A CONCISE GUIDE TO STATUTORY CHARGES

Arthur Moir*

Some conveyancers, who are only vaguely acquainted with the Statutory Charges Register, responded to Folio's recent survey by requesting an article on the topic. So, in the following paragraphs we shall look at the purpose of the Register, what it contains and how to use it.

The Register

The Statutory Charges Register was set up in 1951 to provide a "one stop shop" where conveyancers can check whether or not a property is affected by a range of statutory restrictions. The Register is maintained by the Land Registry, which is now part of Land and Property Services, and is situated at 27-45 Great Victoria Street, Belfast BT2 7SL.

The Register is map-based and all applications for registration must be accompanied by a map which accurately identifies the property. Conveyancers may apply for official searches, make personal searches at the public counter or search on-line using Landweb Direct. Applications for official searches must also be accompanied by an accurate map.

Types of Statutory Charge

Although we normally refer to statutory <u>charges</u>, this phrase actually embraces a variety of charges, restrictions and notices, which are listed in Schedule 11 to the Land Registration Act (NI) 1970 (as amended). Since 1970, over 50 new items have been added to the list and several of the original items have been repealed.

The statutory charges that are currently registrable are described below. For ease of reference I have set these out under rough generic headings.

Access to the Countryside

Matters relating to public paths and access agreements under the Access to the Countryside (NI) Order 1983.

Agricultural property

- Conditions applied to cottages under section 10 of the Hill Farming Act 1946.
- Improvement notices under Part II of the Agriculture Act (NI) 1949.
- Conditions applied to amalgamated agricultural units under Schedule 3 to the Agriculture Act 1967.
- Conditions regarding grants under Parts I and II of the Housing on Farms Act (NI) 1972.

Amenity Lands/Conservation

- Agreements, covenants and waivers under sections 2 and 2A of the Amenity Lands Act (NI) 1965.
- Agreements, covenants, waivers or declarations under Articles 8, 9, 17 or 24 of the Nature Conservation and Amenity Lands (NI) Order 1985.
- Entries in the register under regulation 10 and agreements under regulation 13 of the Conservation (Natural Habitats, etc.) Regulations (NI) 1995.

^{*} Arthur Moir, the former Registrar of Titles, is currently legal consultant to the Land and Property Services Agency.

Aviation

- Grants and agreements under section 55 of the Civil Aviation Act 1982.
- Orders under Articles 7 and 8 of the Airports (NI) Order 1994.

Defence Wayleaves

Wayleave orders or restrictions under sections 14 and 16 of the Land Powers (Defence) Act 1958.

Environment (Areas of Special Scientific Interest)

Declarations under Article 28, management agreements under Article 34 and management notices under Article 35 of the Environment (NI) Order 2002.

Historic Monuments

Entries under Article 3 and notices under Article10 of the Historic Monuments and Archaeological Objects (NI) Order 1995.

Housing

- Statutory conditions attached to a house following payment of a grant, by virtue of section 7 of the Housing (No 2) Act (NI) 1946.
- The following matters under the Housing (NI) Order 1981-
 - (a) clearance orders made under Article 33;
 - (b) demolition notices served under Article 35;
 - (c) closing orders made under Article 38;
 - (d) charges for repairs created under Article 42;
 - (e) declarations of proposed redevelopment areas under Article 47:
 - (f) declarations of housing action areas under Articles 52 and 54;
 - (g) conditions regarding land held by housing associations under Article 123.
- The following matters under the Housing (NI) Order 1992 -
 - (a) conditions regarding land acquired by housing associations, under Article 13;
 - (b) grant conditions registrable by virtue of regulations made under Article 73;
 - (c) matters affecting houses in multiple occupation under Articles 76, 79, 80, 84 and Schedule
 - (d) charges for repairs under Article 84.
- Charges, grant conditions and conditions regarding participation in group repair schemes under Part III of the Housing (NI) Order 2003.

Land Acquisition

Particulars of land injuriously affected under Article 11 of the Land Acquisition and Compensation (NI) Order 1973.

Land Development Values

Conditions or notices regarding recovery of compensation under section 24 of the Land Development Values (Compensation) Act (NI) 1965.

Local Authority Charges and Restrictions

- Charges acquired by a local authority under any statutory provision.
- Prohibitions or restrictions relating to the user of land, imposed by a local authority under any statutory provision, which are binding on successive owners of land.

Matrimonial/Civil Partnerships

- Orders under Article 39 of the Matrimonial Causes (NI) Order 1978 or paragraph 67 of Schedule 15 to the Civil Partnership Act 2004 that render a disposition of land liable to be set aside at the instance of an applicant for financial relief.
- An occupation order under the Family Homes and Domestic Violence (NI) Order 1998 that renders a disposition of land liable to be set aside.

<u>Planning</u>

The following matters under the Planning (NI) Order 1991 -

- (a) an entry in a list of buildings of special architectural or historic interest;
- (b) tree preservation orders;
- (c) enforcement notices;
- (d) listed building enforcement notices;
- (e) certain conditions imposed on the grant of planning permission;
- (f) notices regarding replacement of trees;
- (g) orders for discontinuance of use or alteration of buildings under Article 39;
- (h) planning agreements under Article 40;
- (i) designation of conservation areas under Article 50.

Private Tenancies

Charges for repairs carried out by a local authority under Article 25 of the Private Tenancies (NI) Order 2006.

Rates

Agreements for deferred payments under Article 29A of the Rates (NI) Order 1977.

Rights of light

Obstruction notices under section 1 of the Rights of Light Act (NI) 1961.

Roads/Streets

- Notices, charges, demands, agreements or undertakings under sections 11, 14, 15, 24 and 32 of the Private Streets Act (NI) 1964.
- Notices, charges, demands, agreements or undertakings under Articles 11, 14, 15, 24 and 32 of the Private Streets(NI) Order 1980.
- Any of the following matters under the Roads (NI) Order 1993 -
 - (a) a notice under Article 49 (preventing obstruction of view);
 - (b) a condition under Article 75 regarding building over roads;
 - (c) a condition under Article 76 regarding constructing bridges over roads;
 - (d) an agreement under Article 117 on the use of land near a road;
 - (e) a charge for work done by the Department under Article 122.
- Declarations regarding prospective roads under Article 46 of the Street Works (NI) Order 1995.

Social Need

Conditions for the repayment of financial assistance under Article 4 of the Social Need (NI) Order 1986.

Turbary

Regulations regarding turbary made under section 21 of the Irish Land Act 1903 or section 26 of the Northern Ireland Land Act 1925.

Water and Sewerage

Notices, decisions and agreements under Articles 3, 13 and 17 of the Water and Sewerage Services (NI) Order 1973.

Registering a Statutory Charge

In practice, most applications for the registration of statutory charges are made by public bodies. Such applications are made under Rule 209 of the Land Registration Rules (NI) 1994 and should include -

- a description of the land,
- details of the applicant,
- reference to the statutory provision,
- the date, nature and, if appropriate, the duration of the charge, and
- the amount of money, if any, secured by the charge.

The application should be accompanied by a SCR1 application form (available from the Registry), any relevant documents and an accurate ordnance map. Applications for registration of priority notices are made under Rule 211 and should contain similar information.

Applications under the Rights of Light Act (NI) 1961 are rather different and must comply with the provisions of that Act rather than Rule 209.

Such applications should -

- state the postal addresses of both the servient and the dominant lands,
- identify any persons likely to be affected, and
- confirm that registration of the notice is intended to be equivalent to the obstruction of the access of light that would be caused by the erection of a single opaque structure of unlimited height, in the position shown on an attached map.

The application should be accompanied by (a) copies of notices served on anyone likely to be affected by the registration, (b) affidavits of service, and (c) a copy of an advertisement of the application that was placed in a newspaper circulating in the locality of the lands.

The Effect of Registration

Statutory charges can affect both registered and unregistered land. Double registration is not required, and once a statutory charge has been registered on the Statutory Charges Register, there is no need to register it in either the Land Registry or the Registry of Deeds.

Statutory charges obtain priority from the date of their registration. However, a statutory charge may be void against a purchaser for value if the purchase transaction was registered in the relevant registry prior to the registration of the statutory charge, or a priority notice, on the Statutory Charges Register (section 88 of the Land Registration Act).

The priority of a pending statutory charge can be secured by a priority notice under section 89 of the Land Registration Act, which indicates an intention to create a statutory charge. If the statutory charge is then registered within three months of the notice, registration is deemed to have been made on the date when the charge was created.

Cancellation of Statutory Charges

Only the person or body who registered the charge, or their successor, may apply for its cancellation, and this can sometimes be a cause of frustration to owners whose property is subject to an obsolete charge. However, section 91 of the Land Registration Act imposes a duty on the person or body who created the charge to cancel its registration once it has ceased to have affect, and property owners should be able to compel the cancellation of obsolete statutory charges under this provision.