conducted by him has behaved (whether by act or omission) unreasonably or has, without reasonable cause— 45

(a) refused or failed to comply with the provisions of this Act or delayed in so complying, or

(b) refused or failed to reach agreement or delayed in reaching agreement in relation to any matter under this Act,

5 and such behaviour, refusal, failure or delay occasioned the incurring of the whole or part of the costs of the arbitration, the County Registrar may direct that, as he may consider reasonable, the whole or such part as he may specify, of the costs of the arbitration shall be paid by the party aforesaid.

10 (3) A County Registrar shall not direct the fees of counsel retained on behalf of a party to an arbitration under this Act to be paid by another party to the arbitration unless a question of law was involved in the arbitration of such kind as, in the opinion of the County Registrar, rendered it necessary to retain counsel.

(4) References in this section to the costs of an arbitration are references to party and party costs.

15 PART IX

Miscellaneous

47.—(1) Where a person holds land under a lease (whether granted before or after the commencement of this Act) which is a lease which gives rise to a right to a reversionary lease but is a lease to which the provisions of *Part II* of this Act do not apply and the person holding the said lease proposes to do in relation to the land anything—

25 (a) which is a development and in respect of which permission has been granted under Part IV of the Local Government (Planning and Development) Act, 1963;

(b) which is an exempted development for the purpose of that Act; or

30 (c) as regards which consultation is required by section 84 of that Act and has taken place to the extent required by that Act;

and which, if done, would, apart from this section, be a breach of any covenant, condition or agreement in the lease prohibiting the alteration of the user of the land or the making of an improvement (within the meaning of the Act of 1980) thereon, the covenant condition or agreement shall not, insofar as it prohibits such alterations or the making of such an improvement, apply or have effect in relation to that thing.

(2) *Subsection (1)* of this section does not apply in relation to a covenant, condition or agreement—

40 (a) to which *section 48* of this Act applies; or

(b) which is contained in a lease made by a Harbour Authority within the meaning of the Harbours Act, 1946, as lessor whether before or after the passing of this Act; or

45 (c) which has the effect of prohibiting the erection, provision or re-construction (not being an improvement within the meaning of the Act of 1980) of any building or structure insofar as the covenants, conditions or agreement has such effect; or

- (d) permitting any alteration in the user of the land demised by the lease which would impose a liability or increase liability on the lessor for the payment of rates, insofar as the covenant, condition or agreement prohibits such alteration. 5

Covenants.

48.—(1) Where the interest of a person in land is upon the appointed day enlarged to the fee simple all covenants subject to which the person held the land prior to the appointed day other than a covenant specified in *subsection (2)* of this section shall thereupon cease to have effect. 10

(2) In the case of a covenant—

- (a) which protects or enhances the amenities of any land occupied by the person who was prior to the appointed day the immediate lessor of the person whose interest was on the appointed day enlarged to the fee simple; or 15
- (b) which relates to the performance of a duty imposed by statute on any such person; or
- (c) which relates to a right of way over land in respect of which an interest has been enlarged to the fee simple or a right of drainage or other right necessary to secure the development of other land, 20

the covenant shall, notwithstanding anything contained in this Act, continue in full force and effect and shall be enforceable as follows—

- (i) in the case of a covenant which does not relate to a right of way, right of drainage or other right aforesaid by any person or his personal representatives or successors in title, as if the aforesaid interest was not enlarged to the fee simple; and 25
- (ii) in the case of a covenant which does so relate, by any person aggrieved by breach of the covenant. 30

(3) In any case where the fee simple in land was acquired since the commencement of the Landlord and Tenant (Ground Rents) Act, 1967 by a person who had an interest in the land, any covenant subject to which the grantee held the land other than a covenant specified in *subsection (2)* shall be deemed to have ceased to have effect at the date of acquisition. 35

(4) Section 72 of the Registration of Title Act, 1964 (which relates to burdens that affect land without registration) is hereby amended by the insertion of the following paragraph:

“(r) covenants which continue in force by virtue of *section 48* of the *Landlord and Tenant (Ground Rent Abolition) Act, 1997*’.

Mortgages or charges.

49.—Where, under this Act, a person has on the appointed day, his interest in land enlarged to the fee simple, if the previous interest in the land of that person was subject to a mortgage or charge (including a mortgage by sub-demise) the mortgage or charge shall, if it has not been extinguished, be deemed to be a mortgage or charge on the fee simple of the land. 45

50.—The County Registrar or the Registrar of Titles may, if he thinks proper, lodge any money deposited with him under this Act in Court and the jurisdiction conferred on him under this Act in relation to any such money shall thereupon be exercised by the judge of the Court for the time being assigned to the circuit in which is situated the premises or any part of the premises in relation to which the money is lodged.

Lodgement of monies.

51.—(1) The County Registrar or the Registrar of Titles shall deal with applications received by them under the provisions of this Act in the order in which they are received insofar as is consistent with the efficient discharge of all of their respective functions.

Receipt of applications.

(2) Where a County Registrar or the Registrar of Titles is satisfied for reasons submitted in writing by an applicant or other person concerned that an application is exceptional in that the duty imposed by subsection (1) of this section would result in a serious inconvenience or substantial loss to any such person, he may deal with the application otherwise than in the order in which it was received.

(3) No action shall lie against a County Registrar or the Registrar of Titles in relation to the duty imposed upon them under this section.

52.—Where a lessee under a lease which gives rise to a right to a reversionary lease is, by virtue of a covenant, condition or agreement (whether contained in the lease or in an ancillary or collateral agreement, not being a mortgage) required to affect a contract of insurance in relation to a building or buildings on the land demised by the lease with a specified insurer or an insurer selected or approved of either by the lessor under the lease or another person or through a specified agent, or an agent selected or approved of either by the said lessor or another person, the covenant, condition or agreement shall be construed and have effect as if it were a covenant, condition or agreement requiring the lessee to effect such contract of insurance, either directly or through any agent, as the case may be, with any insurer who is for the time being the holder of an assurance licence granted under the Insurance Act, 1936.

Contract of insurance.



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**AN BILLE UM THIARNAÍ TALÚN AGUS TIONÓNTAÍ
(BUNCHÍOSANNA A CHEALÚ), 1997
LANDLORD AND TENANT (GROUND RENT ABOLITION)
BILL, 1997**

EXPLANATORY MEMORANDUM

This Bill will provide for the abolition of all ground rents and for the payment of compensation to those whose interests in land are affected.

The purpose of the Bill is to bring about the termination of all ground rents at a definite time in the future. The Bill applies to all ground rents in respect of private dwellings, local authority dwellings, and all other premises, held currently under a ground rent lease. It marks the final step in the abolition of ground rents.

The key features of the Bill are as follows:—

1. On an appointed day the interest of the ground rent tenant will be enlarged into a freehold interest or fee simple.
2. The ground landlord will receive a right to compensation. Payment of this compensation will be secured by a charge on the new freehold premises.
3. The compensation due will be paid on the same basis as already applies to the purchase price under the Landlord and Tenant (Ground Rent) Acts 1967 to 1989.
4. Each householder will receive a freehold certificate which will show that he/she is the absolute freeholder of the house.
5. Where a Local Authority is involved the transfer document will become a freehold certificate.
6. A system of simple registration in the Land Registry will be introduced. This would simplify subsequent transfers when a house is sold again.
7. For leases which have expired or have less than 20 years to run, the householder will be entitled to the freehold on a similar basis, without having to pay a portion of the value of the house as was the case heretofore.

The central purpose of the Bill is achieved by *section 7*, which is the key section of the Bill. This section provides that on a day to be appointed by the Minister for Equality and Law Reform the interest of a person holding property under a ground rent lease is enlarged

to the freehold (fee simple) and all intermediate interests are extinguished. Therefore, all various strata of sub-lease that are so common in titles to urban property will be wiped out, leaving the person in occupation under the ground rent lease with the freehold.

Sections 8 to 18 specify the persons who are entitled to have the freehold. The categories of persons entitled under this Bill are broadly similar to the categories entitled to purchase the fee simple under the Landlord and Tenant (Ground Rents) (No 2) Act, 1978.

For leases which have expired or have less than 20 years to run, the householder will be entitled to the freehold on a similar basis, without having to pay a portion of the value of the house as was the case heretofore.

Upon the termination of all ground rents in the manner provided for, in order to comply with the constitutional rights of the former owners of the freehold and the former owners of intermediate interests, it is necessary to provide for the payment of adequate compensation in respect of these interests, that are extinguished. The Bill provides that this compensation will be paid by the person who becomes the new freeholder. In effect this Bill reverses the process in the 1967 and 1978 Acts whereby a ground rent could be purchased. *Section 18* of the Bill sets out the method of calculating the compensation to be paid. The method adopted is similar to that used in the 1978 Act as amended by the Landlord and Tenant (Amendment) Act, 1984.

There is one important difference, in that the method used for calculation of the value of the lessor's interest where a lease has expired or has less than 20 years to run is abandoned, and the compensation to be paid by persons in these situations is calculated on the same basis as the compensation for other categories.

Because the abolition of ground rents on a certain day deprives the former owner of the freehold and the former owner of intermediate interests of their respective assets, in order to ensure that they actually receive the compensation due to them thus vindicating their constitutional rights, some reliable legal protection has to be put in place for them. *Section 19* provides for the creation of a charge or mortgage on the new freehold to secure payment of the compensation due.

Sections 20 to 23 provide an easy way of disposing of compensation claims, and the payment of them by fixing the compensation at a fixed multiple of the ground rent (to be fixed by ministerial Order). A receipt for payment of this sum vacates the charge created. Where an arbitration is held to determine the compensation, once the arbitrator makes his award the sum awarded becomes a charge on the freehold instead of the sum derived from the fixed multiple under *section 20*.

All charges can be vacated by the payment of the compensation and the giving of a written receipt for it.

After hundreds of years of creating numerous layers of property ownership often resulting in several leases attaching to the same property, the time is ripe in the wake of the abolition of ground rent leases, to tidy up this situation by providing for the registration in the Land Registry of all the new freeholds, created by the Bill. The key to doing this is contained in *sections 24 to 27*. These sections provide that the end result of either an agreement between the new freeholder and those interests which have been extinguished, or of

an arbitration, is what is described in the Bill as a “freehold certificate”. This document must be completed by the parties to the agreement or the arbitrator, and it contains the basic information relevant to the transaction. Later in the Bill there is provision for the registration of the new freeholder in the Land Registry upon production of a “freehold certificate” and other essential documents of title.

Sections 28 to 34 deal with consequential technical legal matters.

Sections 35 to 40 set out the procedure for arbitrating disputes concerning any matters that arise from the provisions of the Act. These sections adhere to procedures similar to those in the 1967 and 1978 Acts. Where the property is not a dwelling house, any arbitration is conducted by the County Registrar of the County where the property is situated, and the provisions of the 1967 Act in relation to the conduct of the arbitration are adopted, with appropriate changes.

Where the property is a dwelling house the process of dealing with compensation claims and/or the completion of the “freehold certificate”, can be done through the Land Registry at minimal cost, and without the necessity of employing lawyers. This procedure is broadly similar to that set up in Part III of the 1978 Act, but with appropriate changes.

Section 41 deals with housing authority dwellings. These are dealt with on the same basis as all other dwellings. The special vesting procedure, by way of transfer order, contained in the 1978 Act cannot be retained because in many instances the Local Authority would not on the appointed day be the owner of the freehold and therefore would not have been in a position to vest the freehold. Also the interest of the former freeholder and any other former intermediate owners could not be adequately protected if the procedure used in relation to local authority dwellings was adhered to.

Sections 42 and 43 deal with the registration of the new freehold titles in the Land Registry. A system of compulsory registration is provided for, but only becomes effective on the order of the Minister for Justice. Otherwise the Act provides for registration, on production in the Land Registry of a “freehold certificate” and any other documents which the Registrar of Titles might require.

Sections 44 to 47 deal with the minimal costs that arise on dealing with compensation claims and completing “freehold certificates”.

So far as dwelling houses are concerned where the new freeholder is in occupation of the dwelling house, as in the 1978 Act, there is only a nominal cost of £30.

For all other properties the costs are paid by the new freeholder where no arbitration takes place and where there is arbitration, the arbitrator has discretion as to whom he directs to pay costs or any portion of them.

Sections 47 to 52 deal with miscellaneous matters such as the discharge of some covenants and the continuation of others. These sections arise because of the repeal of the 1967 and 1978 Acts and merely re-enact some of the miscellaneous provisions contained in these Acts.

*Deputy Michael Woods,
January, 1997.*

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