

SCHEDULES

SCHEDULE 15

GENERAL VESTING DECLARATIONS

PART II

SUPPLEMENTARY PROVISIONS

- 16 This Part shall have effect for the purposes of paragraphs 6 to 8.

Exclusion of power of entry under the Acquisition Act 1947

- 17 Paragraph 3 of Schedule 2 to the Acquisition Act 1947 (power to enter upon land after service of notice to treat) shall not apply to land specified in a general vesting declaration under this Act.

Restriction on withdrawal of constructive notice to treat

- 18 The power conferred by section 39 of the Land Compensation (Scotland) Act 1963 to withdraw notice to treat shall not be exercisable, in respect of a notice to treat which is deemed to be served under paragraphs 6 to 8, at any time after the interest in respect of which the notice is deemed to be served has vested in an acquiring authority by virtue of paragraph 7.

Objection to severance

- 19 Paragraph 4 of Schedule 2 to the Acquisition Act 1947 shall not apply to land in respect of which a general vesting declaration is made under this Act.

- 20 (1) If a general vesting declaration under this Act comprises part only of a house, building or factory, or of a park or garden belonging to a house, any person who is able to sell the whole of the house, building, factory, park or garden may by notice served on the acquiring authority (in this Part referred to as a “notice of objection to severance”) require them to purchase his interest in the whole.

- (2) Except as provided by paragraph 29, a notice of objection to severance served by any person shall not have effect if it is served more than 28 days after the date on which the notice required by paragraph 4 above is served on him.

- 21 Where a notice of objection to severance is served in respect of a person’s interest in any land (in this Part referred to as “the land proposed to be severed”), and is so served within the time allowed in accordance with paragraph 20(2), then, notwithstanding anything in paragraph 7—

- (a) that interest shall not vest in the acquiring authority, and
- (b) if he is entitled to possession of that land, the acquiring authority shall not be entitled to enter upon or take possession of it,

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until the notice has been disposed of in accordance with the following provisions of this Schedule.

- 22 Within 3 months after a person has served on an acquiring authority a notice of objection to severance, the acquiring authority shall either—
- (a) serve notice on him withdrawing the notice to treat deemed to have been served on him in respect of his interest in the land proposed to be severed,
 - (b) serve notice on him that the general vesting declaration shall have effect, in relation to his interest in the land proposed to be severed, as if the whole of that land had been comprised in the declaration (and in the compulsory purchase order, if part only of that land was comprised in that order), or
 - (c) refer the notice of objection to severance to the Lands Tribunal and notify him that it has been so referred.
- 23 If the acquiring authority do not take action in accordance with paragraph 22 within the period allowed by that paragraph, then at the end of that period they shall be deemed to have acted in accordance with sub-paragraph (a) of that paragraph.
- 24 Where in accordance with paragraph 22 or 23 the notice to treat deemed to have been served in respect of a person's interest in the land proposed to be severed is withdrawn, or is deemed to have been withdrawn—
- (a) that interest shall not vest in the acquiring authority by virtue of the general vesting declaration, and
 - (b) if he is entitled to possession of that land, the acquiring authority shall not be entitled by virtue of that declaration to enter upon or take possession of it.
- 25 Where an acquiring authority take action in accordance with paragraph 22(b), the general vesting declaration (and, where applicable, the compulsory purchase order) shall have effect as mentioned in that paragraph, whether apart from this Schedule the acquiring authority could have been authorised to acquire the interest in question in the whole of the land proposed to be severed or not.
- 26 Where in accordance with paragraph 22(c) an acquiring authority refer a notice of objection to severance to the Lands Tribunal, and on that reference the Tribunal determines that the part of the land proposed to be severed which is comprised in the general vesting declaration can be taken—
- (a) in the case of a house, building or factory, without material detriment, or
 - (b) in the case of a park or garden, without seriously affecting the amenity or convenience of the house,
- paragraph 21 shall thereupon cease to have effect in relation to that notice.
- 27 (1) If on such a reference the Lands Tribunal does not make a determination in accordance with paragraph 26, the Tribunal shall determine the area of that land (being the whole of it or a part of it which includes the part comprised in the general vesting declaration) which the acquiring authority ought to be required to take; and the general vesting declaration shall have effect, in relation to the interest in that area of the person who served the notice of objection to severance, as if the whole of that area had been comprised in the general vesting declaration, whether apart from this Schedule the acquiring authority could have been authorised to acquire that interest in the whole of that area or not.
- (2) Where sub-paragraph (1) applies, and part of the area determined by the Lands Tribunal was not comprised in the compulsory purchase order, the general vesting

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declaration shall have effect as mentioned in that sub-paragraph as if the whole of that area had been comprised in the compulsory purchase order as well as in the declaration.

28 Where by virtue of paragraph 22(a), 23, 25 or 27 a general vesting declaration is to have effect in relation to a different area of land from that originally comprised in the declaration, the acquiring authority shall alter accordingly the description of the land affected by the declaration.

29 (1) Where in accordance with paragraph 20(1) a person is entitled to serve a notice of objection to severance, and it is proved—

- (a) that he did not receive the notice required by paragraph 4 to be served on him, or received that notice less than 28 days before, or on or after, the date on which the period specified in the general vesting declaration expired, and
- (b) that a notice of objection to severance served by him was served not more than 28 days after the date on which he first had knowledge of the execution of the general vesting declaration,

that notice shall have effect notwithstanding that it is served after the time allowed in accordance with paragraph 20(2) has expired.

(2) Where, in the circumstances specified in sub-paragraph (1), a person serves a notice of objection to severance after the end of the period specified in the general vesting declaration,—

- (a) paragraphs 21 and 24 shall not have effect in relation to that notice,
- (b) paragraph 22 shall have effect in relation to that notice as if sub-paragraph (a) of that paragraph were omitted,
- (c) paragraph 23 shall have effect in relation to that notice with the substitution, for the words “sub-paragraph (a)”, of the words “sub-paragraph (b)”, and
- (d) paragraph 26 shall not have effect in relation to that notice, but without prejudice to the making by the Tribunal of any such determination as is mentioned in that paragraph.

Compensation

30 Where any of the land specified in a general vesting declaration under this Act has become vested in an acquiring authority by virtue of paragraphs 6 to 8, the acquiring authority shall be liable to pay the like compensation, and the like interest on the compensation agreed or awarded, as they would have been required to pay if they had taken possession of the land under paragraph 3 of Schedule 2 to the Acquisition Act 1947.

31 Sections 56 to 60 and sections 63 to 66 of the Lands Clauses Consolidation (Scotland) Act 1845 (absent and untraced owners) and sections 117 to 119 of that Act (interests omitted from purchase) shall not apply to the compensation to be paid for any interest in land in respect of which a notice to treat is deemed to have been served by virtue of paragraphs 6 to 8.

Charges and tenancies

32 (1) Where land specified in a general vesting declaration under this Act is, together with other land not so specified, charged with a charge, such proportion of the charge as may be apportioned under section 109 of the Lands Clauses Consolidation (Scotland) Act 1845 to the first mentioned land shall, subject to sub-paragraph (3), be treated as

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having been extinguished by virtue of paragraphs 6 to 8 on the vesting of that land in the acquiring authority under those paragraphs.

- (2) Where by virtue of sub-paragraph (1) a portion of a charge is treated as having been extinguished, sections 108 to 111 of the Act of 1845 shall have effect as if the extinguishment had taken place under section 110 of that Act.
- (3) If, in the circumstances described in sub-paragraph (1), the person entitled to the charge and the owner of the land subject to it enter into an agreement to that effect, sections 108 to 111 of the Act of 1845 shall have effect as if, at the time of the vesting of the land in the acquiring authority under paragraphs 6 to 8, the person entitled to the charge had released that land from the charge on the condition mentioned in section 109 of that Act; and in that case no part of the charge shall be treated as having been extinguished as regards the remaining part of the land charged with it.
- (4) In this paragraph “charge” means any such feuduty, ground annual or rent or other payment or incumbrance as is mentioned in the introductory words to sections 107 to 111 of the Act of 1845.
- 33 Where land specified in a general vesting declaration under this Act is, together with other land not so specified, comprised in a tenancy for a term of years unexpired, section 112 of the Lands Clauses Consolidation (Scotland) Act 1845 shall have effect in relation to it as if for references to the time of the apportionment of rent mentioned in it there were substituted references to the time of the vesting of the tenancy in the acquiring authority.
- 34 Where any of the land specified in a general vesting declaration under this Act has become vested in an acquiring authority under paragraphs 6 to 8, any person who, in consequence of it, is relieved from any liability (whether in respect of a feuduty, ground annual, rent, interest on a heritable security or any other payment) and makes any payment as in satisfaction or part satisfaction of that liability shall, if he shows that when he made the payment he did not know of the facts which constituted the cause of his being so relieved, or of one or more of those facts, be entitled to recover the sum paid from the person to whom it was paid.

Miscellaneous

- 35 Where, after land has become vested in an acquiring authority under paragraphs 6 to 8, a person retains possession of any document relating to the title to the land, he shall be deemed to have given to the acquiring authority an acknowledgement in writing of the right of the acquiring authority to production of that document and to delivery of copies of it and (except where he retains possession of the document as heritable creditor or as trustee or otherwise in a fiduciary capacity) an undertaking for safe custody of it.
- 36 (1) The time within which a question of disputed compensation, arising out of an acquisition of an interest in land in respect of which a notice to treat is deemed to have been served by virtue of paragraphs 6 to 8, may be referred to the Lands Tribunal shall be 6 years from the date at which the person claiming compensation, or a person from whom he derives title, first knew, or could reasonably be expected to have known, of the vesting of the interest by virtue of those paragraphs.
- (2) In reckoning the period of 6 years referred to in sub-paragraph (1), no account shall be taken of any period during which the person claiming compensation or the person from whom he derives title was under legal disability by reason of nonage or otherwise.

- 37 At the end of the period specified in a general vesting declaration or, if a notice of objection to severance is served under this Schedule, when that notice has been disposed of in accordance with the provisions of this Schedule, that declaration, if still being proceeded with or, as the case may be, that declaration as altered under paragraph 28, shall be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland, and on being so recorded or registered shall have the same effect as a conveyance registered in accordance with section 80 of the Lands Clauses Consolidation (Scotland) Act 1845.