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SCHEDULES

SCHEDULE 4 **E+W**

SPECIAL COVENANTS WITH LOCAL AUTHORITIES ETC. ON ENFRANCHISEMENT OR EXTENSION

PART I **E+W**

OPERATION AND ENFORCEMENT OF COVENANTS

- 1 (1) A covenant entered into in accordance with section 29 or 30 of this Act (in this Part of this Schedule referred to as “a relevant covenant”) shall not be enforceable by any means other than those provided by paragraphs 2 and 3 below.
- (2) A relevant covenant affecting land other than registered land—
- (a) may be registered under [^{F1}section 2 of the ^{M1}Land Charges Act 1972] as a restrictive covenant, if apart from this sub-paragraph it would not be registrable under that section as a restrictive covenant or as an estate contract; and
 - (b) subject to [^{F1}section 4] of that Act, shall be binding upon every successor of the covenantor, if apart from this sub-paragraph it would not be binding upon every such successor.
- (3) Where a relevant covenant affects registered land,—
- [^{F2}(a) the covenant may be the subject of a notice in the register of title kept under the Land Registration Act 2002, if apart from this subsection it would not be capable of being the subject of such a notice; and]
 - (b) where [^{F3}a notice in respect of the covenant has been entered in that register, it] shall be binding upon every successor of the covenantor, if apart from this subsection it would not be binding upon every such successor.
- (4) In sub-paragraphs (2) and (3) above “successor of the covenantor”, in relation to the covenants entered into on any disposition, means a person, other than the covenantor, who is for the time being entitled—
- (a) to the interest disposed of, either in the whole or in part of the property comprised in the disposition; or
 - (b) to an interest consisting of a tenancy (whether of the whole or of part of that property) which has been created (directly or indirectly) out of the interest disposed of.
- (5) Section 84 of the ^{M2}Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) shall not have effect in relation to any relevant covenant.

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- (6) The rule against perpetuities and any enactment relating to that rule shall not apply to any right conferred by, or exercisable in relation to, a relevant covenant, if apart from this sub-paragraph it would apply to any such right.
- (7) Where any such interest as is mentioned in sub-paragraph (4)(a) or (b) above is acquired (whether compulsorily or by agreement) by an authority possessing compulsory purchase powers within the meaning of [^{F4}the Town and Country Planning Act 1990] (including any government department), nothing in the enactment which authorises that acquisition, or in any other enactment conferring powers on that authority, shall be construed as relieving that authority from the obligation to comply with any relevant covenant to which that interest remains subject; but the rights of the covenantee shall for purposes of any such acquisition be treated as an interest in the land affected, and as capable of being, and liable to be, extinguished by being compulsorily acquired in like manner and subject to the like conditions as other interests of the covenantee would be.

Textual Amendments

- F1** Words substituted by virtue of [Land Charges Act 1972 \(c. 61\), s. 18\(6\)](#)
- F2** [Sch. 4 para. 1\(3\)\(a\)](#) substituted (13.10.2003) by [Land Registration Act 2002 \(c. 9\), s. 136\(2\), Sch. 11 para. 8\(3\)\(a\)](#) (with s. 129); S.I. 2003/1725, art. 2(1)
- F3** Words in [Sch. 4 para. 1\(3\)\(b\)](#) substituted (13.10.2003) by [Land Registration Act 2002 \(c. 9\), s. 136\(2\), Sch. 11 para. 8\(3\)\(b\)](#) (with s. 129); S.I. 2003/1725, art. 2(1)
- F4** Words substituted by virtue of [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1\), s. 4, Sch. 2 para. 17\(2\)](#)

Marginal Citations

- M1** 1972 c. 61.
- M2** 1925 c. 20.

- 2 (1) Where it appears to a local authority that a relevant covenant entered into on a disposition by that authority has been broken, the authority may serve written notice under this paragraph on any one or more of the following persons, that is to say—
- (a) any person for the time being entitled to the interest disposed of either in the whole or in part of the land comprised in the disposition (in this paragraph referred to as “the land under covenant”); and
 - (b) any person entitled to an interest consisting of a tenancy (whether of the whole or of part of the land under covenant) which has been created (directly or indirectly) out of the interest disposed of.
- (2) A notice served on any person under sub-paragraph (1) above shall—
- (a) specify the covenant and the matters in respect of which it is alleged by the authority that the covenant has been broken; and
 - (b) state that, after the end of such period (not being less than six weeks from the date of service of the notice) as may be specified in the notice, the authority propose to execute a vesting declaration under paragraph 3 below in respect of that person’s interest in the land under covenant unless before the end of that period he serves on the authority a counter-notice under sub-paragraph (3) below.
- (3) Any person on whom a notice is served under sub-paragraph (1) above may, before the end of the period specified in the notice in accordance with sub-paragraph (2)

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- (b) serve on the authority a counter-notice in writing objecting to the notice on such one or more of the following grounds as may be specified in the counter-notice, that is to say—
- (a) that the relevant covenant specified in the notice under sub-paragraph (1) above has not been broken as alleged in the notice;
 - (b) that, if that covenant has been so broken, the breach does not relate to any part of the land under covenant in which the person serving the counter-notice has an interest;
 - (c) that in the circumstances he ought to be relieved against the execution of a vesting declaration under paragraph 3 below in respect of his interest.
- (4) Where a person has served a counter-notice under sub-paragraph (3) above and that counter-notice has not been withdrawn, the authority shall not execute a vesting declaration under paragraph 3 below in respect of his interest except with the leave of the court; and on any application for such leave—
- (a) where the grounds of objection specified in the counter-notice consist of or include that which is specified in sub-paragraph (3)(a) or (b) above, the court shall not grant leave unless satisfied that the objection on that ground is not well-founded; and
 - (b) without prejudice to paragraph (a) above, where the grounds of objection specified in the counter-notice consist of or include that which is specified in sub-paragraph (3)(c) above, the court, if having regard to the conduct of the parties and to all the other circumstances it appears to the court to be just and equitable to do so, may refuse to grant leave, either unconditionally or on such terms (as to costs, damages or otherwise) as the court think fit.
- 3 (1) Where a local authority have served on any person a notice under paragraph 2 above in respect of such an interest as is mentioned in paragraph 2(1)(a) or (b), then subject to paragraph 2(4) above and to the provisions of any order made under it, the authority may execute a vesting declaration under this paragraph in respect of that interest—
- (a) at any time within the six months following the end of the period specified in the notice in accordance with paragraph 2(2)(b), if no counter-notice under paragraph 2(3) is served before the end of that period; or
 - (b) if such a counter-notice is so served but is withdrawn, at any time within the six months following the withdrawal of the counter-notice; or
 - (c) if such a counter-notice is so served and is not withdrawn, at any time within the six months following the time when the order giving leave under paragraph 2(4) becomes final.³
- (2) A vesting declaration under this paragraph in respect of an interest in land shall be in such form as may be prescribed by regulations made by statutory instrument by [^{F5}the Secretary of State].
- (3) Where a vesting declaration is executed under this paragraph the interest to which it relates shall vest in the authority on such date as is specified in that behalf in the declaration.
- (4) Any reference in the ^{M3}Land Compensation Act 1961 to the compulsory acquisition of land, or of an interest in land, shall be construed as including a reference to the execution of a vesting declaration under this paragraph in respect of an interest in land; and that Act shall apply in relation to the execution of such a declaration as if the authority, having been duly authorised to acquire that interest compulsorily in

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accordance with the [^{F6}Acquisition of ^{M4}Land Act 1981], had served notice to treat in respect of that interest on the date of execution of the declaration.

- (5) In assessing compensation in accordance with the Land Compensation Act 1961 in respect of an interest in land vested in a local authority by a vesting declaration under this paragraph—
- (a) nothing shall be included for damage sustained by reason that the land in which the interest subsists is severed from other land held therewith, or for disturbance or any other matter not directly based on the value of land or of an interest in land; and
 - (b) in a case where immediately before the execution of the declaration the interest is subject to a right of pre-emption under a covenant entered into in accordance with section 30(1)(b) of this Act, no account shall be taken of any diminution of the value of the interest which is attributable to that right.

Textual Amendments

F5 Words substituted by virtue of S.I. 1970/1681, **art. 6(3)**

F6 Words substituted by [Acquisition of Land Act 1981 \(c. 67\)](#), **Sch. 4 para. 1**

Marginal Citations

M3 1961 c. 33.

M4 1981 c. 67.

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