

1969 No. 1570 (S.128)

ACQUISITION OF LAND

The Compulsory Purchase of Land (General Vesting Declaration) (Scotland) Regulations 1969

Made 30th October 1969

Laid before Parliament 17th November 1969

Coming into Operation 8th December 1969

In exercise of the powers conferred on me by section 107 of the Town and Country Planning (Scotland) Act 1947(a) and sections 31 and 103 of, and paragraphs 1, 2 and 4 of Schedule 2 to, the Town and Country Planning (Scotland) Act 1969(b), and of all other powers enabling me in that behalf, I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Compulsory Purchase of Land (General Vesting Declaration) (Scotland) Regulations 1969 and shall come into operation on 8th December 1969.

Interpretation

2.—(1) In these regulations:—

“the Act” means the Town and Country Planning (Scotland) Act 1969;

“acquiring authority” has the meaning assigned to it by section 31(2) of the Act;

“general vesting declaration” has the meaning assigned to it by paragraph 1 of Schedule 2 to the Act;

“charge” includes any such feu-duty, ground annual or rent, or other payment or incumbrance as is mentioned in the words introductory to sections 107 to 111 of the Lands Clauses Consolidation (Scotland) Act 1845(c);

“Lands Tribunal” means the Lands Tribunal for Scotland:

Provided that until sections 1 to 3 of the Lands Tribunal Act 1949(d) come into force as regards Scotland, for any reference in these regulations to the Lands Tribunal there shall be substituted a reference to an official arbiter appointed under Part I of the Land Compensation (Scotland) Act 1963(e) and sections 3 and 5 of that Act shall apply, subject to any necessary modifications, in relation to the determination of any question under these regulations by an arbiter so appointed.

(2) The Interpretation Act 1889(f) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

(a) 1947 c. 53.

(c) 1845 c. 19.

(e) 1963 c. 51.

(b) 1969 c. 30.

(d) 1949 c. 42.

(f) 1889 c. 63.

General Vesting Declarations

3.—(1) For the purposes of paragraph 1 of Schedule 2 to the Act (by virtue of which an acquiring authority may execute a general vesting declaration in respect of land which they are authorised to acquire by a compulsory purchase order), a general vesting declaration shall be in the form specified in Part I of Schedule 1 to these regulations or in a form substantially to the like effect.

(2) For the purposes of paragraph 4 of Schedule 2 to the Act, a notice specifying the land specified in a general vesting declaration and stating the effect of the declaration (which notice is required by that paragraph to be served by an acquiring authority on the persons referred to in sub-paragraphs (a) and (b) thereof as soon as may be after the authority have executed a general vesting declaration) shall be in the form specified in Part II of Schedule 1 to these regulations or in a form substantially to the like effect.

4. For the purposes of sub-paragraph (1) of paragraph 2 of Schedule 2 to the Act (which requires an acquiring authority, before making a general vesting declaration, to publish or serve a statement of the effect of paragraphs 1 to 8 of that Schedule and a notification inviting interested persons to give information to them with respect to their interest in the relevant land) the statement set out in Part I of Schedule 2 to these regulations, or a statement substantially to the like effect, shall be the statement prescribed under sub-paragraph (1)(a), and the form set out in Part II of the said Schedule 2, or a form substantially to the like effect, shall be the form prescribed under sub-paragraph (1)(b) of the said paragraph 2.

William Ross,
One of Her Majesty's Principal
Secretaries of State.

St. Andrew's House,
Edinburgh.
30th October 1969.

Regulation 3

SCHEDULE 1

PART I

FORM OF GENERAL VESTING DECLARATION

We (1).....in exercise of the powers conferred on us by section 30 of the Town and Country Planning (Scotland) Act 1969, and the authorisation given to us by*[the Confirmation by (2).....on19 of] the (3).....Compulsory Purchase Order 19 , recorded in the division of the General Register of Sasines applicable to the County of.....on.....19 ,
 HEREBY DECLARE that the land described in the Schedule hereto, together with the right to enter upon and take possession of the same shall vest in us on (4).....
being the end of a period which meets the requirements of paragraphs 4 and 8 of Schedule 2 to the Town and Country Planning (Scotland) Act 1969.

Signature.....
 *Secretary/Town Clerk/County Clerk

Place

Date

*Delete where appropriate

(5) SCHEDULE

Notes

- (1) Name of authority
- (2) Name of confirming authority (if any)
- (3) Give citation of order
- (4) Insert a date not less than 28 days after the date on which service of the notices required by paragraph 4 of Schedule 2 to the Town and Country Planning (Scotland) Act 1969 is completed and which, in a case where a short tenancy or a long tenancy about to expire exists, also meets the requirements of paragraph 8 of the said Schedule 2
- (5) By paragraph 1(2) of the said Schedule 2 a particular description of the lands affected or a description by reference in the manner provided by section 61 of the Conveyancing (Scotland) Act 1874(a) is required, and where appropriate the description should refer to a map annexed to the *general vesting declaration/compulsory purchase order.

PART II

FORM OF NOTICE STATING EFFECT OF GENERAL VESTING DECLARATION
 TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1969

The Compulsory Purchase Order 19

To:

of:

NOTICE IS HEREBY GIVEN that the (hereinafter called "the Authority") on 19 made a general vesting declaration under section 31 of the Town and Country Planning (Scotland) Act 1969 (hereinafter called "the Act") vesting the land described in the Schedule to this notice (hereinafter called "the said land") in themselves as from the end of the period of days from the date on which the service of notices required by paragraph 4 of Schedule 2 to the Act is completed. (Paragraph 4 of Schedule 2 to the Act requires notice to be served on every occupier of any of the land specified in the

declaration (other than land in which there subsists a "short tenancy" or a "long tenancy which is about to expire"—these expressions are defined in Appendix A to this notice) and on every other person who has given information to the Authority with respect to any of that land in consequence of the invitation published and served under paragraph 2(1) of Schedule 2 to the Act.)

The Authority will in due course specify in a certificate the date on which the service of the said notices is completed.

The effect of the general vesting declaration is as follows:—

On the date of vesting (as determined in accordance with the first paragraph of this notice) the said land, together with the right to enter upon and take possession of it, will vest in the Authority as if the Authority had on that date exercised their powers under the Lands Clauses Consolidation (Scotland) Act 1845 to expedite a notarial instrument (whether for vesting land or any interest in land in themselves or for extinguishing the whole or part of any feu-duty, ground annual or rent, or other payment or incumbrance).

Also, on the date of vesting, the Acts providing for compensation will apply as if, on the date on which the general vesting declaration was made (namely

19) a notice to treat had been served on every person on whom the Authority could have served such a notice (other than any person entitled to an interest in the land in respect of which such a notice had actually been served before that date and any person entitled to a short tenancy or a long tenancy which is about to expire).

If the land includes any land in which there is a short tenancy or a long tenancy which is about to expire, the right of entry will not be exercisable in respect of that land unless, after serving a notice to treat in respect of that tenancy, the Authority have served on every occupier of any of the land in which the tenancy subsists a notice stating that, at the end of a specified period (not being less than fourteen days) from the date of service of the notice they intend to enter upon and take possession of the land specified in the notice, and that period has expired: the vesting of the land will then be subject to the tenancy until that period expires, or the tenancy comes to an end, whichever happens first.

Schedule 3 to the Land Commission Act 1967(a) as applied by the Act contains supplementary provisions as to general vesting declarations executed under the Act. These provisions as so applied are set out in Appendix B to this notice.

A copy of the general vesting declaration to which this notice refers and of the plan annexed to the declaration can be inspected at and may be seen there at all reasonable hours.

Signature.....
Secretary/Town Clerk/County Clerk

Place

Date

THE SCHEDULE above referred to
[Description of the land vested in the
Authority by the general vesting
declaration]

APPENDIX A

[Here set out paragraph 17 of Schedule
2 to the Town and Country Planning
(Scotland) Act 1969]

APPENDIX B

[Here set out Schedule 3 to the Land
Commission Act 1967 as applied by
paragraph 9 of Schedule 2 to the Town
and Country Planning (Scotland) Act
1969]

Regulation 4

SCHEDULE 2

PART I

STATEMENT OF THE EFFECT OF PARAGRAPHS 1 TO 8 OF SCHEDULE 2 TO THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1969 FOR THE PURPOSES OF PARAGRAPH 2(1)(a) OF THAT SCHEDULE

Power to make a general vesting declaration

1. The [insert the name of the acquiring authority] (hereinafter called "the Authority") may acquire any of the land to which this notice relates (hereinafter called "the relevant land") by making a general vesting declaration under section 31 of the Town and Country Planning (Scotland) Act 1969, which has the effect, subject to paragraph 4 below, of vesting the land in the Authority at the end of the period mentioned in paragraph 2 below. Generally a declaration may not be made before the end of the period of two months from the order becoming operative; but the order may prescribe a longer period. In either case, the Authority may make a declaration before the end of the period with the consent of every occupier of the land affected.

Notice, etc preliminary to general vesting declaration

2. If the Authority make a general vesting declaration, they must serve notice of it on every occupier of any of the land affected (except land where there is one of the tenancies described in paragraph 3 below) and on every person who gives them information relating to the land in consequence of the invitation contained in this or any similar notice. When the service of notices of the general vesting declaration is completed, an intermediate period before vesting begins to run. This period, which must not be less than 28 days, will be specified in the declaration. At the end of the period the land described in the declaration will, subject to paragraph 4 below, vest in the Authority together with the right to enter on the land and take possession of it. At the same time every person on whom the Authority could have served a notice to treat in respect of his interest in the land (other than a tenant under one of the tenancies described in paragraph 3 below) will be entitled to compensation for the acquisition of his interest in the land and to interest on the compensation from the date of vesting.

Tenancies with only a short time to run

3. Where a person's interest arises under a tenancy which has only a short time to run, the position stated above is subject to modification. For the modifications to apply the tenancy must be either a "short tenancy", i.e., a tenancy for a year or from year to year or any lesser interest, or a "long tenancy which is about to expire". The latter expression means a tenancy granted for an interest greater than a short tenancy but having at the date of the general vesting declaration a period still to run which is not more than the period specified in the declaration for this purpose (which must be more than a year). In calculating how long a tenancy has to run where any option to renew or to terminate it is available to either party, it is assumed that the landlord will take every opportunity open to him to terminate the tenancy while the tenant will use every opportunity to retain or extend his interest.

Notice of entry

4. The Authority may not exercise the right of entry referred to in paragraph 2 above in respect of land subject to one of the tenancies described in paragraph 3 above unless they first serve notice to treat in respect of the tenancy and then serve every occupier of the land with a notice of their intention to enter and take possession after the period (not less than 14 days) specified in the notice. The right of entry will be exercisable at the end of that period. The effect of the general vesting declaration will be subject to the tenancy until it comes to an end.

Severance

5. If the effect of the general vesting declaration will be to sever a house, building or factory, or a park or garden belonging to a house, by vesting part of it in the Authority and leaving part of it with the person who is entitled to, and is in a position to sell, the whole, that person may serve on the Authority a notice of objection to severance. A notice of objection to severance, in order to be effective, must be served by that

person within 28 days of the service on him by the Authority of the notice of the general vesting declaration referred to in paragraph 2 above (save in the exceptional cases referred to in paragraph 13 of Schedule 3 to the Land Commission Act 1967, as applied by paragraph 9 of Schedule 2 to the Town and Country Planning (Scotland) Act 1969). This (save in those exceptional cases) stops the objector's interest from vesting in the Authority until his rights in the matter have been settled. The Authority have (save in those exceptional cases) three courses open to them:

- (1) they may serve the objector with a notice which in effect excludes the objector's land from the scope of the declaration (and, if he receives no notice from the Authority under one of the other two alternatives within three months after he has served them with his notice of objection to severance, they will be treated as having done this); or
- (2) they may serve him with notice that the declaration shall have effect in relation to the whole of the land (in which case the declaration will take effect in accordance with the notice); or
- (3) they may refer the objection to the Lands Tribunal and give him notice that they have done so.

Powers of the Lands Tribunal in severance cases

6. If the Lands Tribunal determine that the part of the objector's property comprised in the declaration can be taken without material detriment (where the objection concerns the taking of part of a house, building or factory) or (where the objection concerns the taking of part of a park or garden) can be taken without seriously affecting the amenity or convenience of the house, the notice of objection ceases to have effect, so that the land affected, i.e., the part of the property comprised in the declaration, will vest in the Authority. If the Lands Tribunal do not decide in that way, they must decide what part (if any) of the objector's land the Authority ought to be required to take in addition to the part comprised in the declaration. The declaration will then take effect as if both these parts had been comprised in the declaration.

Apportionment of charge

7. If any of the relevant land forms part of property subject to a charge, and the charge is apportioned between the relevant land and the remainder of the property by agreement or under section 109 of the Lands Clauses Consolidation (Scotland) Act 1845, the part apportioned to the relevant land will be treated as extinguished on the vesting of that land in the Authority, and after that the owner of the land will only be liable to pay the part apportioned to the remainder of the property. Compensation for the extinguishment will be payable to the person entitled to the charge, and may be settled by agreement between him and the Authority or determined by the Lands Tribunal. Alternatively the owner of the land and the person entitled to the charge may agree that the part of the property which is comprised in the relevant land shall be released from the charge and that the whole charge shall be charged on the remainder of the property. This will operate to release the relevant land from the charge and to charge the whole charge on the remainder of the property.

Apportionment of rent

8. Where any of the relevant land forms part of property subject to a tenancy, the rent will be apportioned between the relevant land and the remainder of the property on the vesting in the Authority of the tenancy of the relevant land. After that, the tenant will only be liable for that part of the rent which is apportioned to the remainder of the property. Any compensation to which he may be entitled for severance of his property will be assessed with reference to the severance caused by that vesting.

PART II

FORM FOR THE GIVING OF INFORMATION TO AN ACQUIRING AUTHORITY IN RESPONSE TO AN INVITATION REQUIRED TO BE NOTIFIED UNDER PARAGRAPH 2(1)(b) OF SCHEDULE 2 TO THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1969

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1969

The Compulsory Purchase Order 19

To: (a)

[I] [We]* being [a person] [persons]* who, if a general vesting declaration were made under paragraph 1 of Schedule 2 to the Town and Country Planning (Scotland) Act 1969 in respect of all the land comprised in the compulsory purchase order cited above in respect of which notice to treat has not been given, would be entitled to claim compensation in respect of [all] [part of]* that land, hereby give you the following information, in terms of the provisions of paragraph 2(1)(b) of the said Schedule 2:—

- 1. Name and address.....(b)
of claimant(s)
- 2. Land in which an.....(c)
interest is held by.....
claimant(s)
- 3. Nature of interest.....(d)
(including parti-.....
culars of any mort-.....
gage or charge.....
thereon)

Signed.....
[On behalf of.....]*
Date

NOTES

- (a) Insert name of acquiring authority.
- (b) In the case of a joint interest, insert the names and addresses of all the claimants.
- (c) The land should be described as concisely as possible.
- (d) If the interest is under a lease, the date of commencement and length of term should be given. Charges include feuduties and other ground burdens.

*Delete where inappropriate

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations prescribe the form of general vesting declaration which may be made by an acquiring authority under the Town and Country Planning (Scotland) Act 1969 and the form of other documents required to be published or served before or after the making of such a declaration.

Regulation 3, with Schedule 1, prescribes the form of general vesting declaration, and the form of notice stating the effect thereof, for the purposes of paragraphs 1 and 4 of Schedule 2 to the Act, under which an acquiring authority may by means of such a declaration vest in themselves land which they are authorised to acquire by a compulsory purchase order.

Paragraph 2(1)(a) of Schedule 2 to the Act requires an acquiring authority, before they make a general vesting declaration, to include in the notice which they give of the making or confirmation of the relevant compulsory purchase order (or in a notice given subsequently) a statement of the effect of paragraphs 1 to 8 of that Schedule. Such a statement is set out in Part I of Schedule 2 to these Regulations.

Paragraph 2(1)(b) of Schedule 2 to the Act requires the same notice also to contain an invitation to any person who will be entitled to compensation if a general vesting declaration is made, to inform the acquiring authority of his name and address and his interest in any land affected by the declaration: the giving of this information then entitles him under paragraph 4 of the Schedule to receive notice of the making of any general vesting declaration so that he may make a claim for compensation. Part II of Schedule 2 to these Regulations sets out the form in which the information is to be given.