

SCHEDULES

SCHEDULE 18

Section 130

DISCHARGE OR MODIFICATION OF OBLIGATIONS UNDER CONSERVATION COVENANTS

PART 1

DISCHARGE BY UPPER TRIBUNAL

Power to discharge on application by landowner or responsible body

- 1 (1) The Upper Tribunal may, on the application of a person bound by, or entitled to the benefit of, an obligation under a conservation covenant by virtue of being the holder of an estate in land, by order discharge the obligation in respect of any of the land to which it relates.
- (2) The Upper Tribunal must add as party to the proceedings on an application under sub-paragraph (1) the responsible body under the covenant.
- 2 (1) The Upper Tribunal may, on the application of the responsible body under a conservation covenant, by order discharge an obligation under the covenant in respect of any of the land to which it relates.
- (2) The Upper Tribunal must add as party to the proceedings on an application under sub-paragraph (1) any person who, by virtue of being the holder of an estate in land, is bound by, or entitled to the benefit of, the obligation to which the application relates.

Deciding whether to discharge

- 3 (1) The Upper Tribunal may exercise its power under paragraph 1(1) or 2(1) if it considers it reasonable to do so in all the circumstances of the case.
- (2) In considering whether to exercise its power under paragraph 1(1) or 2(1), the matters to which the Upper Tribunal is to have regard include—
 - (a) whether there has been any material change of circumstance since the making of the original agreement, in particular—
 - (i) change in the character of the land to which the obligation relates or of the neighbourhood of that land;
 - (ii) change affecting the enjoyment of the land to which the obligation relates;
 - (iii) change affecting the extent to which performance of the obligation is, or is likely in future to be, affordable;
 - (iv) change affecting the extent to which performance of the obligation is, or is likely in future to be, practicable;
 - (b) whether the obligation serves any conservation purpose it had—
 - (i) when the original agreement was entered into, or

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- (ii) if the obligation has since been modified (whether by agreement or by the Upper Tribunal), when the obligation was modified, as the case may be; and
 - (c) whether the obligation serves the public good.
- (3) In considering whether to exercise its power under paragraph 1(1), the matters to which the Upper Tribunal is to have regard also include—
- (a) whether any conservation purpose which the obligation in question had when the original agreement was entered into could be served equally well by an obligation relating to different land in respect of which the applicant holds a qualifying estate; and
 - (b) whether, if an order under paragraph 1(1) were made, such an alternative obligation could be created by means of a conservation covenant.
- (4) In considering, for the purposes of this paragraph, affordability or practicability in relation to performance of an obligation, change in the personal circumstances of a person bound by the obligation is to be disregarded.
- (5) In this paragraph references to the original agreement, in relation to an obligation under a conservation covenant, are to the agreement containing the provision which gave rise to the obligation.

Supplementary powers

- 4 (1) The Upper Tribunal may include in an order under paragraph 1(1) or 2(1) provision requiring the applicant to pay compensation in respect of loss of benefit resulting from the order.
- (2) Compensation under sub-paragraph (1) shall be payable to such person at such time and be of such amount as the order may provide.
- 5 (1) The Upper Tribunal may, if it considers it reasonable to do so in connection with the discharge under paragraph 1(1) of an obligation under a conservation covenant, include in the order discharging the obligation provision making the discharge conditional on the entry by the applicant and the responsible body under the covenant into a conservation covenant agreement containing such provision as the order may specify.
- (2) The power under sub-paragraph (1) is exercisable only with the consent of the applicant and the responsible body.

PART 2

MODIFICATION BY UPPER TRIBUNAL

Power to modify on application by landowner or responsible body

- 6 (1) The Upper Tribunal may, on the application of a person bound by, or entitled to the benefit of, an obligation under a conservation covenant by virtue of being the holder of an estate in land, by order modify the obligation in respect of any of the land to which it relates.

- (2) The Upper Tribunal must add as party to the proceedings on an application under sub-paragraph (1) the responsible body under the covenant.
- 7 (1) The Upper Tribunal may, on the application of the responsible body under a conservation covenant, by order modify an obligation under the covenant in respect of any of the land to which it relates.
- (2) The Upper Tribunal must add as party to the proceedings on an application under sub-paragraph (1) any person who, by virtue of being the holder of an estate in land, is bound by, or entitled to the benefit of, the obligation to which the application relates.
- 8 The power under paragraph 6(1) or 7(1) does not include power to make a change to an obligation which, had it been included in the original agreement, would have prevented the provision of the agreement which gave rise to the obligation being provision in relation to which the conditions in section 117(1)(a) were met.

Deciding whether to modify

- 9 (1) The Upper Tribunal may exercise its power under paragraph 6(1) or 7(1) if it considers it reasonable to do so in all the circumstances of the case.
- (2) In considering whether to exercise its power under paragraph 6(1) or 7(1), the matters to which the Upper Tribunal is to have regard include—
- (a) whether there has been any material change of circumstance since the making of the original agreement, in particular—
 - (i) change in the character of the land to which the obligation relates or of the neighbourhood of that land;
 - (ii) change affecting the enjoyment of the land to which the obligation relates;
 - (iii) change affecting the extent to which performance of the obligation is, or is likely in future to be, affordable;
 - (iv) change affecting the extent to which performance of the obligation is, or is likely in future to be, practicable;
 - (b) whether the obligation serves any conservation purpose it had—
 - (i) when the original agreement was entered into, or
 - (ii) if the obligation has since been modified (whether by agreement or by the Upper Tribunal), when the obligation was modified, as the case may be; and
 - (c) whether the obligation serves the public good.
- (3) In considering, for the purposes of this paragraph, affordability or practicability in relation to performance of an obligation, change in the personal circumstances of a person bound by the obligation is to be disregarded.

Supplementary powers

- 10 (1) The Upper Tribunal may include in an order under paragraph 6(1) or 7(1) provision requiring the applicant to pay compensation in respect of loss of benefit resulting from the order.
- (2) Compensation under sub-paragraph (1) shall be payable to such person at such time and be of such amount as the order may provide.

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- 11 (1) The Upper Tribunal may, if it considers it reasonable to do so in connection with the modification under paragraph 6(1) of an obligation under a conservation covenant, include in the order modifying the obligation provision making the modification conditional on the entry by the applicant and the responsible body under the covenant into a conservation covenant agreement containing such provision as the order may specify.
- (2) The power under sub-paragraph (1) is exercisable only with the consent of the applicant and the responsible body.

Effect of modification

- 12 (1) The modification of an obligation by an order under this Part binds—
- (a) the parties to the proceedings in which the order is made, and
 - (b) any person who, as respects any of the land to which the modification relates, becomes a successor of a person bound by the modification.
- (2) For the purposes of sub-paragraph (1) “successor of a person bound by the modification” means a person who holds, in respect of any of the land to which the modification relates—
- (a) the estate held by the person so bound when the order modifying the obligation was made, or
 - (b) an estate in land derived (whether immediately or otherwise) from that estate after the order modifying the obligation was made.

Interpretation

- 13 In this Part, references to the original agreement, in relation to an obligation under a conservation covenant, are to the agreement containing the provision which gave rise to the obligation.