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SCHEDULES

SCHEDULE 2

Section 12.

THE LETCHWORTH COMMISSIONER

PART I

ADMINISTRATIVE PROVISIONS

Appointment and disqualifications

- 1 The Letchworth Commissioner shall be appointed for a term of five years and may not be appointed for more than two terms.
- 2 The Letchworth Commissioner may not be relieved of office save at his own request or on grounds of incapacity or misbehaviour and shall in any case vacate office on completing the year of service in which he attains the age of seventy years.
- 3 A person shall be disqualified for being appointed as, or for being, the Letchworth Commissioner if he is or has been—
 - (a) a Governor of the Heritage Foundation;
 - (b) an officer or employee of the Heritage Foundation;
 - (c) a resident of Letchworth Garden City;
 - (d) engaged in carrying on any trade or business in Letchworth Garden City, or employed in such a trade or business, provided in either case that he is or was for that purpose actually in occupation of, or employed at, premises in Letchworth Garden City; or
 - (e) interested in any contract with the Heritage Foundation either in his own behalf or as a member of any company, local authority or other body.
- 4 Any person appointed to be the Letchworth Commissioner shall be disqualified for being a Governor or officer of the Heritage Foundation.

Remuneration, etc.

- 5 The Heritage Foundation shall pay to or in respect of the Letchworth Commissioner such amounts by way of remuneration, pensions, allowances or gratuities, or by way of provision for any such benefits, as they may determine.

Staff and accommodation

- 6 The Heritage Foundation shall in addition pay the reasonable out of pocket expenses of the Letchworth Commissioner incurred in the provision of staff and accommodation.

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PART II

PROCEDURE

- 7 (1) Where the Letchworth Commissioner proposes to conduct an investigation he shall afford to the Heritage Foundation, and to any person who is alleged to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint.
- (2) Every such investigation shall be conducted in private, but except as aforesaid the procedure for conducting an investigation shall be such as the Letchworth Commissioner considers appropriate in the circumstances of the case; and (without prejudice to that generality) the Letchworth Commissioner may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented (by counsel or solicitor or otherwise) in the investigation.
- (3) The Letchworth Commissioner may, if he thinks fit, require the Heritage Foundation to pay to the person by whom the complaint was made, and to any other person who attends or furnishes information for the purposes of an investigation conducted by the Letchworth Commissioner—
- (a) in respect of the expenses properly incurred by them,
 - (b) by way of compensation for the loss of their time,
- such reasonable sums as may be agreed between the Heritage Foundation and the person to whom the payment is to be made or, in default of such agreement, as may be determined by the Letchworth Commissioner.
- (4) The conduct of an investigation under this Act shall not affect any action taken by the Heritage Foundation, or any power or duty of the Heritage Foundation to take further action with respect to any matters subject to the investigation.
- 8 (1) The Letchworth Commissioner may for the purposes of any investigation conducted by him require any Governor or officer of the Heritage Foundation, or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation, to furnish any such information or produce any such documents.
- (2) For the purposes of any such investigation the Letchworth Commissioner shall have the same powers as the High Court in respect of the attendance and examination of witnesses, and in respect of the production of documents.
- (3) The Letchworth Commissioner may, under sub-paragraph (1) above, require any person to furnish information concerning communications between the Heritage Foundation and any Government department, or to produce any correspondence or other documents forming part of any such written communications.
- (4) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information in accordance with sub-paragraph (3) above; and where that sub-paragraph applies the Crown shall not be entitled to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.
- (5) Nothing in sub-paragraph (1) or sub-paragraph (3) above affects—

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- (a) the restriction, imposed by section 11 (2) of the Parliamentary Commissioner Act 1967, on the disclosure of information by the Parliamentary Commissioner or his officers; or
 - (b) the restriction, imposed by paragraph 16 of Schedule 13 to the National Health Service Act 1977, on the disclosure of information by the Health Service Commissioner for England or the Health Service Commissioner for Wales, or by their officers.
 - (6) Subject to sub-paragraph (4) above no person shall be compelled for the purposes of an investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.
 - (7) To assist him in any investigation the Letchworth Commissioner may obtain advice from any person who in his opinion is qualified to give it and may require the Heritage Foundation to pay to any such person such fees or allowances as the Letchworth Commissioner may determine.
 - (8) If any person without lawful excuse obstructs the Letchworth Commissioner in the performance of his functions under this Act, or any member of his staff assisting in the performance of those functions, or is guilty of any act or omission in relation to an investigation under this Act which, if that investigation were a proceeding in the High Court, would constitute contempt of court, the Letchworth Commissioner may certify the offence to the High Court.
 - (9) Where an offence is so certified, the High Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the High Court could deal with him if he had committed the like offence in relation to the High Court.
 - (10) Nothing in sub-paragraph (8) above shall be construed as applying to the taking of any such action as is mentioned in paragraph 7 (4) above.
- 9
- (1) Whenever the Letchworth Commissioner conducts an investigation, or decides not to conduct an investigation, he shall send a report of the results of the investigation, or as the case may be a statement of his reasons for not conducting an investigation—
 - (a) to the complainant, and
 - (b) to the Heritage Foundation.
 - (2) The report shall not—
 - (a) mention the name of any person other than the Heritage Foundation, or
 - (b) contain any particulars which, in the opinion of the Letchworth Commissioner, are likely to identify any person other than the Heritage Foundation and can be omitted without impairing the effectiveness of the report,unless, after taking into account the public interest as well as the interests of the complainant and of persons other than the complainant, the Letchworth Commissioner considers it necessary to mention the name of that person or to include in the report any such particulars.
 - (3) Subject to the provisions of sub-paragraph (7) below, the Heritage Foundation shall for a period of three weeks make copies of the report available for inspection by the

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public without charge at all reasonable hours at their offices; and any person shall be entitled to take copies of, or extracts from, the report when so made available.

- (4) Subject to sub-paragraph (7) below, the Heritage Foundation shall supply a copy of the report to any person on request if he pays such charge as the Heritage Foundation may reasonably require.
 - (5) Not later than two weeks after the report is received by the Heritage Foundation, they shall give public notice, by advertisement in newspapers and such other ways as appear to them appropriate, that copies of the report will be available as provided by sub-paragraphs (3) and (4) above, and shall specify the date, being a date not more than one week after public notice is first given, from which the period of three weeks will begin.
 - (6) If a person having the custody of a report made available for inspection as provided by sub-paragraph (3) above intentionally obstructs any person seeking to inspect the report, or to make a copy of, or extract from, the report, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
 - (7) The Letchworth Commissioner may, if he thinks fit after taking into account the public interest as well as the interests of the complainant and of persons other than the complainant, direct that a report specified in the direction shall not be subject to the provisions of sub-paragraphs (3), (4) and (5) above.
- 10 (1) Whenever the Letchworth Commissioner reports that injustice has been caused to a person aggrieved in consequence of maladministration it shall be the duty of the Heritage Foundation to consider the report and, within the period of three months beginning with the date on which they received the report, or such longer period as the Letchworth Commissioner may agree in writing, to notify the Letchworth Commissioner of the action which the Heritage Foundation have taken or propose to take.
- (2) If the Letchworth Commissioner—
- (a) does not receive the notification required by sub-paragraph (1) above within the period allowed by or under that sub-paragraph, or
 - (b) is not satisfied with the action which the Heritage Foundation have taken or propose to take, or
 - (c) does not within a period of three months beginning with the end of the period so allowed, or such longer period as the Letchworth Commissioner may agree in writing, receive confirmation from the Heritage Foundation that they have taken action, as proposed, to the satisfaction of the Letchworth Commissioner,
- he shall make a further report setting out those facts and making recommendations.
- (3) Those recommendations are such recommendations as the Letchworth Commissioner thinks fit to make with respect to action which, in his opinion, the Heritage Foundation should take to remedy the injustice to the person aggrieved and to prevent similar injustice being caused in the future.
- (4) Paragraph 9 above, with any necessary modifications, and sub-paragraph (1) above shall apply to a report under sub-paragraph (2) above as they apply to a report under that paragraph.
- (5) If the Letchworth Commissioner—

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- (a) does not receive the notification required by sub-paragraph (1) above (as applied by sub-paragraph (4) above) within the period allowed by or under that sub-paragraph or is satisfied before the period allowed by that sub-paragraph has expired that the Heritage Foundation have decided to take no action, or
- (b) is not satisfied with the action which the Heritage Foundation have taken or propose to take, or
- (c) does not within a period of three months beginning with the end of the period allowed by or under sub-paragraph (1) above (as applied by sub-paragraph (4) above) or such longer period as the Letchworth Commissioner may agree in writing, receive confirmation from the Heritage Foundation that they have taken action, as proposed, to the satisfaction of the Letchworth Commissioner,

he may, by notice to the Heritage Foundation, require them to arrange for a statement to be published in accordance with sub-paragraphs (6) and (7) below.

- (6) The statement referred to in sub-paragraph (5) above is a statement, in such form as the Heritage Foundation and the Letchworth Commissioner may agree, consisting of—
 - (a) details of any action recommended by the Letchworth Commissioner in his further report which the Heritage Foundation have not taken;
 - (b) such supporting material as the Letchworth Commissioner may require; and
 - (c) if the Heritage Foundation so require, a statement of the reasons for their having taken no action on, or not the action recommended in, the report.
- (7) The requirements for the publication of the statement are that—
 - (a) publication shall be in any two editions within a fortnight of a newspaper circulating in the area of Letchworth Garden City agreed with the Letchworth Commissioner or, in default of agreement, nominated by him; and
 - (b) publication in the first such edition shall be arranged for the earliest practicable date.
- (8) If the Heritage Foundation—
 - (a) fail to arrange for the publication of the statement in accordance with sub-paragraphs (6) and (7) above, or
 - (b) are unable, within the period of one month beginning with the date on which they received the notice under sub-paragraph (5) above, or such longer period as the Letchworth Commissioner may agree in writing, to agree with the Letchworth Commissioner the form of the statement to be published,

the Letchworth Commissioner shall arrange for such a statement as is mentioned in sub-paragraph (6) above to be published in any two editions within a fortnight of a newspaper circulating within Letchworth Garden City.

- (9) The Heritage Foundation shall reimburse the Letchworth Commissioner any reasonable expenses incurred by him in performing his duty under sub-paragraph (8) above.

- 11 Where on consideration of any report by the Letchworth Commissioner it appears to the Heritage Foundation that a payment should be made to, or some other payment should be provided for, a person who has suffered injustice in consequence of maladministration to which the report relates, the Heritage Foundation may

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(notwithstanding anything in the Rules of the Heritage Foundation) incur such expenditure as appears to the Board of Management of the Heritage Foundation to be appropriate in making such a payment or providing such a benefit.

- 12 (1) Any power of the Heritage Foundation to have their functions discharged by any person or body of persons acting for them shall, as respects the consideration of a further report of the Letchworth Commissioner under paragraph 10 (2) above, be subject to the restriction that, if it is proposed that the Heritage Foundation should take no action on, or not the action recommended in, the report, consideration of the report shall be referred to the Heritage Foundation.
- (2) If when considering a further report of the Letchworth Commissioner under paragraph 10 (2) above the Heritage Foundation take into consideration a report by a person or body with an interest in the Letchworth Commissioner's report, they shall not conclude their consideration of the Letchworth Commissioner's report without also having taken into consideration a report by a person or body with no interest in the Letchworth Commissioner's report.
- (3) No Governor of the Heritage Foundation shall vote on any question with respect to a report or further report by the Letchworth Commissioner in which he is named and criticised by the Letchworth Commissioner.
- (4) Subsection (9) of section 12 (The Letchworth Commissioner) of this Act does not apply to this paragraph.
- 13 (1) For the purposes of the law of defamation the following shall be absolutely privileged:—
 - (a) the publication of any matter in communications between a Governor or officer of the Heritage Foundation and the Letchworth Commissioner for the purposes of this Act;
 - (b) the publication of any matter by the Letchworth Commissioner in communicating with a complainant for the purposes of this Act;
 - (c) the publication of any matter in preparing, making and sending a report or statement in accordance with paragraph 9 or paragraph 10 above, or, subject to paragraph 9 (7) above, in making a report available to the public or in supplying a copy under paragraph 9 (4) above;
 - (d) the publication of any matter by inclusion in a statement published in accordance with sub-paragraphs (5) to (8) of paragraph 10 above.
- (2) Information obtained by the Letchworth Commissioner in the course of or for the purposes of an investigation under this Act shall not be disclosed except—
 - (a) for the purposes of the investigation and of any report to be made under paragraph 9 or paragraph 10 above;
 - (b) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained, under this Act, by the Letchworth Commissioner or for an offence of perjury alleged to have been committed in the course of an investigation under this Act or for the purposes of an inquiry with a view to the taking of such proceedings; or
 - (c) for the purpose of any proceedings under paragraph 8 (9) above;
 and the Letchworth Commissioner shall not be called upon to give evidence in any proceedings (other than proceedings within sub-paragraph (b) or (c) above) of matters coming to his knowledge in the course of an investigation under this Act.

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- (3) A Minister of the Crown may give notice in writing to the Letchworth Commissioner with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Minister the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest; and where such a notice is given nothing in this Act shall be construed as authorising or requiring the Letchworth Commissioner to communicate to any other person, or for any purpose, any document or information specified in the notice, or any document or information of a class so specified.
- (4) Nothing in sub-paragraph (3) above shall affect the obligations imposed by paragraph 8 (4) and (5) above.
- (5) Where information is disclosed in accordance with paragraph 8 (3) above, being information which is derived from a communication from a government department, and which has not been made public, the Letchworth Commissioner shall not without the written consent of an officer of the government department make a report which includes all or any of that information unless he has given the department not less than one month's notice in writing of his intention.
- (6) The provisions of this paragraph shall apply to the Commissioners of Customs and Excise and Commissioners of Inland Revenue as they apply to a Minister of the Crown.

PART III

MATTERS NOT SUBJECT TO INVESTIGATION

- 14 The actions and matters in respect of which the Letchworth Commissioner shall not conduct an investigation are any actions or matters of the following descriptions:—
- (a) The commencement or conduct of civil or criminal proceedings before any court of law.
 - (b)
 - (i) Action taken in matters relating to contractual or other commercial transactions of the Heritage Foundation or any subsidiary of the Heritage Foundation within the meaning of section 736 of the Companies Act 1985, including transactions falling within sub-paragraph (ii) below but excluding transactions falling within sub-paragraph (iii) below.
 - (ii) The transactions mentioned in sub-paragraph (i) above as included in the matters which, by virtue of that sub-paragraph, are not subject to investigation are all transactions of the Heritage Foundation or any company in which the Heritage Foundation have an interest relating to the operation of public passenger transport, the provision of recreation or entertainment, the provision and operation of industrial establishments or the carrying on of any trade.
 - (iii) The transactions mentioned in sub-paragraph (i) above as not included in those matters are transactions for or relating to the acquisition or disposal of land.
 - (c) Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.