

*RESTRICTIVE COVENANTS (DISCHARGE
AND MODIFICATION)*

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**THE RESTRICTIVE COVENANTS (DISCHARGE
AND MODIFICATION) ACT**

**Law
2 of 1960.**

[25th February, 1960.]

1. This Act may be cited as the Restrictive Covenants (Discharge and Modification) Act. Short title.

2. In this Act—

Interpreta-
tion.

“local authority” means—

- (a) in relation to the parishes of Kingston and St. Andrew, the Council of the Kingston and St. Andrew Corporation as constituted under the Kingston and St. Andrew Corporation Act;
- (b) in relation to any other parish, the Parish Council of such parish;

“Town and Country Planning Authority” means the Town and Country Planning Authority appointed under the Town and Country Planning Act.

3.—(1) A Judge in Chambers shall have power, from time to time on the application of the Town and Country Planning Authority or of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction (subject or not to the payment by the applicant of compensation to any person suffering loss in consequence of the order) on being satisfied—

Power to
discharge or
modify
covenants.

- (a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Judge may think

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material, the restriction ought to be deemed obsolete; or

- (b) that the continued existence of such restriction or the continued existence thereof without modification would impede the reasonable user of the land for public or private purposes without securing to any person practical benefits sufficient in nature or extent to justify the continued existence of such restriction, or, as the case may be, the continued existence thereof without modification; or
- (c) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified; or
- (d) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction :

Provided that no compensation shall be payable in respect of the discharge or modification of a restriction by reason of any advantage thereby accruing to the owner of the land affected by the restriction, unless the person entitled to the benefit of the restriction also suffers loss in consequence of the discharge or modification, nor shall any compensation be payable in excess of such loss.

(2) The Judge shall, before making any order under this section, direct such enquiries as he may think fit to be made of the Town and Country Planning Authority and any local authority, and such notices as he may think fit,

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whether by way of advertisement or otherwise, to be given to the Town and Country Planning Authority and any persons who appear to be entitled to the benefit of the restriction sought to be discharged, modified, or dealt with.

(3) Any order made under this section shall be binding on all persons, whether ascertained or of full age or capacity or not, then entitled or thereafter capable of becoming entitled to the benefit of any restriction, which is thereby discharged, modified, or dealt with, and whether such persons are parties to the proceedings or have been served with notice or not.

(4) Rules of court may be made regulating applications under this Act, the recording and registration of orders made under this Act, and all matters incidental thereto.

4. Where any proceedings by action or otherwise are taken to enforce a restrictive covenant, any person against whom the proceedings are taken may in such proceedings apply to the court for an order giving leave to apply to a Judge in Chambers under section 3, and staying the proceedings in the meantime.

Stay of proceedings pending application to Judge in Chambers.

5. The Supreme Court shall have power on the application by motion of the Town and Country Planning Authority or any person interested—

Interpretation of restrictions by Supreme Court.

- (a) to declare whether or not in any particular case any freehold land is affected by a restriction imposed by any instrument; or
- (b) to declare what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed and whether the same is enforceable and if so, by whom.

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Where instrument imposing restriction is not produced.

6. An order may be made under this Act notwithstanding that any instrument which is alleged to impose the restriction intended to be discharged, modified, or dealt with may not have been produced to the court, or the Judge in Chambers, as the case may be, and the court or Judge may act on such evidence of that instrument as the court or Judge may think sufficient.

Duty of Registrar of Titles.

7. Where the title to any land in respect of which any order is made under this Act is registered under the Registration of Titles Act, the Registrar of Titles shall forthwith, upon production to him of a certified copy of such order, enter an appropriate memorandum thereof upon the Register Book.

Application.

8.—(1) This Act shall apply—

- (a) to restrictions whether subsisting at the commencement of this Act or imposed thereafter; and
- (b) whether the title to the land affected by the restriction is registered under the Registration of Titles Act or not.

(2) This Act shall not apply to restrictions created or imposed—

- (a) for Naval, Military or Air Force purposes; or
- (b) for Civil Aviation purposes under the powers of the United Kingdom Civil Aviation Act, 1949,

but subject to the foregoing provisions, shall be binding on the Crown.

(3) Where a term of more than seventy years is created in land (whether before or after the commencement of this Act) this Act shall, after the expiration of twenty-

12, 13 and
14 Geo. VI
C. 67 (U.K.).

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five years of the term, apply to restrictions affecting such leasehold land in like manner as it would have applied had the land been freehold.