

SCHEDULES

SCHEDULE 24

Section 278.

GENERAL VESTING DECLARATIONS

PART I

GENERAL PROVISIONS

Execution of general vesting declarations

- 1 (1) Where a compulsory purchase order authorising an acquiring authority to acquire any land has come into operation, the authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form (in this Schedule referred to as " a general vesting declaration ") vesting the land in themselves as from the end of such period as may be specified in the declaration (not being less than twenty-eight days) from the date on which the service of notices required by paragraph 4 below is completed.
- (2) A general vesting declaration shall contain a particular description of the lands affected or a description by reference of those lands in the manner provided by section 61 of the Conveyancing (Scotland) Act 1874.
- 2 (1) Before making a general vesting declaration with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include in the notice of the making or confirmation of the order which is required to be published or served by paragraph 6 of Schedule 1 to the Acquisition Act 1947 or any other provision of the relevant enactments corresponding to that paragraph, or in a notice given subsequently and before the service of the notice to treat in respect of that land—
 - (a) such a statement of the effect of paragraphs 1 to 8 of this Schedule as may be prescribed; and
 - (b) a notification to the effect that every person who, if a general vesting declaration were made in respect of all the land comprised in the order in respect of which notice to treat has not been given, would be entitled to claim compensation in respect of any such land is invited to give information to the authority making the declaration in the prescribed form with respect to his name and address and the land in question.
- (2) The requirements of the relevant enactments with respect to the publication and service of a notice of the making or confirmation of a compulsory purchase order shall apply to a notice under this paragraph given subsequently to the first-mentioned notice.
- 3 A general vesting declaration shall not be executed before the end of the period of two months beginning with the date of the first publication of the notice complying with paragraph 2(1) above, or such longer period, if any, as may be specified in the notice:

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Provided that, with the consent in writing of every occupier of any of the land specified in the declaration, the acquiring authority may execute a general vesting declaration before the end of that period of two months, or of the longer period so specified, as the case may be.

4 As soon as may be after executing a general vesting declaration, the acquiring authority shall serve—

- (a) 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); and
- (b) on every other person who has given information to the authority with respect to any of that land in pursuance of the invitation published and served under paragraph 2(1) above,

a notice in the prescribed form specifying the land and stating the effect of the declaration.

5 For the purposes of this Schedule, a certificate by the acquiring authority that the service of notices required by paragraph 4 above was completed on a date specified in the certificate shall be conclusive evidence of the fact so stated.

Effect of general vesting declaration

6 At the end of the period specified in a general vesting declaration, the provisions of the Lands Clauses Acts and of section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 (both as incorporated by Schedule 2 to the Acquisition Act 1947) and of the Land Compensation (Scotland) Act 1963 shall apply as if, on the date on which the declaration was made, a notice to treat had been served on every person on whom, under section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (on the assumption that they required to take the whole of the land specified in the declaration and had knowledge of all the parties referred to in that section) the acquiring authority could have served such a notice, other than—

- (a) any person entitled to an interest in the land in respect of which such a notice had actually been served before the end of that period; and
- (b) any person entitled to a short tenancy or a long tenancy which is about to expire.

7 At the end of the period specified in a general vesting declaration, the land specified in the declaration, together with the right to enter upon and take possession of it, shall vest in the acquiring authority as if the circumstances in which under the said Act of 1845 an authority authorised to purchase land compulsorily have any power 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) had arisen in respect of all the land and all interests therein, and the acquiring authority had duly exercised that power accordingly at the end of that period.

8 Where any land specified in a general vesting declaration is land in which there subsists a short tenancy or a long tenancy which is about to expire—

- (a) the right of entry conferred by paragraph 7 above shall not be exercisable in respect of that land unless, after serving a notice to treat in respect of that tenancy, the acquiring authority have served upon every occupier of any of the land in which the tenancy subsists a notice stating that, at the end of such period as is specified in the notice (not being less than fourteen days)

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from the date on which the notice is served, they intend to enter upon and take possession of such land as is specified in the notice, and that period has expired; and

- (b) the vesting of the land in the acquiring authority shall be subject to the tenancy until that period expires, or the tenancy comes to an end, whichever first occurs.

Recovery of compensation overpaid

9 The provisions of paragraphs 10 to 14 below shall have effect where, after the acquiring authority have made a general vesting declaration in respect of any land, a person claims compensation in respect of the acquisition by the authority of an interest in any land by virtue of the declaration, and the authority pay compensation in respect of that interest.

10 If, in a case falling within paragraph 9 above, it is subsequently shown—

- (a) that the land, or the claimant's interest in it, was subject to an incumbrance which was not disclosed in the particulars of his claim; and
(b) that by reason of that incumbrance the compensation paid exceeded the compensation to which the claimant was entitled in respect of that interest,

the acquiring authority may recover the amount of the excess from the claimant.

11 If in a case falling within paragraph 9 above, it is subsequently shown that the claimant was not entitled to the interest in question, either in the whole or in part of the land to which the claim related, the acquiring authority may recover from him an amount equal to the compensation paid, or to so much of that compensation as, on a proper apportionment thereof, is attributable to that part of the land, as the case may be.

12 Any question arising under paragraph 10 or 11 above—

- (a) as to the amount of the compensation to which the claimant was entitled in respect of an interest in land; or
(b) as to the apportionment of any compensation paid,

shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such question, the provisions of section 9 of the Land Compensation (Scotland) Act 1963 shall apply, subject to any necessary modifications.

13 Subject to paragraph 12 above, any amount recoverable by the acquiring authority under paragraph 10 or 11 above shall be recoverable in any court of competent jurisdiction.

14 Any sum recovered under paragraph 10 or 11 above in respect of land by an acquiring authority who are a local authority shall be applied towards the repayment of any debt incurred in acquiring or redeveloping that land or if no debt was so incurred shall be paid into the account out of which the compensation in respect of the acquisition of that land was paid.

Penalty for false information in claiming compensation

15 (1) If any person, for the purpose of obtaining for himself or for any other person any compensation in respect of the acquisition by the acquiring authority of an interest in land by virtue of a general vesting declaration—

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- (a) knowingly or recklessly makes a statement which is false in a material particular; or
 - (b) with intent to deceive produces, furnishes, sends or otherwise makes use of any book, account, or other document which is false in a material particular; or
 - (c) with intent to deceive withholds any material information,
- he shall be guilty of an offence.
- (2) Any person guilty of an offence under this paragraph shall (without prejudice to the recovery of any sum under paragraph 10 or 11 above) be liable—
- (a) on summary conviction, to a fine not exceeding £400;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

PART II

SUPPLEMENTARY PROVISIONS

- 16 The provisions contained in this Part of this Schedule shall have effect for the purposes of paragraphs 6 to 8 above.

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 above, 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 above.

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 of this Schedule 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 below, a notice of objection to severance served by any person shall not have effect if it is served more than twenty-eight 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 of this Schedule referred to as "the land proposed to be

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severed"), and is so served within the time allowed in accordance with paragraph 20(2) above, then, notwithstanding anything in paragraph 7 above.—

- (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,

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

- 22 Within three 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, or
 - (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 the last preceding paragraph 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 above 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 sub-paragraph (b) of paragraph 22 above, the general vesting declaration (and, where applicable, the compulsory purchase order) shall have effect as mentioned in that sub-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) above 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 above 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 the last preceding paragraph, 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

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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 the preceding sub-paragraph applies, and part of the area determined by the Lands Tribunal was not comprised in the compulsory purchase order, the general vesting declaration shall have effect as mentioned in the preceding 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 above 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) above a person is entitled to serve a notice of objection to severance, and it is proved—
- (a) that he never received the notice required by paragraph 4 above to be served on him, or received that notice less than twenty-eight 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 twenty-eight 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) above has expired.
- (2) Where, in the circumstances specified in the preceding sub-paragraph, 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 above shall not have effect in relation to that notice;
 - (b) paragraph 22 above shall have effect in relation to that notice as if sub-paragraph (a) of that paragraph were omitted;
 - (c) paragraph 23 above 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 above 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 above, 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 the said 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 above.

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) of this paragraph, be treated as having been extinguished by virtue of paragraphs 6 to 8 above on the vesting of that land in the acquiring authority under those paragraphs.
- (2) Where by virtue of the preceding sub-paragraph a portion of a charge is treated as having been extinguished, the provisions of sections 108 to 111 of the said 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) of this paragraph, the person entitled to the charge and the owner of the land subject thereto enter into an agreement to that effect, the said sections 108 to 111, shall have effect as if, at the time of the vesting of the land in the acquiring authority under paragraphs 6 to 8 above, the person entitled to the charge had released that land from the charge on the condition mentioned in section 109 of the said Act of 1845; 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 therewith.
- (4) In this paragraph " charge " means 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 said 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 thereto as if for references to the time of the apportionment of rent therein mentioned 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 above, any person who, in consequence thereof, is relieved from any liability (whether in respect of a feu-duty, 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 above, 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 acknowledgment in writing of the right of the acquiring authority to production of that document and to delivery of copies thereof 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 thereof.

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- 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 above, may be referred to the Lands Tribunal shall be six 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 six years referred to in sub-paragraph (1) of this paragraph, no account shall be taken of any period during which the person claiming compensation or the person from whom he derives title was in minority or less age or was under legal disability.
- 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 above, shall be recorded in the General Register of Sasines, and on being so recorded shall have the same effect as a conveyance registered in accordance with section 80 of the Lands Clauses Consolidation (Scotland) Act 1845.

PART III

INTERPRETATION

- 38 (1) In this Schedule " short tenancy " means a tenancy for a year or from year to year or any lesser interest, and " long tenancy which is about to expire ", in relation to a general vesting declaration, means a tenancy granted for an interest greater than a short tenancy, but having at the date of the declaration a period still to run which is not more than the specified period (that is to say, such period, longer than one year, as may for the purposes of this paragraph be specified in the declaration in relation to the land in which the tenancy subsists).
- (2) In determining for the purposes of this paragraph what period a tenancy still has to run at the date of a general vesting declaration it shall be assumed—
- (a) that the tenant will exercise any option to renew the tenancy, and will not exercise any option to terminate the tenancy, then or thereafter available to him, and
 - (b) that the landlord will exercise any option to terminate the tenancy then or thereafter available to him.
- 39 In this Schedule—
- " Acquisition Act 1947 " means the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;
- " relevant enactments ", in relation to an acquiring authority, means the enactments under which that authority may acquire or be authorised to acquire land compulsorily and which prescribe a procedure for effecting the compulsory acquisition of land by them by means of a compulsory purchase order;
- " land ", in relation to compulsory acquisition by an acquiring authority, has the same meaning as in the relevant enactments.