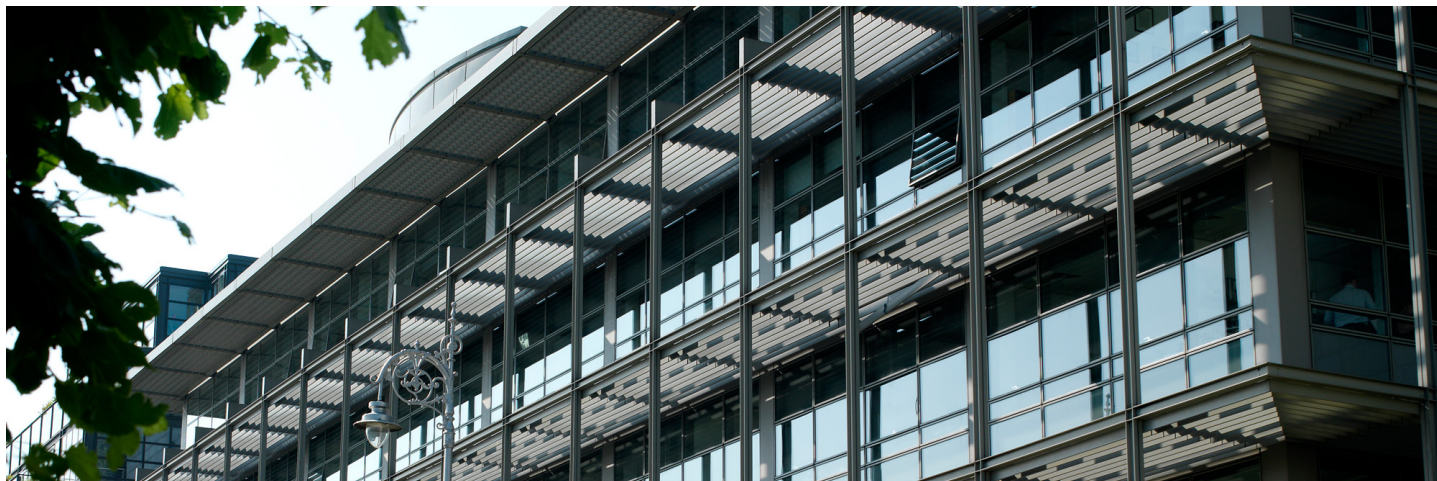


A guide to Northern Irish property law and practice - as compared to England and Wales

PART 1 - GENERAL PRINCIPLES AND LEGISLATION



General

In substance Northern Irish property law is largely based on similar concepts to English property law. The following points are some of those which should be noted:

As under English law, property can be held under freehold title or a leasehold title which confers ownership for the period of years granted by the relevant lease and held from the owner of a superior title in that property. There is also a special category in Northern Ireland called "fee farm grant;" arising partly due to the way land was transferred to participants in the 17th century plantation of Ulster.

Fee farm grant is effectively freehold title but with some of the characteristics of a long lease, including a rent and forfeiture rights. It would be comparable to freehold subject to a rentcharge in England. The Property (NI) Order 1997 prohibited the creation of any new fee farm grants after its enactment, but many are still in existence.

Long leases were often granted out of such title. Due to this, and other various historical reasons, much of the land in Northern Ireland is held under long leases and is sold on on the same basis. "Long" in this context could be for a term up to 10,000 years! All of this has often led to "pyramids" of titles (ie several series of leases and superior interests) for each land holding, given that the leases would all have their own separate forfeiture provisions and so could not be amalgamated.

Even with compulsory registration having been introduced (in 2003, so much more recently than in England), a site could comprise several (or several dozen for large areas) separate registrations, with each held under a separate pyramid of long leasehold interests, due to that lack of amalgamation into one title where such leases are involved.

In part due to the excessive restrictions on use which such pyramids can cause, the Northern Ireland Lands Tribunal (established by the Property (NI) Order 1978), was given extensive powers to extinguish historic covenants which "unreasonably" impede the enjoyment of land. It is more readily accessible than the English Lands Tribunal. It will not however, extinguish ground rents or rights of forfeiture.

3. Legislation

Northern Irish law is still essentially pre-1925 law, with old legislation like the Conveyancing Acts, 1881-1911 and the Settled Land Acts, 1882-1890, still in force.

The Law of Property Act 1925 does not apply to Northern Ireland, although, many of the concepts in that Act are familiar to Northern Ireland as it amalgamated some of the legislation which then applied to the whole of the UK, including Northern Ireland. The Prescription Act (Ir) 1858 is still the relevant legislation dealing with prescriptive easements in Northern Ireland for example. The relevant period required is the same as in England though, namely 20 years use.

The older statutes still in force in Northern Ireland do not fit in well with modern conveyancing practice. In some respects they also conflict with each other. The result is that Northern Irish property law is not as clear cut or accessible as English law. Generally, English case law is persuasive however, save in the cases where Northern Irish law is specifically different.

Northern Ireland has had some limited jurisdictional specific modification applied to it. The Property (NI) Order 1997 for example, provides for certain future “positive” covenants (including some maintenance liabilities and obligations to make on-going payments) to “run with” freehold land and therefore bind successors in title from the date of the effect of the Order; in a departure from the norm in England where only “restrictive” (or negative) covenants run with the land.

Other associated/ancillary legislation will be more familiar to those used to the English terminology. For example, the Insolvency (NI) Order 1989, the Building Regulations (NI) Order 1972 and the Planning (Use Classes) Order (NI) 2004 are all similar to the English equivalents, although the sub division of the clauses is different and does need a separate review.

Article 31 of the Private Streets (NI) Order 1980 is much like Section 38 of the Highways Act 1980, Article 17 of the Water & Sewerage Services (NI) Order 1973 is quite like Section 104 of the Water Industry Act 1991 and Article 40 of the Planning (Northern Ireland) Order 1991 is similar to Section 106 of the Town & Country Planning Act 1990; although there are differences in planning law and policy generally in Northern Ireland. Not least the longer time it generally takes planning applications to be processed.

But the process for infrastructure adoption and the associated “section” agreements and bonds, as you can see, would all be recognisable.

Property taxes

Stamp Duty Land Tax and Value Added Tax are the same in Northern Ireland as in England. The relevant applications can all be made in the same way too.

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This commentary is current as at 9 September 2013 and is intended for guidance only. Full legal advice should be obtained in relation to your particular circumstances and commercial objectives on a case by case basis.