

THE DRAFT LAND BILL, 2011

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THE LAND BILL, 2011

A BILL FOR

AN ACT of Parliament to provide for the sustainable administration and management of land and land-based resources and for connected purposes.

BE IT ENACTED by the Parliament of Kenya as follows—

PART I – PRELIMINARY PROVISIONS

- | | | |
|-----------------|----|---|
| Citation | 1. | This Act may be cited as the Land Act, 2011. |
| Application | 2. | This Act shall apply to -

(a) all land declared as public land Article 62 of the Constitution; and

(b) all private land as declared by Article 64 of the Constitution. |
| Interpretation. | 3. | In this Act unless the context otherwise requires:

“ actual notice ” means the notice which a person has personally of a matter or action or document or the rights and interests of another person;

“ adjoining ”, in relation to parcels of public land, includes only separated by—

(a) roads;

(b) railways;

(c) watercourses or other natural features of such a character as to |

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be insufficient to prevent the passage of stock; or

(d) reserves or unallocated public land;

"assignee" means a person to whom an assignment is made;

"building" means any structure or erection of any kind whatsoever whether permanent or temporary , whether movable or immovable and whether completed or uncompleted;

"Cabinet Secretary" means the Cabinet Secretary in the Ministry responsible for land matters;

"Certificate of Lease" has the meaning assigned to it in the Land Registration Act;

"Certificate of Title" has the meaning assigned to it in the Land Registration Act;

"Commission" means the National Land Commission established by Article 67 of the Constitution;

"Community land" has the meaning assigned to in Article 63 of the Constitution;

"Court" means a body established under written law which is referred to in section 103 of this Act as having jurisdiction to determine land disputes;

"dealing" includes disposition and transmission;

"deliver" includes to transmit by post, hand, email, fax or other prescribed medium;

"development" means the carrying out of any building operation, engineering operation or mining operation in, on, under or over land or the making of any change of a substantial nature in the use of land;

"disposition" means any sale, charge, transfer, grant, partition, exchange,

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lease, assignment, surrender, or disclaimer and includes the disclaimer and includes the creation of an easement, a usufructuary right, or other servitude or any other interest in a land or a lease and any other act by an owner of a land or under a lease whereby his rights over that land or lease are affected and an agreement to undertake any of the dispositions so defined;

“dwelling house” means any house or part of a house or room used as a separate dwelling in any building and includes any garden or other premises within the cartilage of and used as a part of the dwelling house as so defined;

“effective date” means the commencement date of this Act;

“guardian” means a person responsible (whether under African customary law or otherwise) for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

“instrument” means a writing, including an enactment which creates or affects legal or equitable rights and liabilities and includes any covenant or condition expressed in an instrument or implied in a instrument under this or any other enactment relating to land and, except where otherwise provided, any variation of an instrument;

“interest” means a right in or over a land;

“land” has the meaning assigned to in Article 260 of the Constitution;

“lease” means a lease or sublease, whether registered or unregistered of a land and includes a short-term lease and agreement to lease;

“lessee” means a person to whom a lease is granted and includes a person who has accepted a transfer or assignment of a lease;

“lessor” means a person by whom a lease is granted and includes a person who has accepted the transfer or assignment of the reversion of a lease;

“license” means a permission given by the Commission which allows the

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person to whom the license is given to occupy or use or do some act in relation to the land comprised in the land or the lease which would otherwise be a trespass but does not include an easement;

"licensee" means the person occupying land under and in accordance with the terms of a license;

"partition" means the separation by formal legal instrument of the share in a land or a lease held by owners in common so that each such owner takes his as shares free of the rights of the others;

"peri-urban area" means an area which is within a radius of ten kilometers outside the boundaries of an urban or semi-built up area or within any large radius which may be prescribed in respect of any particular urban area by the Cabinet Secretary";

"private land" means all private land as defined by Article 64 of the Constitution; **"proprietor"** means -

- (a) in relation to land or a lease, the person named in the register as the proprietor thereof; and
- (b) in relation to a charge of land or a lease, the person named in the register of the land or lease as the person in whose favour the charge is made;

"public land" means all public land as defined by Article 62 of the Constitution;

"public purposes or public purposes" means the construction of roads, railway lines, dams, water reservoirs, bridges, sea ports, airports, cities, research institutions, security installations, public buildings, or such other prescribed facility.

"register of public land " means a register maintained under the Land Registration Act for the recording of rights and interests in and dispositions of

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public land ;

"restrictive agreement" means an agreement by one owner of land under a land restricting the building on or the use or other enjoyment of his land for the benefit of the owner under a land or neighbouring land and includes a restrictive covenant;

"Rules Committee" has the meaning ascribed to it by the Civil Procedure Act;

"transfer" means the passing of land, a lease or a charge from one party to another by act of the parties and not by operation of the law and includes the instrument by which such passing is effected;

"transferee" means a person who receives the land, lease or charge passed by an act of transfer;

"transferor" means the person who passes the land lease or charge by an act of transfer;

"trustee" includes personal representative;

"valuable consideration" includes marriage, but does not include a nominal consideration; and

"unexhausted improvement" means anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an owner or any person acting on his behalf and increasing the productive capacity, the utility, the sustainability of its environmental quality and includes trees, standing crops and growing produce whether of an agricultural or horticultural nature.

PART II:- ADMINISTRATION AND MANAGEMENT OF PUBLIC LAND

GENERAL PROVISIONS

General powers of the Commission in relation to public land

4. (1) Subject to this Act, and the National Commission Act, the Commission shall, in the name and on behalf of the national government or county government :-
- (a) exercise powers and perform duties in relation to public land in accordance with the Constitution and this Act; and
 - (b) provide land administration expertise to the private and public sectors within Kenya and elsewhere, and raise such fees and charges in respect of that provision as the Commission considers appropriate.
 - (c) Protect, conserve and provide access to all public land.
- (2) The Commission may, when exercising powers or performing duties in relation to public land under subsection (1) (a), require the land to be used for such purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or other instrument.

General powers and functions of the Cabinet Secretary in relation to land

5. The Cabinet Secretary for Land shall exercise the following powers and functions—
- (a) land Policy formulation including the National land use policy;
 - (b) powers of Compulsory acquisition;
 - (c) mobilizing of resources;
 - (d) facilitate implementation of the land policy reforms;
 - (e) coordinating the management of the national Spatial Data infrastructure;

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- (f) land administration;
- (g) establishment of land Bank;
- (h) coordinating and overseeing statutory bodies established to regulate land planners, surveyors, valuers and estate agents;
- (i) land registration;
- (j) prescribe minimum and maximum land holding acreages in respect of private land;
- (k) to regulate the manner in which any land may be converted from one category to another

- Management of public land**
- 6. (1)** The Commission in managing public land on behalf of the National and county governments shall-
- (a) identify , prepare and keep a database of all public land;
 - (b) share data with stakeholders in order to discharge its functions and powers under this Act;
- (2)** From the effective date, all government bodies, public agencies, state corporations, and statutory bodies in actual occupation or use of public land shall surrender the title instruments and other registration particulars to the Commission.
- (3)** The Commission shall be registered as the owner of land whose titles have been surrendered under subsection (4).
- Evaluation of Public land**
- 7.** The Commission shall evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning taking into account physical,

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social and economic information.

Guidelines on the
management of public land

8. (1) The Commission shall prescribe guidelines to be adhered to by all public agencies, statutory bodies and state corporations in actual occupation or use of public lands.
- (2) The guidelines prescribed under subsection (1) shall indicate management priorities and operational principles for managing public land resources for identified uses.
- (3) The guidelines shall be available for the public to make observations and should be modified based on valid representations.

Conservation of Public Land

9. (1) The Commission shall take appropriate action to maintain those public lands that have endangered endemic species of flora and fauna, critical habitats and protected areas.
- (2) Subject to this Act, the Commission shall identify areas under severe pressure falling within public lands, demarcate and prevent environmental degradation.

Allocation of Public Land

10. (1) The Commission may allocate public land by way of ;
- (a) auction to the highest bidder for housing, agriculture, commerce, industry, tourism and recreation or any other purpose at prevailing market value;
- (b) application confined to a targeted group of persons or groups in order to ameliorate their disadvantaged position;
- (c) public notice of tender as may be prescribed ;
- (d) public drawing of lots as may be prescribed;
- (e) public request for proposals as may be prescribed; or
- (f) public exchanges as may be prescribed.

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- (2) The Commission shall satisfy itself that the public lands identified for allocation do not fall into the following categories—
- (a) public lands subject to erosion, floods, earth slips or water logging;
 - (b) public lands that fall within forest and wild life reserves, mangroves, and wetlands or fall within the buffer zones of such reserves or within environmentally sensitive areas;
 - (c) public lands along watersheds, river and stream catchments, public water reservoirs, lakes, and the territorial sea as may be prescribed;
 - (d) public land reserved for security, education, research and other strategic public uses as may be prescribed; and
 - (e) natural features of exceptional value falling within public lands;
- (3) For avoidance of doubt, a non-citizen shall not be allocated or granted land unless it is for investment purposes under the Investment Promotion Act.
- (4) The Commission shall designate land for investment purposes under subsection (3) which shall be identified, gazetted and allocated to investors through leasehold interests not exceeding 99 years.
- (5) For the purposes of this Act, a body corporate whose majority shareholders or owners are non-citizens shall be deemed to be non-citizen.
- (6) At the expiry, termination or extinction of a lease granted to a non-citizen or a foreign company, reversion of interests or rights in and over the land shall vest in the Commission.
- (7) Public land shall not be allocated unless it is planned, surveyed and guidelines for its development prepared in accordance with section 13 of this Act.
- (8) Public land allocated under this section shall not be sold, disposed off, sub-

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leased, or sub-divided without the consent of the Commission.

- (9) In a disposition of public land under this section, the Commission may impose the terms, covenants, stipulations and reservations the Commission considers advisable, and without limiting those powers, the Commission may impose some or all of the following terms—
- (a) the applicant must personally occupy and reside on then land for a period set by the Commission;
 - (b) the applicant must do that work and spend that money for permanent improvement of the public land within that period the Commission requires; or
 - (c) the consideration that must be paid for a disposition of public land
- (10) The Commission shall make regulations on the details of the allocation criteria and for connected matters.

RESERVED PUBLIC LAND

Commission may reserve
public land

- 11.** (1) The Commission may by order reserve public land comprised in:
- (a) forests;
 - (b) any body of water or under the surface,
 - (c) marine waters in the territorial sea and exclusive economic zone, and
 - (d) any other natural resources completely contained on or under the surface.
- for one or more purposes in the public interest.
- (3) The Commission shall within two years of the coming into force of this Act

undertake an inventory of all land based natural resources.

Placing of care, control and
management of reserved
public land

12. (1) The Commission may by order place with a statutory body, public corporation or a public agency ('a management body') the care, control and management of a reserved land for the same purpose as that for which the relevant public land is reserved under section 13 and for purposes ancillary or beneficial to that purpose and may in that order subject that care, control and management to such conditions as the Commission specifies.
- (2) The Commission may by order vary any condition to which the care, control and management of the reserve is subject.
- (3) The Commission may:—
- (a) by order confer on a management body power to grant a lease or sublease or licence over the whole or any part of the public land within the reserve in question for the purposes referred to in subsection (1); and
 - (b) approve a charge of any such lease.
- (4) An order made under this section does not create any interest in reserved public land in favour of the management body of that reserve.
- (5) If public land reserved under this Act for the purpose of recreation is leased or subleased under a power conferred under subsection (3), the lessee or sublessee may, unless the terms of the management order or the lease or sublease otherwise provide, restrict public access to the area leased.
- (6) A management body with whom the care, control and management of a reserve is placed by order under subsection (1) has, by virtue of this subsection, the capacity, functions and powers to hold and deal with the reserve in a manner consistent with the order, any order conferring power on that person under subsection (3) (a) and this Act to the extent that the

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person does not already have that capacity or those functions and powers.

- (7) Subsection (6) does not authorise a management body to perform a function or exercise a power if another enactment expressly prevents the body from performing that function or exercising that power, or expressly authorises another person to perform that function or exercise that power.

Development plans

13. (1) A management body shall submit to the Commission for approval a plan for the development, management and use of reserved public land for the purpose of that managed reserve.
- (2) The Commission may request a management body or proposed management body to submit to the Commission in an approved form, within such period as is specified in that request, for approval a plan for the development, management and use of the public land in the managed reserve of the management body for the purpose of that managed reserve.
- (3) A management body must, before submitting a plan to the Commission under subsection (1) or in response to a request under subsection (2)—
- (a) consider any conservation, environmental or heritage issues relevant to the development, management or use of the public land in its managed reserve for the purpose of that managed reserve; and
 - (b) incorporate in the plan a statement that it has considered those issues in drawing up the plan.
- (4) If a management body submits a plan to the Commission under subsection (1) or in response to a request under subsection (2) and the Commission approves that plan and notifies the management body of that fact, the management body may develop, manage and use the public land concerned—

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(a) in accordance with the plan; or

(b) if the Commission approves a variation of the plan, in accordance with the plan as varied.

Revocation of management orders

14. (1) When a management body does not comply with guidelines or orders issued by the Commission or does not submit a management plan in compliance with a request made under section 17 (2), the Commission may by order revoke that management order.
- (2) If the Commission considers that it is in the public interest to revoke a management order, the Commission may by order revoke the management order.

Rules and regulations for the conservation of reserved land based natural resources

15. (1) The Commission shall make rules and regulations for the sustainable conservation of land based natural resources.
- (2) Without limiting what the Commission may prescribe under subsection (1), the rules and regulations may contain:-
- (a) measures to protect critical ecosystems and habitats.
 - (b) incentives for communities and individuals to invest in income generating natural resource conservation programmes;
 - (c) principles to facilitate the access, use and co-management of forests, water and other resources by communities who have customary rights to these resources;
 - (d) procedures for the registration of natural resources in an appropriate register; and
 - (e) procedures on the involvement of all stakeholders in the management and utilization of land-based natural resources.

PART III— LEASES, LICENSES AND AGREEMENTS FOR PUBLIC LAND

License for temporary purposes specified in the lease.

16. (1) Subject to this Act, the Commission may grant a person a license to occupy unalienated public land for temporary purposes only as may be prescribed.

(2) Unless it is expressly provided otherwise, a license under this section shall continue for one year and thenceforward until the expiration of any three months' notice to quit.

Provided that the notice to quit may be served upon the licensee at any time after the expiration of nine months from the date of the license.

(3) The rent payable under a license under this section, the period and the agreements and conditions of the license, shall be such as may be prescribed.

(4) The benefit of a license under this section may, with the consent of the Commission, be transferred by the licensee, and the transfer and the consent thereto shall be endorsed on the license.

Removal of building under temporary license.

17. The occupant of any public land under a license granted under section 16 may remove any structure or other building erected by him during his occupation of the land at any time before the license expires.

Penalty for unpaid rent, etc.

18. If the rent payable under a license granted under section 16 is unpaid for one month after it became due, or if any tax or taxes imposed upon the land, or upon the structure or building erected on the land, or upon the licensee, are unpaid for two months after they became due, or if the occupant of the land fails to keep the land in a reasonably clean condition, the Commission may declare his license to be forfeited.

PART IV--GENERAL CONDITIONS RELATING TO LEASES, LICENSES AND AGREEMENTS FOR PUBLIC LAND

Implied Covenants and Conditions

- 19.** (1) Except as otherwise provided, there shall in every grant or lease relating to public land , be implied by virtue of this Act covenants by the grantor or lessor:—
- (a) that he has full power to grant the land or lease.
 - (b) that the grantee or lessee, paying the rent and fulfilling the conditions therein contained, shall quietly hold and enjoy the premises without lawful interruption by the grantor or lessor or any person claiming under him, except so far as the laws for the time being in force may permit.
- (2) A grant of public land shall be made in the name of the Commission and shall be sealed.

Implied covenant and conditions by lessee or licensee.

- 20.** In every grant, lease and license for public land under this Act there shall, by virtue of this Act, be implied covenants and conditions by the grantee, lessee or licensee:—
- (a) that he will pay rent and royalties thereby reserved at the time and in the manner therein provided;
 - (b) that he will pay such taxes, rates, charges, duties, assessments or outgoings of whatever description as may be imposed, charged or assessed upon the land or the buildings thereon or upon the lessor or grantor or lessee or licensee in respect thereof.

Buildings on leased Public lands

- 21.** In the absence of special provisions to the contrary in a lease or license for public land under this Act, all buildings on public lands leased or occupied

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under a license, whether erected by the lessee or licensee or not, shall, on the determination of the lease or license, pass to the Government without payment of compensation:

Provided that, in the absence of any special provision to the contrary in the lease, in the case of a lease for a term not exceeding thirty years the lessee shall be at liberty within three months of the termination (otherwise than by forfeiture) of the lease to remove any buildings erected by him on the land leased during the currency of the lease, unless the Commission elects to purchase those buildings; and, in the event of disagreement as to the purchase price of the buildings, the same shall be determined by arbitration.

Covenants and conditions
binding on persons
claiming under grant, lease
or license

22. Every covenant or condition, whether expressed or implied, in a grant, lease or license under this Act which is binding on a grantee, lessee or licensee shall, unless otherwise expressly provided in the grant, lease or license, be binding upon all persons claiming an interest in the land the subject of the grant, lease or license, and whose title is derived through or under the grantee, lessee or licensee

Obligations of minors

23. A minor who becomes a lessee or licensee under this Act shall be in the same position with regard to his liability and obligations under or in respect of his lease or license as though he were of full age.

Rents and other payments.

24. (1) The rent royalties and payments reserved under any lease or license shall be a debt to the Commission, and shall be paid by the lessee or licensee at the office of the Commission or at such other place as may be prescribed.

(2) The annual rent reserved under any lease or license shall be payable in advance on the 1st day of January in each year of the term.

(3) All rents, royalties and other payments reserved under the lease or license shall be debts due to the Commission and shall be paid by the lessee or

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licensee at the Commission or at such other place as may be prescribed

Unpaid Rents and other payments.

- 25.** (1) If any Funds due in respect of any rent, principal installment, royalty or other payment (in this section referred to as "the principal debt") under any agreement lease or license under this Act, or under any Act repealed by this Act, remain unpaid after the due date, a late payment interest at the rate of two percent per month or part thereof, or at such other rate as may from time to time be specified by the Commission in the Gazette, shall be charged on the amount remaining unpaid for more than one month after the due date until the full amount is recovered.
- (2) Any payment made under subsection (1) shall first be attributed to the payment of outstanding interest and thereafter only when such interest has been paid in full shall any payment be attributed to the reduction of the principal debt.
- (3) Where any interest becomes payable under subsection (1) the Commission shall serve on the person in debt a notice demanding payment of such interest in addition to the other Funds then due .
- (4) Notwithstanding the foregoing provisions of this section, the Commission may, upon good and sufficient cause shown remit the whole or any part of any late payment interest provided for by this section.

Commission may sue for rent, etc., in arrears.

- 26.** Without prejudice to his right to recover in any other way, the Commission may sue in Court for any rent, principal, installment, royalty or other payment, payable under any agreement, lease or license under this Act, which is in arrear, and for any penalty payable under section 24.

Forfeiture of lease if rent unpaid or for breach of covenant.

- 27.** (1) If the rent or royalties or any part thereof reserved in a lease under this Act is at any time unpaid for the space of thirty days after the same has become due, or if there is any breach of the lessee's covenants, whether

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express or implied by virtue of this Act, the Commission may serve a notice upon the lessee specifying the rent or royalties in arrear or the covenant of which a breach has been committed, and at any time after one month from the service of the notice may commence an action in Court for the recovery of the premises, and, on proof of the facts, the Court shall, subject to relief upon such terms as may appear just, declare the lease forfeited, and the Commission may re-enter upon the land.

(2) In exercising the power of granting relief against forfeiture under this sub-section (1) the Court shall be guided by the principles of the doctrines of equity.

Forfeiture of license

28. (1) Except where other provision is made in this Act, if the rent or any part thereof payable under a license issued under this Act is at any time unpaid for a space of thirty days after the same has become due, or if the licensee fails to comply with, or commits any breach of, the conditions, whether express or implied, of his license, the Commission may cause an application to be made in Court to declare the license forfeited.
- (2) Upon receipt of an application under subsection (1), together with a statement specifying the rent in arrear or the condition which has not been complied with or of which a breach has been committed, the Court shall cause to be served upon the licensee a copy of the statement, together with a notice of the date, not being less than fourteen days from the date of the notice, when the application will be heard.
- (3) If upon the date fixed for the hearing of the application or to which the hearing is adjourned it is prove to the satisfaction of the court that rent is in arrear or that the licensee has failed to comply with or has committed a breach of any of the conditions of the license, it shall, subject to such relief against forfeiture for non-payment of rent as may seem just, declare the

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license forfeited.

Debt to Commission not extinguished by forfeiture

- 29.** Forfeiture shall not operate to extinguish any debt to the Commission in respect of any rent, royalty or other payment to be made by a lessee or licensee under a lease or license forfeited.

Subdivision etc. of public land subject to continuing interests etc.

- 30. (1)** If the Commission proposes to survey or resurvey the internal or external boundaries (or both) of, or to subdivide leased public land the subject of any interests or caveats, the Commission may, with or without the consent of the holders of the interests, or of the relevant caveators, by order incorporating a plan of survey or revised plan of survey prepared by a statutory body responsible for survey, make such adjustments to those boundaries as—
- (a) the Commission considers necessary; and
 - (b) accord with any proposed plan of subdivision approved under the Physical Planning Act.

without any obligation to make or pay compensation.

- (2)** On the approval by the Commission of a plan of survey or revised plan of survey referred to in subsection (1) and the registration of the order with reference to that plan of survey or revised plan of survey, the internal or external boundaries (or both) of the relevant public land are adjusted accordingly—
- (a) despite the existence of any interests registered or caveats lodged in respect of that public land; and
 - (b) with or without the consent of the holders of those interests or of the relevant caveators.
- (3)** The Commission shall ensure that an adjustment made under subsection (2) is made in conformity with sound planning and land management principles so

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as to cause as little detriment as possible to any interest or caveat affected by that adjustment.

- (4) On the adjustment under subsection (2) of the internal or external boundaries (or both) of leased public land subject to interests or caveats, the interests or caveats apply to the relevant locations or lots within those boundaries and not to the public land referred to in the instruments which created those interests or caveats.

Acceptance of purchase money or rent not to operate as waiver of forfeiture.

31. The acceptance by or on behalf of the Commission of any purchase money or part thereof or of any rent or other payment under any lease or license shall not be held to operate as a waiver by the Commission of any forfeiture accruing by reason of the breach of any covenant or condition annexed to any sale, lease or license of or respecting public land, whether the sale, lease or license is under this Act or under any other Act relating to the disposal of public land.

PART V - TRANSFERS

Transfer

32. (1) A proprietor may transfer his land, lease or charge to any person (including himself), with or without consideration, by an instrument in the prescribed form.
- (2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or charge and by filing the instrument.
- (3) The transferee of a charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer

Transfer to take effect immediately

33. A transfer shall not be expressed to take effect on the happening of any event or on the fulfillment of any condition or at any future time.

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Transfer of part

- 34.** (1) No part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and new registers have been opened in respect of each subdivision.

Transfer of leases

- 35.** On the transfer of a lease, unless the contrary is expressed in the transfer, there shall be implied-
- (a) a warranty on the part of the transferor that the rent, agreements and conditions on the part of the lessee to be paid, performed and observed have been so paid, performed and observed up to the date specified in the transfer or, if no such date is specified, the date of the transfer; and
 - (b) an agreement on the part of the transferee to pay the said rent as from the

day following the date specified in the transfer or the date of the transfer, as the case may be, and to perform and observe the said agreements and conditions.

Effect of transfer on agreement in leases

- 36.** (1). A transferee from a lessor or from a lessee shall possess all the rights, and be subject to all the liabilities, of the lessor or lessee, as the case may be, expressed or implied in the lease, or arising or which have arisen thereunder, and the transferor shall cease to be under any obligation or possessed of any rights in respect of the lease:
- Provided that nothing in this section shall affect the rights or liabilities of the lessor or lessee, as the case may be, in respect of a breach of any of the agreements expressed or implied in -the lease which occurred before the transfer.

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damages.

Any term express or implied in a contract or other instrument which conflicts with this section shall be inoperative

Procedure for obtaining
order for possession

- 40.** (1) Where the vendor proposes to seek to regain possession of private land under section 39, he shall serve a notice on the purchaser which shall inform the purchaser:-
- (a) of the nature and extent of the breach complained of by the vendor;
 - (b) whether the vendor considers that the breach is capable of being remedied by the payment of a stated amount of money owing under the contract;
 - (c) whether the vendor considers that the breach is capable of being remedied by the purchaser doing or desisting from doing anything or paying reasonable compensation or both, and of the thing that the purchaser must do or desist from doing or the amount of compensation that must be paid V or both to remedy the breach and the time, being not less than thirty days within which the actions referred to in this paragraph must be completed;
 - (d) where the vendor considers that the breach is capable of being remedied, of the period within which the purchaser must remedy the breach;
 - (e) of the consequence that if the purchaser fails to remedy the breach or if the vendor does not consider that the breach can be remedied, the vendor may seek an order from the court to possess the land and rescind the contract;
 - (f) of the right of the purchaser, within not more than fifteen days to-
 - (i) apply to court for relief against the rescission of the contract;
 - (ii) tender an amount by way compensation different to that proposed by the vendor in the notice;
 - (iii) propose alternative remedies to those set out in the notice;

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(iv) propose an alternative time for the completion of the actions referred to in paragraph (c).

(2) The fact that the notice served under subsection (1) does not comply in every particular with the provisions of subsection (1) shall not-

(a) render it invalid so long as the purport of the notice is clear; or

(b) Absolve the purchaser from the consequences of not responding to the notice.

Relief against rescission of
contract for the sale of
land

41. (1) Where the vendor, after serving on the purchaser a notice under section 40, applies to the court for an order for possession of the land or where the vendor has peaceably entered on to the land in order to regain possession under section 148, the purchaser may apply to the court for relief against the rescission of the contract either:-

(a) in the proceedings for an order for possession; or

(b) in a proceeding brought by the purchaser.

(2) Where the vendor has peaceably entered on to the land the purchaser must apply for relief within ninety days of the entry on to the land.

(3) The court may grant such relief on any terms which it thinks fit, including relief for breach of any term or condition of the contract that is not capable of being remedied.

(4) An application for relief under this section is not in itself to be taken as an admission by the purchaser that-

(a) there has been a breach of the contract by the purchaser;

(b) by reason of the breach, the vendor has the right to rescind the contract;

(c) a notice has been duly and properly served on the purchaser; or

(d) the time for remedying a breach or for paying an amount by way of

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compensation has expired, and the court may grant relief without determining any of those matters.

(5) Any term, express or implied, in a contract or other instrument to which this section applies which conflicts with or purports to set aside or negates this section shall be inoperative.

Purchase of right to land may seek relief against performance of contract to assign

42. (1) Where a court will not or would not, in the exercise of its discretion, order the specific performance by a purchaser of a contract to sell land but the purchaser is not entitled to rescind or repudiate the contract, the purchaser may apply to the court for relief under this section.
- (2) On any application made under subsection (1) the court may make an order-
- (a) rescinding the contract;
 - (b) requiring the vendor to refund any deposit and other money paid to the vendor by the purchaser;
 - (c) declaring that the purchaser has a lien on the land to which the contract relates to secure payment by the vendor of any amounts ordered to be refunded to the purchaser under paragraph (b).
- (3) The grant of relief under this section does not deprive the vendor of any right to claim damages from the purchaser for failure to perform the contract and in awarding damages; the court shall take account of any relief granted under this section.
- (4) Any term, express or implied in a contract or other instrument to which this section applies which conflicts with or purports to set aside or negates this section shall be inoperative.

PART VII – LEASES

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Application of this part

- 43.** (1) Unless otherwise provided for, the provisions of sections 43 to 73 of this Part shall apply to all leases, other than leases governed by customary law, made or coming into effect after the coming into operation of this Part of this Act.
- (2) The parties to a lease made or coming into effect before the enactment of this Act may agree in writing to adopt or incorporate any of the provisions of this Part into that lease and where the agreement is made, the provisions so adopted or incorporated shall, unless the agreement otherwise provides, as from the date of the agreement, become a part of the lease and enforceable in every respect as such.
- (3) In this Part, unless the context expressly or by implication renders it unfeasible, references to a lease include a sub-lease.

Power to lease land

- 44.** Subject to the provisions of this Act, the owner of private land may lease that land or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite, may be terminated by the lessor or the lessee, and subject to any conditions which may be required by this Act or any other law applicable to leases or which he may think fit.

Periodic leases

- 45.** (1) Where in any lease-
- (a) the term is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to be a periodic lease;
- (b) the term is from week to week, month to month, year to year or any other periodic basis, it shall be treated as a term for a period equal to its minimum possible duration;
- (c) the lessee remains in possession of land with the consent of the lessor after the term of a lease has expired, then-
- (i) unless the lessor and lessee have agreed, expressly or by implication, that the continuing possession shall be for some other

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period, the lease shall be deemed to be a periodic one; and

- (ii) all the terms and conditions of the lease that are consistent with the provisions of sub-paragraph (i) continue in force until the lease is terminated in accordance with this section.

(2) Where the owner of land permits the exclusive occupation of the land or any part of it by any person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.

(3) The periodic tenancy to which paragraph (a) of subsection (1) refers shall be the period by reference to which the rent is payable.

(4) A periodic tenancy may be terminated by either party giving to the other notice, the length of which shall be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

Short-term leases

- 46.** **(1)** A short term lease is a lease which is:
- (a)** made for a term of one year or less;
 - (b)** a periodic tenancy for periods of one year or less;
 - (c)** A lease to which subsection (2) of section 45 applies.
- (2)** A short term lease may be made orally or in writing.
- (3)** A short term lease is not a registrable interest in land.

Lease terminating on the occurrence of a future event

- 47.** A lease which comes into operation on or after the date on which this Part of this Act comes into operation which provides for its termination or permits notice of its termination to be given on the occurrence of a future event is not invalid by reason only of that fact if the event is sufficiently defined in the lease so as to be identified when it occurs.

Lease remaining in possession after termination of lease without the

- 48.** **(1)** Where a lessee remains in possession of land without the consent of the lessor after the lease has been terminated or the term of the lease has expired, all the

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consent of lessor

obligations of the lessee under the lease continue in force until such time as the lessee ceases to be in possession on the land.

(2) A lessor who accepts rent in respect of any period after the lease has been terminated or the term of the lease has expired is not, by reason only of that fact to be taken as having given consent to the lessee remaining in possession of the land or as having given upon any of the rights or remedies of the lessor against the lessee for breach of a covenant or condition of the lease but where the lessor continues for two months to accept rent from a tenant who remains in possession after the termination of the lease, a periodic lease from month to month shall be deemed to have come into force.

Future leases

49. (1) For the avoidance of doubt, it is hereby provided that a lease of a land may be made for a term to begin on a future date, not being later than twenty-one years from the date on which the lease is executed.

(2) A future lease, which is expressed to be for a period of more than five years, shall be of no effect unless and until it is, registered under the Land Registration Act

Lessor's consent to dealing with leases

50. Where a lease contains a condition, express or implied, by the lessee that he will not transfer, sub-let, charge or charge or part with the possession of the land leased or any part of it without the written consent of the lessor, no dealing with the lease shall be registered until the consent of the lessor has been produced to, and authenticated to the satisfaction of the Registrar.

Notice by co-owners

51. If a lease is entered into by-

(a) two or more lessors as co-owners; or

(b) two or more lessees as co-owners,

and the lease is terminable by notice; the notice must be given by and to all the co-owners, unless all the parties to the lease have agreed otherwise, expressly or by

implication.

Sublease for term the
same as or longer than
term of head lease

- 52.**
- (1)** This section applies to a sub-lease coming into operation after the date of the commencement of this Act under which a leasee enters or purports to enter into a sublease for a term which will expire at the same time as or not later than, the expiry of the term of the head lease.
 - (2)** A sublease to which this section applies does not operate as an assignment of the head lease to the sub-leases, unless a contrary intention appears from the sub-lease or from the circumstances surrounding the granting of the sublease.
 - (3)** If the term of the sublease to which this section applies will expire after the expiry of the term of the head-lease, then:
 - (a)** the term of the sublease is reduced, so as to expire one day earlier than the term of the head lease, but without prejudice to any remedies which the subleases may have in respect of that reduction; or if the term of the headlease is extended or renewed beyond the term for which the sublease was created, the sublease shall expire at the end of that original; or
 - (b)** if the term of the head lease is extended or the head lease is renewed, the term of the sublease is extended so as to expire-
 - (i)** one day earlier than the extended term of the head lease or the term of the head lease as renewed; or
 - (ii)** one day earlier than the time at which the head lease is expressed to expire,whichever time is the earlier.
 - (4)** The parties to a lease and sublease to which this section refers may renegotiate any terms or conditions of the sublease but no renegotiated terms or conditions shall be more onerous to or impose more obligations on the

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subleases than the original terms and conditions.

Surrender to enable a new head lease to be entered into not to affect sublease

- 53.** (1) The surrender of a lease for the purpose of enabling a new lease to the same lessee to be entered into does not require the surrender of any sublease in respect of the surrendered lease, if, on or before the date on which the term of the new head lease. will expire-
- (a) the term of the sublease will expire; or
 - (b) in the case of a sublease which is a periodic tenancy, the sublease may be terminated by the giving of the specified period of notice of termination and the expiry of that period.
- (2) A sublease preserved under subsection (1)-
- (a) continues in force as though it had been entered into in respect of the new head lease; and all rights and obligations under the sublease, including those which relate to any period.
 - (b) before the surrender of the head lease, continue to be enforceable, except to the extent that any such obligation is, by reason of the fact that a new head lease has been entered into, more onerous than it would have been had the original head lease not been surrendered.
- (3) A sublease entered into in respect of a surrendered lease includes for purposes of this section any sublease entered into by a person deriving title through the lessee under the surrendered lease.

Covenants implied in a lease on part of the lessor

- 54.** (1) There shall be implied in every lease covenants by the lessor with the lessee binding the lessor-
- (a) that, so long as the lessee pays the rent and observes and performs covenants and conditions contained or implied in the lease and on his part to be observed and performed, the lessee shall peaceably and quietly possess and enjoy the land leased during the term of the lease without any

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lawful interruption from or by the lessor or any person rightfully claiming through him;

- (b)** not to use or permit any adjoining or neighbouring land of which he is the owner or a lessee in any way which would render the leased land or any buildings on the leased land unfit or materially less fit for any purpose for which they were leased or may, consistent with the terms and conditions of the lease, be used;
- (c)** where part only of a building is leased, to keep the roof, all external and main walls and main drains, and the common parts and common installations and facilities, including common passages and walkways in a proper state of repair;
- (d)** where any dwelling house, flat, or room is leased, that house, flat or room is fit for human habitation at the commencement of the tenancy and will be kept fit for human habitation during the lease;
- (e)** that if at any time the leased premises or any part of them are destroyed or damaged-
 - (i)** by fire, flood or explosion or other accident not attributable to the negligence of the lessee, his invitees or employees;
 - (ii)** by civil commotion;
 - (iii)** by lightning, storm, earthquake, volcanic activity or other natural disaster,

so as to make the leased premises or any part of it wholly or partially unfit for occupation or use, the rent and any contribution payable by the lessee to the outgoings on the premises or a just proportion of that rent or contribution according to the nature and extend of the damage sustained shall be suspended and cease to be payable until the leased premises have been again rendered fit for occupation and use; but that if the leased premises have not been so rendered fit

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for occupation and use within six months of their destruction or damage as is referred in this paragraph, the lessee may at his option and on giving one month's notice of his intention so to do, terminate the lease;

- (f) if it is an express or implied term of the lease that the leased land or a building on it may be used for any one or more specific purpose, the lessee may terminate the lease, on giving one month's notice to the lessor, if at any time during the currency of the lease, the land or building cannot be, or can no longer lawfully be used for any one or more of those purposes;
 - (g) unless otherwise specified in the lease, to pay all rates, taxes, dues and other outgoings which are payable in respect of the land leased during the continuance of the lease unless the same area or shall be payable exclusively by the lessor under any law.
- (2) There shall be implied in every lease covenants by the lessor with the lessee empowering the lessor-
- (a) at all reasonable times, to enter, either personally or by agents, the leased land or buildings for the purpose of inspecting their condition and repair and for carrying out repairs and making good any defects which it is the Lessor's obligation so to do but that in the exercise of that power, the lessor will not unreasonably interfere with the occupation and use of the land and buildings by the lessee;
 - (b) to terminate the lease by serving a notice of intention to terminate the lease on the lessee where-

 - (i) any rent is unpaid for one month after the due date for payment whether or not a demand in writing for payment has been made by the lessor or an agent of the lessor;
 - (ii) the lessee has failed for a period of one month to observe or perform any condition, covenant or other term, the observation or

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performance of which has been assumed by the lessee expressly or impliedly in the lease.

Conditions implied on leases on part of the lessee

- 55. (1)** There shall be implied in every lease, other than a short term lease covenants by the lessee with the lessor binding the lessee-
- (a)** to pay the rent reserved by the lease at the times and in the manner specified in the lease;
 - (b)** to use any land in a sustainable manner and in accordance with any conditions imposed on that use of that land by the lease, or with any written law or with any provisions in a grant of a public land out of which that lease has been created and in particular, unless the purpose for which the land has been leased cannot be carried out without so doing, not to cut down, injure or destroy any living tree on the land;
 - (c)** to yield up the land and buildings in the same condition as they were when the term of the lease began, except that the lessee is not bound to repair damage or restore the land and buildings to the same conditions they were at the beginning of the lease where the damage or deterioration of the condition is caused by-
 - (i)** reasonable wear and tear;
 - (ii)** fire, flood or explosion or other accident not attributable to the negligence of the lessee, his invitees or employees;
 - (iii)** civil commotion;
 - (iv)** lightning, storm, earthquake, volcanic activity or other natural disaster;
 - (d)** to keep all boundary marks in repair;
 - (e)** subject to the lessor's obligations set out in paragraph (d) of subsection (1) of section 54 and except where part only of a building is leased, to keep all

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buildings comprised in the lease in a reasonable state of repair, regard being had to the condition of the building and the materials of which it is composed at the beginning of the lease;

- (f) subject to the lessor's obligations set out in paragraphs (c) and (d) of subsection (1) of section 54, where part only of a building leased, to keep the leased part of the building in a reasonable state of repair, regard being had to the condition of the building and the materials of which it is composed at the beginning of the lease;
 - (g) to permit the lessor or his agent or employees at all convenient times and after reasonable notice to enter on the leased land or buildings to examine their condition and to undertake any repairs and make good any defects for which the lessor is responsible;
 - (h) to repair or make good any defect or breach of covenant for which the lessee is responsible and of which notice has been given by the lessor to the lessee within any period which may be specified in the notice;
 - (i) not to transfer, charge, sublease or otherwise part with the possession of the leased land or buildings or any part of it without the previous written consent of the lessor, that consent not to be unreasonably withheld;
 - (j) where a termination order has been served and, if disputed, confirmed by a court, to render up possession of the leased land and buildings peaceably and without further dispute.
- (2) There shall be implied in a short term lease only the following covenants by the lessee with the lessor binding the lessee, that is to say, those covenants set out in paragraph (a); (b); (c); (g); (i) and (j).

Meaning of reference to the 'usual covenants'

- 56.** In a lease coming into effect after the commencement of this Act, unless the context requires otherwise, a reference to the 'usual covenants' is to be taken as a reference to the covenants implied in that lease by sections 54 and 55.

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Meaning of 'in reasonable state of repair'

57. In a lease coming into effect after the commencement of this Act, a covenant to keep a building or part of it "in a reasonable state of repair" (or like expression) shall, in the absence of an express provision to the contrary, mean in such a state of repair as that which a prudent owner, might reasonably be expected to keep his own building, due allowance being made for the age, character and locality of the building and the means of the person under the obligation to comply with such a covenant provided that there shall not be read into any such covenant an undertaking by a lessee to put any building or part of it into a better condition than it was in at the commencement of the lease.

Consent by lessor to application by lessee under lease

58. (1) On and after the enactment of this Act, a covenant by the lessee not to take an action without the consent of the lessor shall be construed as requiring the lessor not unreasonably to withhold consent to the taking of that action by lessee.

(2) Where an application is made by a lessee to a lessor for consent to take one or more of the following action, that is to say-

- (a) transfer or assign the lease;
- (b) enter into a sublease;
- (c) part with possession of the leased land or buildings;
- (d) change the use of the land or buildings from a use which is permitted under the lease;
- (e) extend, improve, add on to or in any other way develop any building beyond what is permitted in the lease;
- (f) create a charge over the lease;
- (g) take any of the actions referred to in subparagraphs (a), (b), (c), (d), (e) or (f) in relation to any part of the leased land or buildings, or for any part of the

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term of the lease,

the lessor must on receiving the application and within a reasonable time thereafter-

- (i) give that consent; or
- (ii) withhold that consent,

and in either case must inform the lessee in writing of his decision on the application.

(3) Without limiting the generality of the lessor's obligation under subsection (1), consent is unreasonably withheld if the lessor as a condition of or in relation to the giving of consent-

- (a) requires the lessee to pay any money by way of additional rent, or a premium or a fine or other consideration for the consent, other than the payment of the lessor's reasonable expenses incurred in connection with the giving of consent;
- (b) imposes on the lessee any unreasonable condition or precondition;
- (c) where the lessee propose to transfer or assign the lease or enter into a sublease, objects to the gender or nationality or other personal characteristic of the transferee, assignee or sublessee where the circumstances are such that a reasonable person would consider that those factors are irrelevant to the granting of such consent.

(4) A lessor who refuses consent or gives consent subject to a condition or precondition must, if the lessee so requests in writing, inform the lessee as soon as may be of the reasons for the refusal or, as the case maybe, for the imposition of the condition or pre-condition.

(5) The lessee or any persons at the request of the lessee involved in a transaction to which this section applies who has paid any money or suffered any loss in

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connection with subsection (3) may recover that money and seek damages for that loss from the lessor.

- (6) This section does not prevent the inclusion in a lease of a covenant binding the lessee absolutely not to take any action of the kind referred to in subsection (2).

Merger of lessor's interest
not to affect remedies

- 59.** Where a sublessor surrenders his head lease to or merges his head lease with the land out of which it was created, the owner of the land shall have all the same remedies against the sublessee for non-performance or non-observation of the covenants and conditions expressed or implied in the sublease and all the same rights to give notice of the termination of the sublessee to the subleases as the sublessor had before he surrendered or merged his head lease.

TRANSFERS AND ASSIGNMENTS OF LEASES

Burden and benefit of
covenants to run with the
reversion

- 60.** (1) Where the interest held by the lessor under a lease (the reversion) ceases to be so held by the lessor (whether by transfer, assignment, grant, operation of law

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or otherwise), then, unless a contrary intention appears from the lease, expressly or impliedly, or from some other circumstance-

- (a)** the obligations imposed by every covenant of the lease on the lessor run with the reversion and may be enforced by the person who is from time to time entitled to the reversion;
 - (b)** the rights to the benefits of every covenant of the lease which has reference to the subject matter of the lease imposed on the lessee may be exercised and enforced by the person who is from time to time entitled to the reversion against the person who is from time to time entitled to the lease.
- (2)** A person who becomes entitled to exercise a right to which paragraph (b) of subsection (1) refers may exercise that right even if it first became exercisable or accrued before the time at which that person became so entitled, unless before that time, the right was waived or the lessee was released from the obligation to which the right relates.
- (3)** If, in respect of a lease-
- (a)** there has been a division of the reversion into different parts so that different persons are lessors of the different parts; or
 - (b)** the lease has terminated as to part only of the land comprised in the lease, the obligations referred to in paragraph (a) and the rights and remedies referred to in paragraph (b) of subsection (1) shall be apportioned, and to the extent required by that apportionment, remain attached to each part of that reversion or to that part of the land in respect of which the lease has not been terminated as the case may require and may be enforced by the person entitled to enforce those obligations under paragraph (a) and exercised by the person entitled to exercise those rights and remedies under paragraph (b) of subsection (1).

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Effect of payment by lessee
to assignor of reversion

- 61.** (1) If a lessor has transferred or assigned the reversion, payment of all or part of the rent or other money due under the lease to the transferor or assignor by the lessee who does not have actual notice of the transfer or assignment discharges the lessee to the extent of that payment.
- (2) For purposes of subsection (1), registration of a transfer of the revision is not, in itself, actual notice to the lessee of the transfer, notwithstanding any other provision to the contrary in any other written law.

Transferor of assignor of
lease released from liability
to pay rent and observe
covenants thereafter

- 62.** (1) In respect of any lease or any transfer or assignment of a lease or part of it made or coming into effect on or after the date of the commencement of this Act, the rule of the common law that a transferor or assignor of a lease remains liable on the personal covenant to the lessor for payment of rent and for all breaches of covenants, notwithstanding that the transferor or assignor is no longer in possession or occupation of the leased land is abolished and the effect of a transfer or assignment of a lease is, as from that date, to discharge absolutely and without more the transferor or assignor from any obligation to pay rent or to observe any covenants in respect of the land as from the date of the transfer or assignment, whether the person to whom the lease has been transferred or assigned is in or goes immediately into occupation or possession of the land so transferred or assigned.
- (2) Where the transferor or assignor remains in occupation of the leased land notwithstanding the transfer or assignment, he shall remain liable to pay rent and comply with all the covenants as if he were still the lessee for as long as he shall remain in occupation.
- (3) Subsection (1) shall not apply to absolve a transferor or assignor of a lease from any obligation to pay rent or remedy and breach of a covenant which accrued or arose during the term of the lease when that transferor or assignor was bound by all the covenants in that lease and the lessor may enforce all such

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obligations of that lease which have so accrued or arisen against that transferor or assignor notwithstanding that the lease has been transferred or assigned.

- (4) As from the date of the commencement of this Act, the rule of common law that a lessee remains liable to pay rent and comply with all the covenants notwithstanding that he has, with the agreement of the lessor, vacated the leased land before the date for the termination of the lease is abolished and the provision set out in subsection (5) shall forthwith apply.
- (5) A lessee who, with the agreement of the lessor, vacates land before the termination of a lease shall, unless the lease provides expressly for a shorter period, remain liable to pay rent and observe all the covenants in the lease for one year from the date on which he vacates the land or buildings except that where the lessor leases that land or any buildings to another person before the end of the period of one year, the provisions of subsection (1) shall apply from the date of the execution of that lease.
- (6) The provisions of subsection (3) shall apply to a lessee referred to in subsection (5) as if for the words "transferor or assignor" wherever they appear, they are substituted the words "lessee to whom subsection (5) applies" and at the end of the subsection, for the words "the lease has been transferred or assigned" there are substituted the words "he has vacated the land."
- (7) The provisions of subsections (1) and (5) apply in like manner to the transfer, or assignment of a lease of a part of the leased land and to the vacating of a part of the leased land as they apply to the transfer or assignment of the lease of all the land and the vacating of all the land comprised in the lease.
- (8) Any term expressed or implied in a lease or in a condition or covenant in a lease conflicting with this section is of no effect.

Transferor or assignee as
lessee

63. (1) A person who accepts a transfer or assignment of a lease becomes the lessee without any need for that person to-

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- (a) acknowledge the lessor as such;
 - (b) take possession of the land or buildings comprised in the lease.
- (2) If there is a covenant in the lease that the lessee will not, or will not without the consent of the lessor transfer or assign the lease, a transfer or assignment has effect whether or not the lessor has consented to that transfer or assignment and whether or not that transfer or assignment is in breach of the covenant but this subsection does not prevent the lessor from seeking any remedy for any such breach.
- (3) A person to whom this section applies who becomes a lessee-
- (a) is bound to pay to the lessor the rent payable under the lease;
 - (b) is bound to observe and perform all the covenants on the part of the lessee expressed or implied in the lease;
 - (c) may enforce all covenants made by and binding on the lessor expressed or implied in the lease.

REMEDIES AND RELIEF

Application of
determination of lease by
re-entry or forfeiture

64. (1) The power of a lessor to determine a lease by re-entry or forfeiture is abolished.
- (2) On and after the commencement of this Act, a lessor may terminate a lease for non-payment of rent or for breach of any covenant in accordance and only in accordance with the provisions of this Sub-Part, notwithstanding any provision in any lease to the contrary.
- (3) Any term expressed or implied in a lease or in any condition or covenant in a lease which purports to avoid or has the purpose or effect of avoiding the need to comply with all or any sections in this Sub-Part is of no effect.

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- Abolition of distress for rent
- 65.** (1) On and after the commencement of this Act, a person shall not distrain for-
- (a) arrears of rent or other payments due under a lease or any agreement collateral to a lease;
 - (b) payments due in respect of the breach of any covenant or condition contained in a lease or in any agreement collateral to a lease.
- (2) This section does not affect the right of a lessor to seek a summary judgment against a lessee for non-payment of rent due under the lease or the manner in which a person may enforce a judgment debt.
- Termination of lease for non-payment of rent or for breach of covenant
- 66.** (1) A lessor may exercise any right to terminate a lease for failure to pay rent due under the lease or for breach of any covenant or condition in the lease only by applying for and acting in accordance with an order of the court for possession of the land or buildings comprised in the lease.
- (2) The Cabinet Secretary may in consultation with the Rules Committee provide for the procedures to be followed in applying for and the granting of an order for possession and such rules may provide for the granting of a summary order of possession in circumstances where the court is satisfied that the lessee has no reasonable defence or excuse for the non-observance of any covenant or condition in the lease or for not complying with any notice from the lessor requiring the breach to be remedied.
- Notice of intention to terminate a lease for breach of covenant
- 67.** (1) Where lessee is in arrears with the rent and has been in arrears for not less than thirty days, the lessor may serve on that lessee a notice of intention to terminate the lease.
- (2) A notice served on a lessee under this section shall adequately inform the recipient of all the following matters:
- (a) the nature and extent of the breach complained of;

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- (b) the amount which must be paid to remedy the breach;
- (c) the period, being not less than thirty days from the date of the service of the notice within which the breach must be remedied;
- (d) the consequence that if the breach is not remedied the lessor will apply to the court for an order of termination;
- (e) the right of the lessee to apply to the court, or, for relief against the termination of the lease.

Notice of intention to terminate a lease for breach of covenant other than to pay rent

- 68.** (1) Where a lessee is in breach of a covenant or condition in the lease, the lessor may serve notice of intention to terminate the lease on that lessee.
- (2) A notice served on a lessee under this section shall adequately inform the recipient of the following matters:
- (a) the nature and extend of the breach;
 - (b) where the lessor considers that the breach is capable of being remedied-
 - (i) the action which the lessee must take or desist from taking to remedy the breach;
 - (ii) he amount (if any) of compensation which the lessee must pay to remedy the breach and to reimburse the lessor's reasonable expenses incurred in connection with the breach;
 - (iii) the reasonable time, being not less than thirty days, within which the lessee must take or desist from taking the action specified in subparagraph (i);
 - (c) the consequences that if the breach is not remedied within the time specified in subparagraph (iii) or the compensation is not paid, the lessor will apply to the court for an order of termination,
 - (d) the right of the lessee to apply to the court for relief against the order of

termination.

Consequential provisions relating to notice under section 88 and 89

- 69.** (1) Where the lessor has served a notice on a lessee under section 67 and or 68, he shall at the same time or as soon as practicable serve a copy of that notice on-
- (a) sublessees;
 - (b) spouse of the lessee;
 - (c) chargee of the lessee or of sublessees;
 - (d) where the lessee is bankrupt, the trustee in bankruptcy of the lessee.
- (2) The obligation of the lessor under subsection (1) only applies to those persons mentioned in that subsection of whose names and addresses the lessor has actual notice.
- (3) The acceptance by the lessor of any rent after the service of a notice under section 67 or 68 does not operate as a waiver of the lessor's right to apply for an order of termination on the ground of breach of any covenant or condition in the lease, unless acceptance of the rent by the lessor causes the lessee reasonably to believe that the lessor no longer intends to apply for that order.
- (4) The Cabinet Secretary may by regulations prescribe the form of the notices to be served under sections 67 and 68 and where notices have been so prescribed, a notice served under either of the preceding sections shall be in that form and shall be void if it is not in that form.

Application for relief

- 70.** (1) An application for relief may be made to the court-
- (a) in a proceeding brought by the lessor for an order of termination of the lease;
 - (b) in a proceeding brought for the purpose by any of the persons referred to in subsection (2) before the lessor commences a proceeding mentioned in

paragraph (a).

- (2)** An application for relief against an order of termination of a lease may be made by-
- (a)** the lessee;
 - (b)** if two or more persons are entitled to the lease as co-owners, by one or more of them on their own behalf;
 - (c)** sublessee;
 - (d)** a chargee for the lessee of a sublessee;
 - (e)** the trustee in bankruptcy of the lessee.
- (3)** If an application made in accordance with paragraph (b) of subsection (1) is not made by all the co-owners, then, unless the court orders otherwise, it must be served on all the co-owners.
- (4)** Any person with an interest in the leased land or buildings the subject of an application by the lessor for an order of termination who on reasonable grounds claims that he has been prejudiced by not being served with a notice to which section 67 and 68 apply may apply to the court for an extension of time within which to make an application for relief and the court may grant that person an extension of the time on any conditions which it thinks fit.
- (5)** An application for relief is not to be taken as an admission by the lessee or any other person applying for relief that-
- (a)** there has been a breach of a covenant or condition of the lease by the lessee;
 - (b)** by reason of such a breach, the lessor has the right to terminate the lease;
 - (c)** all notices which were required to be served by the lessor were properly served;

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(d) the period for remedying the breach specified in the notice served under section 68 was reasonable or had expired, and the court may grant relief without determining all or any of those matters.

Power of the court with respect to the order of termination or relief

71. (1) In considering whether to grant an order of termination or to grant relief against an order of termination, the court shall have regard to the following matters:
- (a) in respect of the lease of a dwelling house, the matters contained in section 25 of the Rent Restriction Act, applicable to dwelling houses;
 - (b) the gravity of the breach and in particular whether any written law has not, as a result of the breach, been complied with;
 - (c) the reasonableness of the action required to be taken or desisted from by the lessee to remedy the breach and the item within which it has to be taken or desisted from as specified in the notice served by the lessor under this Act, and in particular with respect to the lease of any building, the age, condition and location of building;
 - (d) the reasonableness of the amount of compensation required to be paid and the manner of its payment by the lessee as specified in the notice served by the lessor under section 67;
 - (e) whether the lessor has committed any breaches of covenants or conditions which he is under an obligation by the lease to comply with and the extent to which those breaches have contributed to any breaches by the lessee;
 - (f) the degree of forbearance shown by the lessor in respect of other breaches of covenants and conditions by the lessee;
 - (g) the age, means and circumstances of the lessor;
 - (h) the age, means, and circumstances including the health and number of

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dependants of the lessee, and in particular whether-

- (i) the lessee will be rendered landless or homeless by the grant of an order;
 - (ii) the lessee will have any alternative means of providing for himself and his dependants;
 - (iii) a spouse of the lessee will or is likely to suffer undue hardship if an order were made;
- (i)** whether there is any alternative remedy which can be applied in the circumstances;
- (j)** the interests of all parties other than the lessee and his dependants who are participating in the application for relief;
- (k)** any other matter which the court considers appropriate and reasonable in all the circumstances.
- (2)** A court may grant any relief against the operation of an order which the circumstances of the case require and without limiting the generality of that power, may:-
- (a)** cancel, vary or postpone the order;
 - (b)** extend the period of time for compliance by the lessee with a notice served under section 67;
 - (c)** alter the amount of compensation required to be paid by the lessee by a notice served under section 67.
 - (d)** substitute a different remedy for the one specified by the lessor or a different time for taking or desisting from taking an action specified by the lessor in a notice served under section 68;
 - (e)** provide that any arrears of rent or other payments due under the lease be paid in such installments and at such times as the court shall

determine;

- (f)** require the lessor or the lessee to remedy any breaches of any covenants and conditions which either or both of them are under an obligation to comply with;
- (g)** order the lessor to enter into a lease with-
 - (i) a chargee or the lessee; or
 - (ii) a sub-lessee; for a period, not being longer than the period of the lease which is to be terminated, and on any terms and conditions which the court thinks fit;
- (h)** confirm the notice notwithstanding that some procedural errors took place during the making of that notice if the court is satisfied that-
 - i. the lessee or other person applying for relief was made fully aware of the substance of the notice; and
 - ii. no substantial injustice will be done by confirming that notice, and may grant that relief of any conditions as to expenses, damages, compensation or any other relevant matter which the court thinks fit.

(3) A court may grant relief against an order for termination notwithstanding that the lessee has breached an essential term of the lease and the breach is not capable of being remedied.

Remedies of lessor and
lessee for breach of
covenant

- 72. (1)** Where a lessee is in breach of a covenant or condition of a lease, which he is under an obligation to observe and comply with, the lessor may, instead of serving a notice of intention to terminate, commence an action against the lessee-
- (a)** for damages; or

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(b) for a decree of specific performance; or

(c) for an injunction; or

(d) to recover as a debt any arrears of rent,

but no action commenced before the service of a notice of intention to terminate shall not be proceeded with or judgment given in respect of it until after the conclusion of any proceedings commenced in connection with an order of termination arising from the same breaches, including any appeal against any decision given in connection with that order of termination.

(2) Where a lessor is in breach of a covenant or condition in a lease which he is under an obligation to observe and comply with, the lessee may-

(a) commence an action against the lessor-

(i) for damages; or

(ii) for a decree for specific performance; or

(iii) for an injunction; or

(b) in any case where the lessor has failed to comply with the covenants contained in paragraphs (c) or (d) of subsection (1) of section 54-

(i) serve a notice on the lessor that unless he undertake the repairs and maintenance he is obliged to undertake within thirty days, the lessee will undertake the repairs and maintenance which under those paragraphs, it is the lessor's obligation to undertake;

(ii) if the lessor does not commence the repairs and maintenance as specified in the notice and does not seek an extension of time within which to undertake the repairs and maintenance specified in the notice referred to in subparagraph (i) in as economical and efficient a way as possible; and (iii) set off the cost of that work against the rent due under the lease; or

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- (c) deduct from any rent due under the lease any sums which the lessor has, contrary to the covenants and conditions in the lease or contrary to any written law, required the lessee to pay as a condition either of obtaining the lease or of continuing as the lessee; or
- (d) repudiate the lease and cease to pay any rent under it on the grounds that the lessor's conduct shows that he does not intend to comply with the lease, and may pursue any two or more of these actions together as the case may require.

(3) Where the lessee commences an action for damages, the court may award damages for the inconvenience suffered by the lessee and those dependants living with him for the lessor's failure to comply within the covenants and conditions under the lease and in addition may award an element of damages to the lessee by way of a penalty on the lessor.

Unlawful eviction

- 73.** (1) A lessee who, contrary to the express or implied terms and conditions of a lease is evicted from the whole or a part of the leased land or buildings, is not as from the time of the eviction, under any obligation to pay any rent or other monies due under the lease or perform any of the covenants and conditions on the part of the lessee expressed or implied in the lease in respect of the land or buildings or part thereof from which he has been so evicted.
- (2) A lessee who, contrary to the express or implied terms of the lease is, on the commencement of the lease, unable through the actions or non-actions of the lessor or any of his agents or employees, to obtain possession of the leased land or buildings or part thereof is for purposes of this section to be taken as having been evicted from the whole or as the case may be, a part of that land or those buildings.

PART VI – CHARGES

GENERAL PROVISIONS

Application of this part to charges

74. This Part applies to all charges of land made or coming into effect before on and after the coming into operation of this Act and any other charges of land which are specifically referred to in any section in this Part and references to charges in this Part shall apply to charges of land.

(1) References in this Part to "the charged land" shall be taken to mean and include a charged land, a charged lease and sublease and a second or subsequent charge.

Power to create charge

75. (1) An owner of private land and a lessee may, by an instrument in the prescribed form, charge his interest in the land or a part thereof to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfillment of a condition.

(2) The power conferred by subsection (1) shall include the power to create second and subsequent charges.

(3) A charge of a matrimonial home, including a customary charge of a matrimonial home shall be valid only if-

(a) any document or form used in applying for such a charge is signed by or there is evidence from the document that it has been assented to by the borrower and any spouse of the borrower living in that matrimonial home;

(b) any document or form used to grant the charge is signed by or there is evidence that it has been assented to by the borrower and any spouse of any borrower living in that matrimonial home.

(4) The power conferred by this section shall be exercisable subject to-

(a) any prohibition or limitation imposed by this Act or any written law;

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- (b) any restriction contained in an instrument creating or affecting the interest in land which is to be the subject of a charge.
- (5)** In respect of a charge, it shall take effect only when it is registered in a prescribed register and a lender shall not be entitled to exercise any of his remedies under that charge if it is not so registered.
- (6)** Nothing in this section shall operate to prevent a borrower from offering and a lender from accepting-
- (a) a written and witnessed undertaking, the clear intention of which is to charge the borrower's land with the repayment of money or money's worth obtained from the lender; or
- (b) a deposit of any of the following-
- (i) a certificate of title to private land;
 - (ii) a certificate of a customary land;
 - (iii) a document of a lease;
 - (iv) other document which may be agreed upon evidencing a right to an interest in land;
 - (v) other documents which may be agreed upon to secure any payments which are referred to in subsection (1).
- (7)** The arrangement specified in paragraph (a) of subsection (6) may be referred to as an "informal charge" and a deposit of documents specified in paragraph (b) of subsection (6) shall be known and referred to as a "lien by deposit of documents."
- 76. (1)** On and after the date of the commencement of this Act, a charge shall have effect as a security only and shall not operate as a transfer of any interests or rights in the land from the borrower to the lender but the lender shall have, subject to the provisions of this Part, all the powers and remedies in case of

Charge of land take effect as security only

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default by the borrower and be subject to all the obligations that would be conferred or implied in a transfer of an interest in land subject to redemption.

(2) In the case of the charge of a lease, the lender shall not be liable to the lessor for rent or in respect of the covenants and conditions contained or implied in the lease to any greater extent than he would have been if the charge had been by way of a sublease.

Priority

77. (1) Charges shall rank according to the order in which they are registered.
- (2) Informal charges shall rank according to the order in which they are made provided that where an informal charge is registered it shall take priority over any unregistered informal charge.
- (3) For purposes only of determining the priority of charges, a customary charge shall be deemed to be an informal charge, and registration of a customary charge in a register of village land shall have the same effect as regards the priority of such a charge as if it were registered.
- (4) Where two informal charges are made on the same day or are registered on the same day, the charge which was first in time to be made or registered shall have priority.
- (5) Where a lender, subsequent in time to a prior lender under a charge, lends money or money's worth on the security of a charge to a borrower as a consequence of or through the fraud, dishonesty or misrepresentation of the prior lender, either in conjunction with or separately from the fraud, dishonesty or misrepresentation of the borrower, that prior lender's right to repayment under the charge shall be postponed to the rights of the subsequent lender.
- (6) The rules of priority for informal charges shall apply as far as the circumstances shall permit liens by deposit of documents.

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Tacking

- 78.** (1) A lender may, subject to the provisions of this section, make provision in the charge instrument to give further advances or to give credit to the borrower on a current or continuing account.
- (2) A further advance referred to in subsection (1) shall not rank in priority to any subsequent charge unless-
- (a) the provision for further advances is noted in the register in which the charge is registered; or
- (b) the subsequent lender has consented in writing to the priority of the further advance.
- (3) Except as provided for in this section there is no right to tack.
- (4) Where a charge provides for the payment for a principal sum by way of installments, the payment of those installments shall not be taken to be a further advance.

Consolidation

- 79.** (1) Unless there is an express provision to the contrary clearly set out in the charge instrument, where a borrower has more than one charge with a single lender on several securities he may discharge any or some of the charges without having to redeem all charges.
- (2) A lender who has made provision in accordance with subsection (1) for the consolidation of his charge shall record that right in the register or registers against all the charges so consolidated which are registered.
- (3) Notwithstanding subsection (1), no right to consolidate shall be exercisable to the prejudice of any person acquiring any land or lease or other interest in land entitling that person to the occupation and use of that land prior to the recording of that right to consolidate in the prescribed register.
- (4) Consolidation shall not be permitted in respect of a small charge and any attempt to provide for or exercise any powers of consolidation in a small charge

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shall be void.

(5) The rules of equity applicable to consolidation shall not apply as from the date of the commencement of this Act

Variation of a charge

- 80.** **(1)** The rate of interest payable under a charge may be reduced or increased by a notice served on the borrower by the lender, which shall-
- (a)** give the borrower a written notice of not less than thirty days of the reduction or increase in the rate of interest;
 - (b)** state clearly and in a manner which can be readily understood, the new rate of interest to be paid in respect of the charge.
- (2)** The amount secured by a charge may be reduced or increased by a memorandum which –
- (a)** complies with subsection (5); and
 - (b)** is signed-
 - (i)** in the case of a memorandum of reduction by the lender; or
 - (ii)** in the case of a memorandum of increase, by the current borrower; and
 - (c)** states that the principal Funds intended to be secured by the charge are reduced or increased as the case may be, to the amount or in the manner specified in the memorandum.
- (3)** The term or currency of a charge may be shortened, extended or renewed by a memorandum which:-
- (a)**complies with subsection (5); and
 - (b)** is signed by the current borrower and by the lender; and
 - (c)**states that the term or currency of the charge is shortened, extended or renewed, as the case may be, to the date or in the manner specified in the memorandum.

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- (4) The covenants, conditions and powers expressed or implied in a charge are varied in the manner specified in the memorandum.
- (5) A memorandum for the purposes of subsections (2), (3) and (4)-
 - (a) must be endorsed on or annexed to the charge instrument; and
 - (b) when so endorsed or annexed to the charge instrument, operates to vary the charge in accordance with the terms of the memorandum.

DISCHARGE OF CHARGES

Right to discharge

- 81.** (1) Subject to the provisions of this section, on payment of all money and the performance of all other conditions and obligations secured by the charge the borrower shall be entitled to discharge the charge at any time before the charged land has been sold by the lender or a receiver under a power of sale and any agreement or provision in the charge instrument or otherwise which-
- (a) purports to deprive the borrower of this right; or
 - (b) seeks to fetter the exercise for this right; or
 - (c) stipulates for a collateral advantage which is unfair and unconscionable and inconsistent with the right to discharge, shall be void.
- (2) The lender may provide in the charge instrument that where a borrower wishes to exercise his right to discharge the charge at any time before the expiry of the term of the charge-
- (a) he shall give one month's notice of his intention to discharge; or
 - (b) he shall pay not more than one month's interest at the rate at which interest is payable on the principal sum secured by the charge or at any lesser rate which may be agreed, as well as paying all other monies secured by the charge.
- (3) A discharge whether of the whole or a part of a charge shall be as prescribed

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under this Act or any other law.

Transfer of Charge

- 82.** (1) The current borrower or any person mentioned in subsection (2) may at any time, other than a time when the lender is in possession of the charged land in writing request the lender to transfer the charge to a person named in the written request.
- (2) Subject to the consent of the borrower which consent shall not be unreasonably withheld the persons who may make the written request under subsection (1) are-
- (a) any person who has an interest in the land, lease or charge that has been charged;
 - (b) any surety for the payment of the amount secured by the charge;
 - (c) any creditor of the borrower who has obtained a decree for sale of the charged land, lease or charge.
- (3) The lender, on receiving a written request made under subsection (1) and on

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payment by the person or persons making the request of all monies which would have been payable if discharge of the charge had been made under section 81, and the performance of all other obligations secured by the charge, shall transfer the charge to the person named in the written request.

Lender's consent to transfer

- 83.** Where a charge contains a condition, express or implied by the borrower that the borrower will not, without the consent of the lender transfer or assign or lease the land or in the case of a lease, sublease, no transfer, assignment, lease or sublease shall be registered until the written consent for the lender has been produced to the Registrar.

COVENANTS, CONDITIONS AND POWERS IMPLIED IN CHARGES

Implied covenant by the borrower

- 84. . (1)** There shall be implied in every charge covenants by the borrower with the lender binding the borrower-
- (a)** to pay the principal money on the day appointed in the charge agreement, and, so long as the principal money or any part thereof remains unpaid, to pay interest on the money thereon or on so much of the money which for the time being remains unpaid at the rate and on the days and in the manner specified in charge agreement;
 - (b)** to pay all rates, charges, rent, taxes and other outgoings which are at all times payable in respect of the charged land;
 - (c)** to repair and keep in repair all buildings and other improvements upon the charged land or to permit the lender or his agent at all reasonable times until the charge is discharged and after reasonable notice to the borrower, to enter the land and examine the state and condition of such buildings and improvements;
 - (d)** to ensure by insurance or any other means which may be prescribed or

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which are appropriate, that resources will be available to make good any loss or damage caused by fire to all buildings on the land, and where insurance is taken out, it is done so in the joint names of the borrower and lender with insurers approved by the lender and to the full value of all the buildings;

- (e) in the case of a charge of land used for agricultural purposes, to use the land in a sustainable manner and in accordance with the principles of good husbandry and any conditions subject to which the land or lease under which the land is held and to comply with all written laws and lawful orders applicable to that use of the land;
- (f) not to lease or sublease the charged land or any part of it for any period longer than a year without the previous consent in writing of the lender, but that consent shall not be unreasonably withheld;
- (g) not to transfer or assign the land or lease or part of it without the previous consent in writing of the lender but that consent shall not be unreasonably withheld;
- (h) in the case of a charge of a lease, during the continuance of the charge, to pay, perform and observe the rent, covenants and conditions by and in the lease contained and implied and on the part of the lessee to be paid, performed and observed and to keep the lender indemnified against all proceedings, expenses and claims on account of non-payment of the rent or part of it or the breach or non-observance of the said covenants and conditions or any of them, and, if the lessee has an enforceable right to renew the lease, to renew it;
- (i) where the charge is a second or subsequent charge, that he borrower will pay the interest from time to time accruing on each prior charge when it becomes due and will at the proper time repay the principal money or part

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of it due on each prior charge;

(j) where the borrower fails to comply with any of the covenants implied by paragraphs (b), (c), (d), (e) and (h) of this subsection, that the lender may spend any money which is reasonably necessary to remedy the breach and may add the amount so spent to the principal money and that amount shall be deemed for all purposes to be a part of the principal money secured by the charge.

(2) Reference to the obligation of the borrower in paragraph (b) of subsection (1) to keep all buildings upon the charged land in repair shall be taken to be an obligation to keep such buildings in a reasonable state of repair as set out in section 57.

(3) The provisions of section 58 shall apply to an application by a borrower to a lender for consent under paragraphs (f) and (g) of subsection (1).

Foreclosure abolished

85. . (1) Any rule of law, written or unwritten, entitling a chargee (lender) to foreclose the equity of redemption in charge land is abolished.

(2) It is hereby declared that on and after the coming into operation of this Act, a lender shall not be entitled to enter into possession of the charged land or a charged lease or to receive the rents and profits of that land or lease by reason only that default has been made in the payment of the principal sum or of any interest or other periodic payment or of any part thereof or in the performance or observance of any agreement expressed or implied in the charge, other than in accordance with the provisions of this Sub-Part.

Remedies of the Lender

86. . (1) Where a borrower is in default of any obligation to pay interest or any other periodic payment or any part thereof due under any charge or in the performance or observation of any covenant, express or implied in any charge and continues so to be in default for one month, the lender may serve on the borrower a notice in writing to pay the money owing or to perform and

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observe the agreement as the case may be.

(2) The notice required by subsection (1) shall adequately inform the recipient of the following matters-

- (a)** the nature and extent of the default made by the borrower;
- (b)** where the default consists of the non-payment of any money due under the charge, the amount that must be paid to rectify the default and the time, being not less than three months, by the end of which the payment in default must have been completed;
- (c)** where the default consists of the failure to perform or observe any covenant, express or implied, in the charge, the thing the borrower must do or desist from doing so as to rectify the default and the time, being not less than two months, by the end of which the default must have been rectified;
- (d)** the consequence that if the default is not rectified within the time specified in the notice, the lender will proceed to exercise any of the remedies referred to in this section in accordance with the procedures provided for in this Sub-Part;
- (e)** the right of the borrower in respect of certain remedies to apply to the court for relief against those remedies.

(3) Where the borrower does not comply within two months of the date of service, with the notice served on him under subsection (1), the lender may-

- (a)** sue the borrower for any monies due and owing under the charge;
- (b)** appoint a receiver of the income of the charged land;
- (c)** lease the charged land or where the charge is of a lease, sublease the land;
- (d)** enter into possession of the charged land;
- (e)** sell the charged land;

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- (f) where the charge is a charge of land held for customary land
 - (i) appoint a receiver of the income of the charged land;
 - (ii) apply to the court for an order to
 - aa. lease the charged land or where the charge is of a lease sublease the land enter into possession of the charged land;
 - bb. sell the charged land to any person or group of persons referred to in Community Land Act.

(4) The Cabinet Secretary shall in consultation with the Commission be regulations prescribe the form and content of a notice to be served under this section where the notice to be served under this section has been so prescribed, a notice served under subsection (l) shall be in that form and shall be void if it is not in that form.

Lender's action for money
secured by charge

- 87.** (1) The lender may sue for the money secured by the charge only in the following cases:-
- (a) where the borrower is personally bound to repay the money;
 - (b) where by any cause other than the wrongful act of the borrower or lender, the security is rendered in sufficient and the lender has given the borrower a reasonable opportunity to provide further security sufficient and the borrower has failed to provide that additional security;
 - (c) where the lender is deprived of the whole or part of his security through or in consequence of the wrongful act or default of the borrower.
- (2) No action shall be commenced until the time for complying with a notice served under section 86 has expired.
- (3) The court may at its discretion order a postponement of any proceedings brought under this section, until the lender has exhausted all his other remedies against the charged land, unless the lender agrees to discharge the

charge.

Appointment, powers,
remuneration and duties' of
the receiver

- 88.**
- (1)** It shall be an implied condition in every charge that the lender shall have the power to appoint a receiver of the income of the charged land.
 - (2)** Prior to the appointment of a receiver under this section, the lender shall serve a notice in the prescribed form on the borrower and shall not proceed with the said appointment until thirty days have elapsed from the date of the service of that notice.
 - (3)** The appointment of a receiver shall be in writing signed by the lender.
 - (4)** A receiver may be removed at any time and a new receiver appointed by writing signed by the lender.
 - (5)** A receiver appointed under this section shall be deemed to be the agent of the borrower for the purposes for which he is appointed, and the borrower shall, unless the charge instrument provides otherwise, be solely responsible for the acts and defaults of the receiver.
 - (6)** Where a court approves the appointment of a receiver under a small charge, it may order that the lender be jointly responsible with the borrower for the acts and defaults of the receiver.
 - (7)** The receiver shall have the power to demand and recover all the income of which he is appointed receiver, by action or otherwise, in the name of the borrower, and to give effectual receipts for the same.
 - (8)** The receiver shall be entitled to retain out of any money received by him all costs, charges and expenses incurred by him as receiver, and, for his remuneration, a commission at the rate, not exceeding five per centum of the gross amount of all monies received, specified in the appointment, or if no rate is so specified at the rate of five per centum or any other rate as the

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borrower and lender may agree or where the appointment of a receiver comes before the court, which the court thinks fit.

- (9)** The receiver shall apply all Funds received by him in the following order of priority-
- (a)** first, in the payment of all rents, rates, charges, taxes and other outgoings required to be paid in respect of the charged property;
 - (b)** second, in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the charge of which he is the receiver
 - (c)** third, in payment of his remuneration and expenses;
 - (d)** fourth, in payment of all reasonable expenses incurred in the doing of anything which a receiver is required or entitled to do in respect of the charged land, including but not limited to-
 - i. the payment of any premiums on any insurance policy properly payable under the charge instrument; and
 - ii. the costs of undertaking necessary and proper repairs to any buildings comprised in the charged land as directed in writing by the lender,
 - iii. fifth, in the repayment of any money paid or advanced by the lender to meet the reasonable expenses referred to in paragraphs (a), (b), (c) and (d) together with any interest on any amount so paid or advanced at the rate at which interest is payable on the principal sum secured by the charge;
 - iv. sixth, in payment of the interest accruing due in respect of any principal sum secured by the charge;
 - v. seventh, in and towards the discharge of the principal sum secured by the charge,

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and shall pay the residue, if any, to the borrower or other person entitled to the charged land.

Lender's power of leasing

89. (1) A lender who has appointed a receiver under section 88, shall, unless the charge instrument expressly provides to the contrary, have power, subject to the provisions of this Act and any other laws applicable to the leases of land-

(a) to grant leases in respect of the charged land or any part thereof;

(b) to accept a surrender of any lease so granted and of any lease granted by the borrower,

and may, for that purpose, execute, in place of the borrower any instrument required to execute that lease or surrender.

(2) Prior to granting a lease under this section, a lender shall serve a notice on the borrower in the prescribed form and shall not proceed with the granting or execution of that lease until thirty days have elapsed from the service of that notice.

(3) Every lease granted by the lender shall-

(a) be made to take effect in possession not later than six months after its date;

(b) reserve the best rent that can reasonably be obtained regard being had to the circumstances of the case;

(c) subject to the provisions of paragraph (a) of subsection (5), be for a term not exceeding fifteen years or the length of the term of the charge whichever is the shorter;

(d) contain any terms and conditions which are reasonable, having regard to the interests of the borrower and of any other persons having an interest in the charged land;

(e) contain a declaration that the lender has appointed a receiver, with the

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date of the appointment.

- (4) A lease created by a lender under this section shall not be binding on any person holding, and shall not take priority over, any charge which has priority to the charge of the lender who has granted the lease.
- (5) Where money has been advanced on the security of a customary charge, a lease created out of that charged land shall-
- (a) be for a term not exceeding two years;
 - (b) in the case of-
 - (i) land used for agricultural purposes, ensure that the borrower is left in possession of sufficient land and buildings to enable him to provide
 - (ii) a dwelling house, ensure that the borrower is left sufficient space in that dwelling house or is provided with alternative accommodation to enable him to provide basic shelter for himself and his dependants living with him.

Power of the lender to take possession of the charged land

90. (1) A lender may, at any time after the end of the period specified in the paragraphs (b) and (c) of subsection (2) of section 86, serve a notice of intention to enter in the prescribed form on the borrower that the lender will enter into possession of the whole or a part of the charged land at date not earlier than one month after the date of the service of the notice.
- (2) A lender may exercise the power of it peaceably and without committing any forcible entry;
- (a) entering into and taking physical possession of the land or a part of it peaceably and without committing any forcible entry;
 - (b) asserting management or control over the land by serving a notice in the prescribed form requiring any lessee of the borrower or any other owner of the land to pay to the lender any rent or profits which would otherwise

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be payable to the borrower.

- (3)** The lender shall be regarded as being in possession on the date-

 - (a)** on which he enters into possession in accordance with paragraph (a) of subsection (2);
 - (b)** on which he first receives any rent or profit from the land
- (4)** A lender who has entered into possession may refrain in possession, without prejudice to the right to withdraw from possession, so long as the charged land continues to be subject to any liability under the charge.
- (5)** A lender in possession shall be bound by all those covenants set out in paragraphs (a) to (e), and (h) and (i) of subsection (J) of section 84 as if that lender were the borrower referred to in that subsection,
- (6)** A lender in possession of any charged land-

 - (a)** by occupation, shall be entitled to manage the land and take all its profits, but shall be liable to the borrower for any act by which the value of the land, or any buildings on, or other permanent improvements to the land are impaired or the borrower otherwise suffers loss;
 - (b)** whether by occupation or by receipt of rents and profits shall be accountable to the borrower not only for the sums actually received by him, but also for any additional sums which he might reasonably have been expected to receive by the careful and business like exercise of his powers;
 - (c)** may renew a lease granted by the borrower on the same terms as the original lease but may not otherwise grant any lease out of the charged land.
- (7)** A lender in possession shall apply all the Funds received by him to the same payments and in the same order as apply to receiver and are set out in subsection (9) of section 88 except that a lender in possession shall not be

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entitled to receive any payments under paragraph (c) of that subsection.

(8) Any person on whom a notice under subsections (1) or (2) has been served shall forthwith comply and continue to comply with that notice until either-

(a) a notice of withdrawal in the prescribed form is served on that person by the lender in possession; or

(b) the lender in possession withdraws from that possession;

(c) a court orders the lender in possession to withdraw from possession.

Withdrawal of lender from
possession

91. (1) A lender may, not sooner than one month after the service of a notice of withdraw in the prescribed form on the borrower and on all persons served with a notice under subsections (1) and (2) of section 92, withdraw from possession of the charged land.

(2) A lender shall withdraw from possession of the charged land-

(a) where a court makes an order directing the lender to withdraw;

(b) where the lender appoints a receiver under section 88;

(c) where the default which was the cause of the entry into possession has been rectified through the possession of the lender;

(d) where the lender has exercised the power of sale under section 205;

(e) where the borrower has discharged all liabilities under the charge.

(3) A lender in possession shall be taken to have withdrawn from possession of all or a part of the charged land in any case provided for-

(a) by paragraph (a) of subsection (2), when the order of the court is made;

(b) by paragraph (b) of subsection (2), when the receiver has been appointed in accordance with section 92;

(c) by paragraph (c) of subsection (2), when the lender has either-

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(i) ceased to occupy the charged land;

(ii) where he is not in occupation, served a notice of withdraw on all persons served with a notice under subsections (1) and (2) of section 205;

(d) by paragraph (d) of subsection (2), when the purchaser of the charged land enters into occupation of that land;

(e) by paragraph (e) of subsection (2), when the borrower serves notice of cancellation of possession in the prescribed form.

(4) A lender who has withdrawn from possession of charged land may not again enter into possession of that land, otherwise than by complying with the provisions of sections 199, and 202 where the borrower is in a fresh default under the charge.

Lender's power of sale

92. (1) Where a borrower is in default of his obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on him under subsection (1) of section 90, a lender may exercise his power to sell the charged land.

(2) Before exercising the power to sell the charged land, the lender shall serve a notice to sell in the prescribed form on the borrower and shall not proceed to complete any contract for the sale of the charged land until a period of forty days have elapsed from the date of the service of that notice to sell.

(3) A copy of the notice to sell served in accordance with subsection (2) shall be served on-

(a) the Commission where the charged land is public land;

(b) the Community Land Committee of the village where the charged land is located where that land is held for a customary land or is held under customary tenure;

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- (c) where the charged land is a lease, the holder of the land out which the lease has been granted;
- (d) any spouse of the borrower;
- (e) any lessee and sublessee of the charged land or of any buildings on the charged land;
- (f) any person who is a co-owner with the borrower;
- (g) any other lender of Funds secured by a charge on the charged land of whom the lender proposing to exercise the power of sale has actual notice;
- (h) any guarantor of the Funds advanced under the charge;
- (i) any other person with a right to enter on and use the land or the natural resources in, on, or under the charged land;
- (j) such other persons as may be prescribed by regulations, and shall be posted in a prominent place at or as near as may be to the charged land.

Duty of lender exercising
power of sale

- 93.** (1) A lender who exercises a power to sell the charged land, including the exercise of the power to sell in pursuance of an order of a court, owes a duty of care to the borrower, any guarantor of the whole or any part of the sums advanced to the borrower, any lender under a subsequent charge including a customary charge or under a lien to obtain the best price reasonably obtainable at the time of sale.
- (2) Where the price at which the charged land is sold is twenty-five per centum or more below the average price at which comparable interests in land of the same character and quality are being sold in the open market, there shall be a rebuttable presumption that the lender is in breach of the duty imposed by subsection (1) and the borrower whose charged land is being sold for that price may apply to a court for an order that the sale be declared void, but the fact that a plot of charged land is sold by the lender at an undervalue being

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less than twenty-five per centum below the market price shall not be taken to mean that the lender has complied with the duty imposed by subsection (1).

- (3) It shall not be a defence to a proceeding against a lender for breach of the duty imposed by subsection (1) that the lender was acting as agent of or under a power of attorney from the borrower or any former borrower.
- (4) A lender shall not be entitled to any compensation or indemnity from the borrower, any former borrower or any guarantor in respect of any liability arising from a breach of the duty imposed by subsection (1).
- (5) The sale by a prescribed lender of any community land occupied by a person shall conform to the provisions of the Community Land Act save that such a sale shall not require any approval from a Community Land Committee.
- (6) Any attempt by a lender to exclude all or any of the provisions of this section in any charge instrument or any agreement collateral to a charge or in any other way shall be void.

Powers incidental to the
power of sale

94. (1) Where a lender or a receiver becomes entitled to exercise the power of sale, that sale may be-
 - (a) of the whole part of the charged land;
 - (b) subject to or free of any charge or other encumbrance charge having priority to the lender's charge
 - (c) by way of subdivision or otherwise;
 - (d) by private contract or public auction;
 - (e) with or without reserve;
 - (f) for a purchase price payable in one sum or by installments;
 - (g) subject to any other conditions which the lender shall think fit, having due regard to the duty imposed by subsection (1) of section 93.

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- (2) Where a sale is to proceed by public auction, it shall be the duty of the lender to ensure that the sale is publicly advertised in such a manner and form as to bring it to the attention of persons likely to be interested in bidding for the charged land and that the provisions relating to auctions and tenders for land are, as near as may be, followed in respect of that sale.
- (3) A sale of the charged land by a lender in exercise of the power of sale shall be made in the prescribed form and the Registrar shall accept it as sufficient evidence that the power has been duly exercised.
- (4) Upon registration of the land or lease or other interest in land sold and transferred by the lender the interest of the borrower as described therein shall pass to and vest in the purchaser free of all liability on account of the charge, or on account of any other charge or encumbrance to which the charge has priority, other than a lease or easement to which the lender had consented in writing.

Protection of purchaser

- 95.** (1) This section applies to-
- (a) a person who purchases charged land from the lender or receiver, excluding where the lender is the purchaser;
 - (b) a person claiming the charged land through the person who purchases charged land from the lender or receiver, including a person claiming through the lender where the lender is the purchaser where, in such a case the person so claiming obtained the charged land in good faith and for value.
- (2) A person to whom this section applies-
- (a) is not answerable for the loss, misapplication or non-application of the purchase money paid for the charged land;
 - (b) is not obliged to see to the application of the purchase price;

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(c) is not obliged to inquire whether there has been a default by the borrower or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper or regular.

(3) A person to whom this section applies is protected even if at any time before the completion of the sale, he has actual notice that there has not been a default by the borrower, or that a notice has not been duly served or that the sale is in some way, unnecessary, improper or irregular, except in the case of fraud, misrepresentation or other dishonest conduct on the part of the lender of which that person has actual or constructive notice.

(4) A person prejudiced by an unauthorised, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power.

Sale by lender to himself

- 96.** (1) A lender exercising the power of sale may sell to himself, other than in the circumstances provided to for in subsection (3) only if a court gives him leave to do so.
- (2) A court shall not grant leave unless the lender satisfies such court that a sale of the charged land to himself is the most advantageous way of selling the land so as to comply with the duty imposed on the lender by subsection (1) of section 93.
- (3) Where the charged land is to be sold by public auction, the lender may bid for and purchase the charged land at that public auction so long as the price bid for the charged land by the lender is-
- (a) the highest price bid for that land at the auction; or
 - (b) equal to or higher than the reserve price, if any, put upon the land before the auction,

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whichever amount is the greater.

(4) Where a lender who has sold charged land to himself applies to the Registrar to be registered as the lawful owner of land under a land or lease, the Registrar may require that lender to provide any evidence which the Registrar may specify that the provisions of this section have been complied with and the Registrar shall not be obliged to register any such land or lease until the lender has so satisfied the Registrar.

Application of proceeds of
sale of charged land

97. The purchase money received by a lender who has exercised his power of sale shall be applied in the following order of priority-

- (a)** first, in payment of any rates, rents, taxes, charges or other sums owing and required to be paid on the charged land;
- (b)** second, in discharge of any prior charge or other encumbrance subject to which the sale was made;
- (c)** third, in payment of all costs and reasonable expenses properly incurred and incidental to the sale or any attempted sale;
- (d)** fourth, in discharge of the sum advanced under the charge or so much of it as remains outstanding, interests, costs and all other Funds due under the charge, including any monies advanced to a receiver in respect of the charged land under section 88;
- (e)** fifth, in payment of any subsequent charges in order of their priority, and the residue, if any, of the money so received shall be paid to the person who, immediately before the sale, was entitled to discharge the charge.

Right of borrower to
discharge charge on
payment of any sum due
any time before sale

98. (1) At any time before the charged land is sold, or withdrawn from sale, the borrower or any other person who is entitled to discharge the charge may discharge the charge in whole or in part by paying to the lender all Funds secured by the charge at the time of payment.

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- (2) Where payment is made under subsection (1), the lender shall deliver to the borrower-
- (a) a discharge of the charge in the prescribed form over the whole or that part of the charged land to which the payment relates;
 - (b) all instruments and documents of title held by the lender in connection with the charged land.

Application for relief by
borrower

99. (1) An application of relief against the exercise by the lender of any of the remedies referred to in paragraphs (a) and (b) of subsection (3) of section 99 may be made by-
- (a) the borrower;
 - (b) if two or more persons are joint borrowers, by one or more of them on their own behalf;
 - (c) a spouse of the borrower;
 - (d) a lessee of the borrower;
 - (e) the trustee in bankruptcy of the borrower.
- (2) If an application made in accordance with paragraph (b) of subsection (1) is not made by all the joint borrowers, then, unless the court orders otherwise, it must be served on all the joint borrowers.
- (3) An application for relief may be made at any time after the service of a notice under subsection (2) of section 86, or subsection (2) of section 87, or subsection (1) of section 88 or subsection (2) of section 90, or during the exercise of any of the remedies referred to in those sections.
- (4) An application for relief is not to be taken as an admission by the borrower or any other person applying for relief that-
- (a) there has been a breach of a covenant of the charge by the borrower;

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- (b) by reason of such a breach, the lender has the right to exercise the remedy in respect of which the application for relief has been made;
- (c) all notices which were required to be served by the lender were properly served;
- (d) the period for remedying the breach specified in the notice served under section 87 was reasonable or had expired, and the court may grant relief without determining all or any of those matters.

Power of the court in respect of remedies and reliefs thereto

- 100. (1)** In considering whether to grant relief against any of the remedies of the lender in relation to a charge in respect of which an application for relief has been made, a court-
- (a) shall, where the charged land consists of agricultural land or commercial premises, and the remedy proposed to appoint a receiver, or to take possession of or lease the land or a part therefore, have regard to whether the remedy which the lender proposes to exercise is reasonably necessary to prevent any or any further reduction in the value of the charged land or to reverse any such reduction as has already occurred;
 - (b) shall, where the charged land consists or includes a dwelling-house, and the remedy proposed is to appoint a receiver, or take possession or lease the dwelling house or a part of it, have regard to the effect that the appointment of a receiver or the taking of possession or leasing the whole or a part of the dwelling house would have on the occupation of the dwelling house by the borrower and his dependants and if the effect would be to impose undue disturbance on those owners, whether it is satisfied that-
 - (i) the lender has made all reasonable efforts, including the use of other remedies available to him, to induce the borrower to comply with his obligations under the charge; and
 - (ii) the borrower has persistently been in default of his obligations under

the charge; and

(iii) where the sale is of land held for a customary land, the lender has had regard to the age, means, and circumstance including the health and number of dependants of the borrower, and in particular whether-

(aa) the borrower will be rendered landless or homeless;

(bb) the borrower will have any alternative means of providing for himself and his dependants;

(iv) it is necessary to sell the charged land in order to enable the lender to recover the Funds owing to him under the charge;

(v) in all the circumstances, it is reasonable to approve, or as the case may be, to make the order to sell the charged land.

(2) A court may refuse to authorise an order or may grant any relief against the operation of a remedy which the circumstances of the case require and without limiting the generality of those powers, may-

(a) cancel, vary, suspend or postpone the order for any period which the court thinks reasonable;

(b) extend the period of time for compliance by the borrower with a notice served under section 86;

(c) substitute a different remedy or the one applied for or proposed by the lender or a different time for taking or desisting from taking any action specified by the lessor in a notice served under section 86;

(d) authorise or approve the remedy applied for or proposed by the lender, notwithstanding that some procedural errors took place during the making of any notices served in connection with that remedy if the court is satisfied that-

(i) the borrower or other person applying for relief was made fully

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aware of the action required to be taken under or in connection with the remedy; and

(ii) no injustice will be done by authorising or approving the remedy, and may authorise or approve that remedy on any conditions as to expenses, damages, compensation or any other relevant matter as the court thinks fit.

(3) Where under the terms of a charge, the borrower is entitled or is to be permitted to pay the principal sum secured by the charge by installments or otherwise to defer payment of it in whole or in part but provision is also made in the charge instrument or any collateral agreement for earlier payment of the whole sum in the event of any default by the borrower or of a demand by the lender or otherwise, then for purposes of this section the court may treat as due under the charge in respect of the principal sum secured and of interest on it only the amounts which the borrower would have expected to be required to pay if there has been no such provision for earlier payment.

(4) A court must refuse to authorise or approve a remedy if it appears to the court that-

(a) the default in issue has been remedied;

(b) the threat to the security has been removed;

(c) the borrower has taken the steps which he was required to take by the notice served on him under section on 86

(d) the lender has taken or attempted to take some action against the borrower in contravention of subsection (4) of section 99.

Power of the court to re-open certain charges and revise terms

101. (1) The Court may reopen-

(a) a charge for a sum equal to or less than the amount that maybe lent on the security of a small charge; or

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(b) a charge of whatever amount secured on a matrimonial home, in the interests of doing justice between the parties.

(2) The Court may reopen a charge to which subsection (1) refers if it appears the Court-

(a) that principles of fair dealing were contravened when the terms of the charge were agreed to;

(b) that the effect of the terms of the charge, at the time when the question of reopening it arises, is to give the lender rights substantially greater than or different from those necessary to ensure that the charged land provides adequate security for the principal sum advanced on the security of that land;

(c) that the charge requires payments to be made that are exorbitant or illegal, whether such payments are of interest or capital or both or otherwise and whether such payments are required to be made unconditionally or otherwise;

(d) that the charge includes a term which postpones that right to discharge the charge or otherwise impedes the discharge of the charge which appears to contravene the provisions of subsection (1) of section 85;

(e) that the charge imposes terms on the borrower that are significantly disadvantageous to the borrower compared to terms imposed on other borrowers in respect of similar charges and that these terms have been imposed solely or mainly because of the gender of the borrower.

Exercise of powers to
reopen certain charges

102. (1) The court may exercise the powers conferred on it by this Act either-

(a) on an application made to it for that purpose by either the borrower or the lender; or

(b) on an application by the lender: -

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- (i) to enforce the charge; or
 - (ii) to commence an action under section 87; or
 - (iii) to obtain an order authorising the exercise of a remedy in connection with a default by the borrower under a small charge;
- (c) or on an application by the borrower for relief against the exercise by the lender of any remedy in connection with a default by the borrower under a charge;
- (d) by the Registrar in respect of-
- (i) charges provided by one or more specific lenders where there is prima facie evidence of a pattern of unfair dealing and practices by that lender or those lenders; or
 - (ii) a lender, being a corporate body, which appears to exercise discrimination against borrowers on account of their gender, whether by granting charges on terms to which paragraph (e) of subsection (2) of section 101 applies, or by refusing to grant charges to persons on account of their gender except that a lender, being a corporate body which is implementing any programme, approved or assisted by the Government, designed to assist women to improve their economic and social position by providing them with advances secured by a charge of land shall not be taken to be acting in discriminatory manner if the advances under that programme are made only to women.

(2) In reopening the charge, the court may-

- (a)** direct that the charge shall have effect subject to modifications which the court shall order;
- (b)** require the lender to repay the whole or part of any sum paid under the charge or any related or collateral agreement by the borrower or any

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- guarantor or other person who assumed an obligation under the charge whether it was paid to the lender or any other person;
- (c) require the lender to pay any compensation to the borrower which the court shall think fit;
 - (d) direct the lender, being a corporate body to cease acting in a discriminatory manner with respect to the granting of charges.
- (3) In considering whether to exercise the powers conferred on it by this section, the court shall have regard to-
- (a) where the borrower is an individual, the age, gender, experience, understanding of commercial transaction, and health of the borrower at the time when the charge was created;
 - (b) the financial standing and resources of the borrower relative to those of the lender at the time of the creation of the charge;
 - (c) the degree to which, at the time of the creation of the charge, the borrower was under financial pressure and the nature of that pressure;
 - (d) the interest rates prevailing at the time of the creation of the charge and during the continuation of the charge and the relationship of those interest rates to the interest rate applying from time to time in the charge;
 - (e) the degree of risk accepted by the lender, having regard to the value of the charged land and the financial standing and other resources of the borrower;
 - (f) the importance of not undermining the confidence of reputable lenders in the market for charges; and
 - (g) any other factors which the court considers relevant.

PART VI:- COMPULSORY ACQUISITION OF INTERESTS IN LAND

GENERAL PROVISIONS

Interests in land may be taken for public works

- 103. (5)** Whenever the national government is to undertake, construct or provide any public purposes and the use of any land or any interest in land is required for the purposes of the work, then, unless otherwise specially provided:-
- (a)** any interest in the land held by a person may be taken;
 - (b)** any designation of the land or of any interest in the land may be removed;
 - (c)** any condition affecting the land may be revoked or modified, whatever the purpose for which the condition had been made, whether local or general;
 - (d)** any interest in the land held by the government or taken from some other person under paragraph (a) may be disposed of or granted to any other person; and
 - (e)** any interest in the land held by the government or taken from some other person under paragraph (a) (including an interest disposed of or granted under paragraph (d)) may be designated for the purpose of the public works,
- in accordance with this Part.
- (6)** The powers under subsection (1) may be exercised at any time, and whether or not the powers have previously been exercised for the purposes of that public works.

Taking interests in underground land

- 104. (1)** For the purpose of constructing any underground works, an interest in land under the surface may be taken under this Part without taking any interest in the surface.

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- (2) In such a case no compensation is payable unless:—
- (a) the surface of the overlying soil is disturbed;
 - (b) the support to the surface is destroyed or injuriously affected; or
 - (c) a mine, underground working, spring, reservoir, dam, or well in or adjacent to the land is injuriously affected,
- by the construction of the works.

The quantum of interests
when land is taken

- 105.** If an acquisition order provides that land is to be taken, or that an interest in land is to be taken, the interest taken includes all rights conferred to a proprietor by this Act.

PROCEDURE FOR TAKING INTERESTS IN LAND BY AGREEMENT

Agreements may be made
to purchase interests in
land

- 106. (1)** If any interest in land is required for a public purposes the Cabinet Secretary may, whether or not a notice of intention has been registered:—
- (a) enter into an agreement to purchase the interest; or
 - (b) obtain the written consent of the person to the taking of the interest, with compensation to be provided.
- (2)** On commencing negotiations with any person for such an agreement, the Cabinet Secretary must advise the person, by means of a statement in an approved form, of procedures under this Act for the taking of land, payment of purchase money or compensation for land taken, rights of appeal or review and rights as to the future disposition of interests in land taken by agreement or compulsorily taken.

Purchase price

- 107. (1)** An agreement under section 106 (1) (a) may specify a purchase price or other consideration for the interest in the land, or may provide for it to be assessed as if for compensation under this Act.
- (2)** Consideration for the interest may include a grant of an interest in any

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public land available for the purpose.

- (3) An agreement may provide for the reimbursement of property valuation costs incurred by the holder of the interest.

PROCEDURE FOR TAKING INTERESTS IN LAND WITHOUT AGREEMENT

Notice of intention to take
interest in land

108. (1) Subject to this section, if it is proposed to take interests in land without agreement under this Part, the Cabinet Secretary shall issue a notice of intention to take the interests, in accordance with this section.
- (2) A copy of the notice shall be sent to the Registrar.
- (3) Upon the receipt of the notice the Registrar shall register the notice in the document of title relating to the land;
- (4) After the registration of the notice, the Cabinet Secretary shall—
 - (a) cause a copy of the notice to be published once in a daily newspaper circulating throughout the country ;
 - (b) cause a copy of the notice to be served on the proprietor of any land affected by the notice, the occupier of the land and the holders of any title rights or interests in the land, either personally or by certified mail posted to their last known place of residence;
 - (c) advise the persons mentioned in paragraph (b) of the procedures under this Act for the taking of land, payment of purchase money or compensation for land taken, rights of appeal or review and rights as to the future disposition of land taken by agreement and compulsorily taken, unless they have already been given that advice.
- (5) The Cabinet Secretary may cancel or amend the notice of intention, or cancel the notice and substitute another notice of intention, by a notice issued, published and distributed in the same way as the original notice.

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- (6) The notice of intention, or substituted notice of intention, remains current for 12 months, or a longer period determined under subsection (7), from the date of registration, unless cancelled.
- (7) The Cabinet Secretary may, in respect of a particular notice of intention, determine that a longer period applies for the purposes of subsection (6).
- (8) A determination under subsection (7) —
 - (a) must be made while the notice of intention is current;
 - (b) must be notified in writing to the relevant persons mentioned in subsection (4) (b) and (c); and
 - (c) may be made more than once.
- (9) Subsections (2) and (3) apply to a determination under subsection (7) as if it were a notice of intention.

Content of notice of
intention

- 109. (1)** A notice of intention must include:—
- (a) a description of the land required;
 - (b) particulars of:—
 - (i) the purpose of the public purposes for which the land is proposed to be designated;
 - (ii) the nature of the interests to be taken;
 - (c) if it is proposed to make a disposition or grant to any person out of the
 - (d) interests proposed to be taken, a statement to that effect and particulars of the disposition or grant to be made;
 - (e) particulars of:—
 - (i) a place where persons interested may at any reasonable

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time inspect a plan of the land;

- (ii) the reasons why the land is suitable for, or is needed for, the public works;
- (iii) the date from which the land is likely to be required;
- (iv) the name of a contact officer in the Cabinet Secretary's office; and
- (v) an address for lodging objections;

(2) A notice of intention issued in good faith is not invalidated by reason only that it contains an error or omission in the information required by subsection (1)(d), (e) or (f).

No transactions to affect land under notice without the Cabinet Secretary's approval

110. (1) This section applies to a transaction affecting land which is included in a current notice of intention, other than a transaction mentioned in subsection (6).

(2) A person may not enter into a transaction to which this section applies except with the consent in writing of the Cabinet Secretary.

(3) A transaction entered into in contravention of subsection (2) is void.

(4) An application for the Cabinet Secretary's consent under this section for a proposed transaction must be in writing.

(5) A person who is a party to the transaction must—

- (a) furnish in writing such particulars of the transaction as the Cabinet Secretary may require as being necessary to enable the Cabinet Secretary to determine whether any party to the transaction is fully aware of the implications of the notice of intention to take the land; and
- (b) to furnish such statutory declarations in support of the particulars furnished under paragraph (a) as the Cabinet Secretary may require.

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- (6) If the Cabinet Secretary is of the opinion that any party to a transaction to which this section applies is not fully aware of the implications of the notice of intention to take the land affected by the transaction, and that the party would, if his or her consent were given, be likely to incur loss, the Cabinet Secretary may withhold consent to the transaction.
- (7) This section does not apply to a transaction—
- (a) by which an interest in land is acquired on sale under a writ or warrant of execution issued out of any court;
 - (b) by way of discharge of a charge;
 - (c) by way of partition between co-proprietors;
 - (d) by way of deed of arrangement between beneficiaries under a will or settlement;
 - (e) which vests an interest in land in the personal representative of a deceased person;
 - (f) which vests an interest in land in a trustee of the estate of a deceased person, a trustee in bankruptcy, or a newly appointed trustee under any instrument;
 - (g) which vests an interest in land held by a company in a liquidator, administrator, receiver, receiver manager or manager of the company;
 - (h) which is without consideration and the purpose of which is to vest an interest in land in a person beneficially entitled to the interest, under or by virtue of a will or intestacy or by way of gift; or
 - (i) by way of a personal insolvency agreement under the insolvency laws.

No improvements to be made to land under notice without Cabinet Secretary's approval

111. While a notice of intention is current in relation to land, a person must not cause the building or making of any improvement to the land to be commenced or

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continued except with the approval in writing of the Cabinet Secretary

Evidence of Cabinet Secretary's approval may be required for registration of transaction affecting land under notice

112. If an instrument relates to a transaction affecting land included in a current notice of intention, and the instrument is presented to the Registrar, the Registrar must require the production of the consent in writing of the Cabinet Secretary, or such evidence as he or she thinks sufficient that section 64 does not apply to the transaction, and may refuse to register the instrument until that consent or evidence is produced.

Objections to a proposal to take interests in land

113. (1) When a notice of intention is issued:—

(a) any person who is:—

(i) the proprietor of land affected by the notice; or

(ii) an occupier of land affected by the notice; or

may, alone or jointly with any other person or body, serve on the Cabinet Secretary, at an address mentioned in the notice of intention, a written objection to the taking of interests in the land, not relating to compensation.

(2) An objection must be lodged within 60 days after the registration of the notice of intention or such further time as the Cabinet Secretary may allow.

(3) An objection must identify the land and specify the nature of the interest of the objector in the land, the address of the objector and the grounds of objection.

(4) The Cabinet Secretary shall consider any objections and any other representations by the objectors.

(5) After considering the objections and representations, the Cabinet Secretary is to:—

(a) determine that the notice of intention is to stand unchanged; or

(b) cancel or amend the notice of intention, or cancel the notice

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and substitute another notice of intention.

- (6) If a notice of intention is amended, or cancelled and another notice substituted, under subsection (5) (b), the amended or substituted notice is to be treated as a new notice of intention for the purpose of allowing objections under this section, unless—
- (a) the changes to the notice of intention do not affect any interests in land apart from those of persons who have already objected; and
 - (b) each objector has agreed to the change in writing.

Making a acquisition order

114. (1) If:—

- (a) a notice of intention has been registered in relation to land; and
- (b) the Cabinet Secretary either—
 - (i) has received no objections from any proprietor or occupier within 60 days after the registration or within such further time as is allowed by the Cabinet Secretary;
 - (ii) has determined that the objections received in that time do not warrant the cancellation, amendment or cancellation and substitution of the notice of intention; or
 - (iii) is satisfied that every objector concerned has consented in writing to the purchase or taking of the objector's interest,

the Cabinet Secretary may make an acquisition order consistent with the notice of intention.

- (2) If an agreement has been concluded in accordance with section 106, the Cabinet Secretary may make an acquisition order in relation to the interest the subject of the agreement.
- (3) The Cabinet Secretary, when making an acquisition order under this

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section, may also make such other orders under this Act as are necessary to give effect to the purpose of the taking.

- (4)** As soon as possible after the registration of the order, the Cabinet Secretary must—
- (a)** cause an extract from the order, in the approved form, to be published once in a daily newspaper circulating throughout the country;
 - (b)** cause a copy of the order together with forms for the claiming of compensation under this Act to be served on each proprietor and each occupier of the land or such of them as can with reasonable diligence be ascertained at the time of the making of the order, either personally or by certified mail posted to their last known place of residence; and
 - (c)** advise the persons mentioned in paragraph (c) of the procedures under this Act for compensation for interests taken, unless they have already been given that advice.

Content of a acquisition
order

- 115. (1)** An acquisition order must—
- (a)** identify the land affected by the order;
 - (b)** either—
 - (i)** identify any registered or unregistered interest to be taken; or
 - (ii)** specify that the land is taken, subject to any provision made under subsection (2)(a);
 - (c)** specify that, subject to any provisions made under subsection (2)(d), any interest taken is to be held as public land in the name of the government;
 - (d)** designate appropriately any land or interests in land required for the purpose of the public works; and

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- (e) if the land, or interests in the land, required for the public purposes will be held by a person other than the government specify any covenants in favour of the public purposes that will apply to the land or the interests; and
- (2) An acquisition order may, as necessary—
 - (a) provide that specified interests are to be preserved in land affected by the order;
 - (b) provide that any existing designation of the land is to be cancelled;
 - (c) vary an existing condition on the use of the land ;
 - (d) provide that specified interests are to be disposed of or granted in land affected by the order to specified persons;
 - (e) provide that land will be excised from an existing portion or portions of land;
 - (f) provide as necessary for the cancellation, amendment or issue of certificates of title.
- (3) The interests which may be disposed of or granted under subsection (2) (d) include the fee simple, a lease of public land or any easement or obligation.
- (4) A grant or disposition under subsection (2) (d) may be made to the Cabinet Secretary or any other person.
- (5) An easement granted under subsection (2) (d) may be specified as being subject to revocation without compensation on a breach of any of the conditions subject to which it was granted.
- (6) The Cabinet Secretary may, by the same or a subsequent order, declare that the interest of any lessee or occupier of the land is to continue until a

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date specified in the order or uninterrupted until taken by further notice, and may declare that the continued interest is not to be considered to be in satisfaction or part satisfaction of compensation for the land.

(7) If the land affected by the acquisition order was occupied the acquisition order may specify the date of actual occupation as the date of taking.

Effect of an acquisition order

116. On the registration of an acquisition order in relation to land:—

- (a)** the order has effect according to its terms;
- (b)** if the order provides that the land is taken, every registered and unregistered interest in the land is extinguished, and each person who formerly held such an interest has that holding converted into a claim for compensation under this Act; and
- (c)** if the order does not provide that the land is taken—
 - (i)** each interest declared by the order to be taken is extinguished and each person who formerly held such an interest has that holding converted into a claim for compensation under this Act; and
 - (ii)** every unregistered interest in the land inconsistent with the effect and purpose of the acquisition order is also extinguished to the extent of the inconsistency, and each person who formerly held such an interest has that part of the holding which was extinguished converted into a claim for compensation under this Act

An acquisition order may be annulled or amended

117. (1) An acquisition order may, at any time within 90 days after its registration, be annulled or amended by the registration of an order to that effect.

(2) As soon as possible after the registration of an order under subsection (1) the Cabinet Secretary shall cause a copy of the order to be published once in

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a daily newspaper circulating throughout the country.

(3) Section 108 (b) and (c) apply to the order annulling or amending the acquisition order as if it were an acquisition order.

(4) Subject to this section:—

(a) an order so annulled; and

(b) if an order is so amended, any part of the earlier order that is inconsistent with the order as amended,

is void *ab initio*.

(5) A person is not to be prejudiced in respect of any interest in the land or in any right arising from such an interest by reason of having, in consequence of or in reliance on the earlier order, done or omitted any act or thing, or failed to enforce or act upon any right, or comply with any obligation in respect of the interest or right.

(6) Except as provided in this Act, no person has any right of action or claim against the government or the Cabinet Secretary for anything done in good faith done under the acquisition order before it was annulled or amended.

(7) This section does not limit the power of the Cabinet Secretary to take, by any subsequent order, any interest in the land described in any order annulled or amended.

Compensation on
annulment or amendment
of acquisition order

118. (1) When an acquisition order, or an amended acquisition order, is annulled or amended, any claimant who would otherwise have been entitled to compensation is entitled to compensation for reasonable costs incurred, in relation to the taking, up to and including the date of taking and for actual damage to the land.

(2) A claim under this section must be made to the Cabinet Secretary within 60 days after the date of registration of the annulling or amending order, or

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within such longer period as the Cabinet Secretary may allow.

- (3) Compensation under this section is to be paid by the Cabinet Secretary.
- (4) The Cabinet Secretary shall not pay any compensation under this section until a survey plan for the land in question has been prepared and approved by a statutory body responsible for survey.
- (5) If the parties fail to agree on the amount of the compensation, the amount may be determined in accordance with this Act

ENTRY ON TO LAND

Land may be entered for a feasibility study

119. (1) If it appears to the Cabinet Secretary that it may be necessary to use any land for a proposed public purposes for which the Cabinet Secretary is authorised to take interests in land, the Cabinet Secretary may authorise a person—
- (a) to enter on that land; and
 - (b) to do anything necessary in order to study the feasibility of the proposed public works.
- (2) The Cabinet Secretary or person authorised must, before entering on any land under this section, give to the proprietor, the occupier, and to the holders of any title rights and interests, not less than 30 days notice in writing, giving a description of the area of the land to be entered upon, a description of what is proposed to be done for the feasibility study, and the time that it is expected to take.

Land included in notice of intention may be entered for inspection or assessment of compensation, or for surveys

120. (1) At any time after the registration of a notice of intention, a person authorised in writing by the Cabinet Secretary may at all reasonable times enter on land included in the notice for the purpose of inspecting the land or making an assessment of compensation payable for the taking of interests in

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the land.

- (2) At any time after the registration of a notice of intention, a person authorised in writing by the Cabinet Secretary may at all reasonable times enter on land included in the notice and do anything necessary or convenient for the surveying of the land for the purposes of the public works.
- (3) The Cabinet Secretary or person authorised must, as far as is practicable, before entering on any land under this section give to the proprietor, the occupier, and to the holders of any title rights and interests, not less than 48 hours notice in writing, describing the area of land to be entered on and the purpose of the entry.

Land may be occupied temporarily for the purpose of public works

- 121.** (1) The Cabinet Secretary may authorise a person to occupy and use any land temporarily for the purpose of constructing or repairing any public purposes and a person so authorised may—
- (a) take stone, gravel, earth and other materials from the land;
 - (b) deposit any such material on the land;
 - (c) make and use temporary roads;
 - (d) manufacture bricks or other materials; and
 - (e) erect temporary workshops, sheds and other buildings.
- (2) Property in anything deposited, made or erected under this section remains with the Cabinet Secretary.
- (3) Subject to subsection (4), the Cabinet Secretary or person authorised must, before the land is used or occupied under this section, give to the proprietor or occupier of the land, and to the holders of any title rights and interests in the land, not less than 7 days notice in writing, and must state in the notice the use proposed to be made of the land and an approximate

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period during which the use is expected to continue.

- (4) If the Cabinet Secretary is satisfied that the situation is sufficiently urgent, the notice period may be shortened or the land may be occupied before notification has been given

Work may be commenced
without a Acquisition order
in certain circumstances

122. (1) If the Cabinet Secretary is satisfied that—

- (a) it is necessary to use any land for a proposed public purposes for which the Cabinet Secretary is authorised to take interests in land; and
- (b) because of the urgency of the work or the difficulty in tracing the proprietors of the land, it is unreasonable or impractical to delay entry onto the land until the land has been taken in accordance with this Part,

the Cabinet Secretary may authorise a person—

- (a) to enter on the land;
- (c) to do anything necessary in order to study the feasibility of the proposed public works;
- (d) to do anything necessary as preliminary or ancillary to the undertaking, constructing, or providing of the public works; and
- (e) to carry out the public works,

in all respects as if the necessary acquisition order had been made for the purposes of the public works.

- (2) This section applies whether or not a notice of intention has been issued in relation to the land, and whether or not the land has been entered on under any other section.

- (3) The Cabinet Secretary or person authorised must, as far as is practicable, before entering on any land under this section—

- (a) give to the proprietor, the occupier, and to the holders of any title

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rights and interests, not less than 7 days notice in writing, giving a description of the area of the land to be entered upon, a description of what is proposed to be done, and the time that it is expected to take; and

- (b) advise the persons mentioned in paragraph (a) of the effect of this section and the procedures under this Act for the taking of land, payment of purchase money or compensation for land taken, rights of appeal or review and rights as to the future disposition of land taken by agreement or compulsorily taken, unless they have already been given that advice.
- (c) As soon as practicable after any land has been entered on under this section, the Cabinet Secretary must determine the interests in the land which it is necessary to take.
- (d) On the making of a determination under subsection (4), the Cabinet Secretary may make an appropriate acquisition order in relation to the land as if section 70 of this Act had been satisfied, and as if the determination were a notice of intention.

COMPENSATION

- | | |
|---|---|
| Owners of interests in land taken entitled to compensation | 123. Every person having any interest in land which is taken under this Act is entitled, subject to this Part, to compensation for the interest from the government. |
| Persons who suffer damage from entry on to land entitled to compensation | 124. (1) A person holding any interest in any land, or lawfully occupying the land, who suffers damage by reason of any entry on or occupation of the land, or the removal of any material, is entitled, subject to this Part, to compensation for the damage from the government if the land is not subsequently taken.

(2) No compensation is payable under this section in respect of any entry or occupation unless some person having an interest in the land gives notice in |

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writing to the government during the entry or occupation concerned that the person will require compensation.

- (3) Compensation paid under this section in respect of any land must not exceed the amount that would have been payable in respect of the land had the land been taken

Time limit for making claim for compensation

125. (1) Unless a direction for the hearing of a claim is made by the Land Acquisition Compensation Tribunal under section 123, a person is not entitled to make a claim for compensation under this Part more than 6 months after:—

(a) the registration of the relevant acquisition order, for a claim under section 121; or

(b) the commission of the acts complained of, for a claim for compensation under section 78.

- (2) The time limit (whether it has expired or not) under this section may, on the application of a person who wishes to make a claim, be extended if the Cabinet Secretary is satisfied that the application is reasonable and made in good faith.

- (3) When the time limit, or the time limit as extended, has expired, no action or proceeding lies against the Cabinet Secretary in respect of any claim for compensation.

By whom compensation may be claimed

126. (1) A claim for compensation may be made by any person entitled to compensation under this Part, or by the person's executor or administrator, whether or not the person has the power to sell and convey the interest on which the right to compensation depends.

- (2) Any claim on behalf of beneficiaries of trusts, wards or incapable persons may be made by their trustees or guardians.

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Procedure in
unrepresented absentee
claims

- 127. (1)** If a claim is not made within the time limit and it appears to the Cabinet Secretary that a person entitled to claim compensation is absent from the country or an infant or an incapable person, the Cabinet Secretary shall offer the amount of compensation and apply to the Land Acquisition Compensation Tribunal for a direction.
- (2)** The Land Acquisition Compensation Tribunal may direct either that the offer is to be accepted on behalf of the claimant by the public trustee or that the claim is to be heard and determined by the Land Acquisition Compensation Tribunal.
- (3)** If the Land Acquisition Compensation Tribunal directs that the claim is to be heard by it, it shall appoint a public trustee on behalf of the absent person.
- (4)** The Land Acquisition Compensation Tribunal may proceed in the examination of the claim, as in ordinary cases where the claimant is present.
- (5)** The public trustee is to represent the person entitled to claim, and may act on the person's behalf in all matters relating to the claim or the hearing.

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Making a claim

- 128. (1)** A claim for compensation under this Part must be in an approved form, stating:—
- (a)** the particulars identifying the land in respect of which the claim is made;
 - (b)** the nature and particulars of the claimant's interest in the land;
 - (c)** if the land or the interest is charged, leased, or subject to any easement-particulars of the charge, lease, or easement;
 - (d)** each matter on account of which compensation is claimed, with particulars of the nature and extent of the claim; and
 - (e)** the claimant's full name and address for service.
- (2)** The claim must be served on the Cabinet Secretary and accompanied by—
- (a)** all deeds and documents necessary to establish the claimant's title to the interest which are in the claimant's custody, possession, or power; and
 - (b)** an abstract or certified copy of all such deeds or documents as are not in the claimant's custody, possession, or power.
 - (c)** A reference in this Part to the serving of a claim includes a reference to the serving of the documents referred to in subsection (2).

Requests for non-monetary compensation

- 129. (1)** A claimant may request that the claim be satisfied, in whole or in part, by compensation in a form other than money (for example by the transfer of property or the provision of goods or services).
- (2)** If such a request is made the Cabinet Secretary must:—
- (a)** consider the request; and
 - (b)** negotiate in good faith in relation to it.

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Claim and offer may be amended

130. At any time before a claim for compensation is settled in full, if proceedings for determination of the amount of compensation have not been commenced in any court or before the Land Acquisition Compensation Tribunal, the claimant may with notice to the Cabinet Secretary amend the claim only as to the amount claimed and the authority may with notice to the claimant amend the offer of compensation.

If offer not rejected by claimant, equivalent to acceptance

131. (1) A claimant who wishes to reject an offer or amended offer of compensation must serve on the Cabinet Secretary, within 60 days after service of the offer or amended offer, a notice in an approved form rejecting the offer.

(2) If notice of rejection is not given within that time, the offer or amended offer, as the case may be, is deemed to have been accepted,

Method of determining compensation when offer rejected

132. If a notice rejecting an offer or amended offer of compensation is served on an Cabinet Secretary, the compensation payable to the claimant may be determined by any one of the following methods:—

(a) by agreement between the Cabinet Secretary and the claimant;

(b) by an action for compensation by the claimant against the Cabinet Secretary in accordance in a court of law;

(c) by reference of the claim to the Land Acquisition Compensation Tribunal in accordance with this Part.

If offer not made within 120 days of service of claim claimant may commence proceedings

133. (1) If the Cabinet Secretary fails to serve on a claimant an offer of compensation within 120 days after the relevant day, the claimant may either:—

(a) institute an action for compensation against the Cabinet Secretary;

or

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(b) refer the claim for the compensation to the Land Acquisition Compensation Tribunal.

(2) For the purposes of this section, the relevant day is:—

(a) if no notice disputing the claim was served, the latest of:-

(i) the day of service of the claim;

(ii) the day of service of any amendment to the claim; or

(iii) the day of compliance with any requirement for further particulars; or

(b) if the title of claimant was disputed and the court upheld the claimant's title in whole or in part, the day of the judgment.

Commencing an action in
the Land Acquisition
Compensation Tribunal

134. (1) A claimant who rejects an offer and wishes to refer his or her claim to the Land Acquisition Compensation Tribunal shall, with or after the service of the notice rejecting the offer, serve on the Cabinet Secretary notice in an approved form of the appointment of an assessor together with copies of the assessor's consent and declaration.

(2) A claimant who wishes to refer his or her claim to the Land Acquisition Compensation Tribunal shall serve on the Cabinet Secretary notice in an approved form of the appointment of an assessor together with copies of the assessor's consent and declaration.

(3) Within 30 days after being served with a notice of the appointment of an assessor, the Cabinet Secretary must—

(a) appoint an assessor and serve on the claimant a copy of the appointment in an approved form; or

(b) serve on the claimant an offer of compensation, or, if an offer has already been made, an amendment to the offer increasing the

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amount of compensation offered.

- (4) If the Cabinet Secretary has not complied with subsection (3) within 30 days after being served with the notice of the appointment of an assessor by the claimant, the claimant may request the Chairman of the Land Acquisition Compensation Tribunal, in specifying who is to constitute the Tribunal for the purpose of determining the claim, to choose a consenting person as if the person had been appointed as an assessor by the Cabinet Secretary and the Chairman is to act accordingly, and notify the authority and the claimant.
- (5) When assessors have been appointed by or on behalf of both the claimant and the Cabinet Secretary the Chairman of the Land Acquisition Compensation Tribunal is to specify who is to constitute the Tribunal for the purpose of determining the amount of compensation to be paid.
- (6) For the purposes of subsection (5) (a), the claimant or the Cabinet Secretary is to be regarded as having appointed a person as an assessor if circumstances have arisen in which the Chairman of the Land Acquisition Compensation Tribunal may, in specifying who is to constitute the Tribunal, choose any consenting person as if the person had been appointed as an assessor by the claimant or the Cabinet Secretary, as the case requires.
- (7) Upon receiving notice of the appointment of an assessor by the Cabinet Secretary or notice that the Chairman of the Land Acquisition Compensation Tribunal has chosen a person as if the person had been appointed as an assessor by the Cabinet Secretary, the claimant must at once file a copy of the claim and of all notices and other particulars in the Land Acquisition Compensation Tribunal.
- (8) If the offer is for part only of the interest in land taken, the title to the rest being disputed, the assessment of the compensation, unless the claimant admits the objections to his or her title, is to be adjourned pending the

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judgment of the Court.

- Consent of assessor to act
- 135.** (1) No appointment of an assessor is valid unless the person appointed signs a consent and declaration in approved form.
- (2) A consent and declaration must be filed in the Land Acquisition Compensation Tribunal, and a copy appended to the notice of appointment of the assessor.

THE LAND ACQUISITION COMPENSATION TRIBUNAL

- The Land Acquisition Compensation Tribunal
- 136.** (1) Except as otherwise stated in this section, when the Land Acquisition Tribunal is dealing with a claim for compensation under this Part, it is to be constituted by—
- (a) An advocate of the High Court of more than ten years standing appointed by the Attorney General for a period of four years who shall be chairperson of the tribunal;
- (b) the person appointed as an assessor by the claimant; and
- (c) the person appointed as an assessor by the Cabinet Secretary
- (2) If the claimant and the Cabinet Secretary agree in writing, the Land Acquisition Compensation Tribunal may be constituted solely by the chairperson.

- Assessing compensation
- 137.** (1) In determining the amount of compensation (if any) to be offered, paid, or awarded for an interest in land taken under this Act, regard is to be had solely to the matters referred to in this section.
- (2) Regard is to be had to the value of the land with any improvements, or the interest of the claimant in the land, assessed as on:—
- (a) in the case of an interest taken by agreement under section 60, the

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date of the execution of the agreement, unless the agreement provides otherwise; or

- (b) in the case of an interest to which paragraphs (a) does not apply, the date of the taking,

and discounting any increase or decrease in value attributable to the proposed public works.

- (3) If a notice of intention was registered in relation to the interest on a date before the date referred to in subsection (2), and a transaction relating to the land made between those dates affected the value of the interest, regard may be had to the value of the interest assessed as at the date referred to in subsection (2) and discounting the effect of the transaction.

- (4) No regard is to be had to the value of any improvements made without the consent of the Cabinet Secretary after the registration of a notice of intention.

- (5) Regard is to be had to the loss or damage, if any, sustained by the claimant by reason of—

- (a) removal expenses;
- (b) disruption and reinstatement of a business;
- (c) the halting of building works in progress at the date when the interest is taken and the consequential termination of building contracts;
- (d) architect's fees or quantity surveyor's fees actually incurred by the claimant in respect of proposed buildings or improvements which cannot be commenced or continued in consequence of the taking of the interest; or
- (e) any other facts which the Cabinet Secretary, the court, or the State Administrative Tribunal considers it just to take into account in the

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circumstances of the case.

- (6) If the fee simple in land is taken from a person who is also the holder in fee simple of adjoining land, regard is to be had to the amount of any damage suffered by the claimant:—
- (a) due to the severing of the land taken from that adjoining land; or
 - (b) due to a reduction of the value of that adjoining land,

however, if the value of any land held in fee simple by the person is increased by the carrying out of, or the proposal to carry out, the public purposes for which the land was taken, the increase is to be set off against the amount of compensation that would otherwise be payable under paragraph (b).

- (7) If the interest in land is taken without agreement, an amount considered by the court or the Land Acquisition Compensation Tribunal or, for the purposes of making an offer, by the Cabinet Secretary, appropriate to compensate for the taking without agreement may be added to the award or offer.

- (8) The additional amount under subsection (7) must not be more than 10% of the amount otherwise awarded or offered, unless the court or the Land Acquisition Compensation Tribunal, or, for the purposes of making an offer, the Cabinet Secretary, is satisfied that exceptional circumstances justify a higher amount.

- (9) If the interest in land taken produces any rent or profits, then at the option of the Cabinet Secretary, either—
- (a) the amount of the rent or profits received by the Cabinet Secretary, less the reasonable cost of collection, for the period from the date of registration of the Acquisition order to the date of the payment of compensation or the date of the award, whichever is earlier, is to be added to the compensation payable; or

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(b) interest is to be paid on the amount of compensation for the same period, at the rate of 6% per annum, or such higher rate as the Cabinet Secretary, the court, or the Land Acquisition Compensation Tribunal considers adequate having regard to the circumstances of each case, but if the interest in land ceases to produce any rent or profits after the taking, interest is to be paid in accordance with paragraph (b).

(10) When any amount representing an advance payment of compensation is paid to a claimant, interest on the total amount of compensation is payable only to the date of the first payment, and interest is payable thereafter only on the balance outstanding from time to time.

(11) when any amount is offered by the Cabinet Secretary as an advance payment of compensation and the offer is not accepted by the claimant within 30 days of the day on which it was made, no interest is payable thereafter in respect of the amount so offered.

(12) If—

(a) the amount of any purchase money or compensation, or any payment on account, is payable under this Act;

(b) the Cabinet Secretary causes a notice to be published once in a daily newspaper circulating throughout the Country stating that the authority intends to make the payment; and

(c) Three months after the publication of the notice, no person has been able, or being able has not agreed, to give a sufficient discharge and receipt in respect of that amount, or any portion of that amount,

the Cabinet Secretary may cause the Funds to be paid to the public trustee and thereafter is not liable for any further interest payment on the Funds.

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or through a claimant on the date of taking, all rates and taxes which, under the provisions of any Act, are a charge on the land and are payable or paid by the claimant are to be apportioned between the claimant and Cabinet Secretary as at that date.

- (2) If the land was occupied by, on behalf of or through the claimant on the date of taking, the rates and taxes referred to in subsection (1) are to be apportioned between the claimant and Cabinet Secretary as at the date when possession was given up by the claimant to the Cabinet Secretary or when by agreement with the Cabinet Secretary the claimant ceased to be responsible for the payment of rates and taxes.
- (3) On the apportionment of rates and taxes under subsection (1):—
- (a) the aggregate amount, if any, due by the claimant as rates and taxes at the date as at which the rates and taxes are required to be apportioned, if not paid by the claimant, are to be deducted from the amount of the compensation;
- (b) the aggregate amount, if any, paid by the claimant as rates and taxes in respect of any period subsequent to the date as at which the rates and taxes are required to be apportioned, are to be added to the amount of compensation

Anything done by claimant to make land less suitable for the execution of work to be taken into account

139. If the Land Acquisition Compensation Tribunal or the court hearing an action for compensation under this Act is of the opinion that the claimant has, at any time after the date of registration of the relevant notice of intention, or, if no notice of intention was issued, of the date of taking, done anything upon or under the land with the effect of making the land less suitable for the purpose of the public purposes for which it is taken, the Land Acquisition Compensation Tribunal or the court is to take that into account, by way of deduction from the amount of compensation, and if, in its opinion, the action so increases the cost of executing

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the public purposes that the increase in cost exceeds the value of the land taken, the award is to be for the payment by the claimant to the Cabinet Secretary of the amount of the excess, and the costs of inquiry.

Gross sum or separate sums may be awarded and conditions attached

- 140.** (1) The Land Acquisition Compensation Tribunal or the court hearing the action for compensation may award one aggregate amount as compensation for a whole claim, or may divide the claim into several items and award a separate amount for each item.
- (2) The Land Acquisition Compensation Tribunal or the court may determine that no compensation is payable in respect of the whole claim or in respect of any item.
- (3) The Land Acquisition Compensation Tribunal or the court may attach conditions to the payment of the whole of the compensation or to the payment of the amount awarded for any item.

Cabinet Secretary may grant surplus interests in land in lieu of compensation

- 141.** (1) The Cabinet Secretary may in consultation with the Commission, with the consent of the claimant, in satisfaction, or in part satisfaction, for any interest in land which is taken or purchased under this Act, grant to the person or persons from whom the land has been taken or purchased, any interest in public land available to be granted or disposed of.
- (2) The value of the interest, together with any money compensation, must not exceed the amount which it appears to the Cabinet Secretary would probably have to be paid if compensation were made wholly in money in the usual way.

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Out of what funds
compensation to be paid

142. Funds payable as compensation or as costs or on the apportionment of rates and taxes under this Act are to be paid out of Funds appropriated by Parliament for the works in respect of which the claim for compensation arises but the Cabinet Secretary is not personally liable for any compensation or costs which may become payable under this Act.

PART X –EASEMENTS AND ANALOGOUS RIGHTS

GENERAL

Application of this part

143. (1) This Part shall apply to all easements made or coming into force on or after the commencement of this Act.

(2) Subsection (1) shall not, unless stated specifically otherwise, apply to easements, profits, restrictive agreements and all other like restrictions on the use of land having effect in customary law only.

(3) In this Part, reference to "analogous rights" means an access order made under section 147.

Nature of easement

144. (1) Subject to the provisions of this Act or any other written law applicable to the use of land, the rights capable of being created by an easement are-

(a) any rights to do something over, under or upon the servient land; or

(b) any right that something should not be so done;

(c) any right to require the owner of servient land to do something over, under or upon that land;

(d) any right to graze stock on the servient land.

(2) The rights capable of being created by an easement do not include-

(a) any right to take and carry away anything from the servient land;

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(b) any right to the exclusive possession of any land

(3) Except where an easement has been created for specific period of time which will terminate at a fixed date in the future or on the happening of a specific event in the future or on the death of the grantor, the grantee or some other person named in the grant, an easement burdens the servient land and runs with the land for the same period of time as the land or lease held by the grantor who created that easement.

(4) Subject to the provisions of this part an easement shall be capable of existing only during the subsistence of the land or lease out of which it was created.

Terminology

145. (1) The land for the benefit of which any easement is created is in this Act referred to as the "dominant land" and the land of the person by whom an easement is created is referred to as "the servient land";

(2) An easement is, in this Act, in relation to the dominant land referred to as "benefiting" that land and is, in relation to the servient land, referred to as "burdening that land";

(3) Subject to the provisions of this part, an easement shall be capable of existing only during the subsistence of the land or lease out of which they were created

Entry on neighbouring land where easement is refused

146. (1) An owner of any land (the dominant land) may apply to a court on the prescribed form for an order, referred to as an "entry order" authorising entry on or over any neighboring land (the servient land) for the purpose of erecting, repairing, adding to, painting or demolishing the whole or any part of any structure on the dominant land or doing any other necessary or desirable thing on that land.

(2) The applicant shall give not less than fourteen days notice in writing to:-

(a) the owner of the servient land; and

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- (b) the local authority having jurisdiction in the area where the dominant and servient land are located, of the intention to apply for an entry order under this section.
- (3) On an application under subsection (1), the court may after hearing the applicant and the persons to whom notice was given under subsection (2), make an entry order authorising the applicant to do all or any of the following:

 - (a) to enter on or over the servient land, either personally or through the applicant's employees, agents or contractors, for any purpose specified in the entry order;
 - (b) to use for that purpose on or over the servient land and vehicles and other means of transport and any plant machinery, cranes or other equipment as are specified in the entry order;
 - (c) to store on the servient land such materials require for the purposes of the work and in any quantities which are specified in the entry order.
- (4) In determining whether to make an entry order under subsection (3), the court shall have regard to-

 - (a) the nature and conduct of the negotiations if any, between the owners of the dominant and servient land with respect to any attempt by the owner of the dominant land to obtain an easement for the purpose for which the entry order is applied for from the owner of the servient land;
 - (b) the urgency, importance and desirability of the work for which the entry order is being applied for;
 - (c) the scope of the work and the length of the time for which the entry order is being applied for;
 - (d) whether the applicant has applied for or obtained all permissions, license and consents required from all relevant public authorities to execute the

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works;

(e) any other matters which shall appear to the court to be relevant.

(5) An order made under subsection (3) may be made on any conditions which the court shall think fit and without prejudice to the generality of this provision, these conditions may include-

(a) The period of time during which the entry on or over the servient land is authorized;

(b) The hours of the day or night during which the work may be done;

(c) The preservation of the safety of persons or property on the servient land;

(d) the preservation, so far as is consistent with the work to be executed, of the natural features and condition of the servient land;

(e) the restoration of the servient land to its former state at the conclusion of the work;

(f) the maintenance of adequate access to the servient land;

(g) the provision of security or indemnity to secure-

i. the performance of any conditions of the entry order; or

ii. the making good of any damage caused by entry on or over the servient land, or work on or over the land; or

iii. the reimbursement of the owner of the servient land for any costs, expenses or loss arising from the entry;

(h) any other relevant matter

(6) Where, as a result fire, civil commotion or natural disaster, a structure on the dominant land has become a threat to public safety or public health, so that there is an urgent need to effect repairs to or demolish that structure and such action may only be executed by entry on or over the servient land, the owner

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of the dominant land may, on giving not less than twenty-four hours notice in writing to the owner of the servient land, enter the servient land and effect the repairs or demolition but the entry and execution of works shall not prevent the owner of the servient land from applying to court for an order requiring the owner of the dominant land to make good any damage caused by the entry and works and to reimburse the owner of the servient land for any costs, expenses or loss arising from the entry and works.

(7) In this section-

- (a) an owner of land shall be taken to include an owner under a land, a lessor and lessee; and
- (b) neighboring land means any land in respect of which an order is sought under this section, whether or not it adjoins the land occupied by the applicant for an entry order.

Access to landlocked land

- 147. (1)** An owner of landlocked land may apply in the prescribed form to a court for an order, referred to as an "access order" granting reasonable access to that land.
- (2)** A copy of the application shall be served on:
- (a)** the owners of each piece of land adjoining the landlocked land;
 - (b)** any person claiming an interest in any such piece of land of whom the applicant has actual notice;
 - (c)** the local authority having jurisdiction in the area where the landlocked land is located;
 - (d)** such other person occupying or having an interest in land which in the opinion of the court may be affected by the granting of the application.
- (3)** The court may, after hearing the applicant and any person served with an application under subsection (2) make an access order in respect of any other

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piece of land, the owner of which was served with a copy of the application under subsection (2), for the benefit of the landlocked land.

- (4)** In considering whether to grant an access order, the court shall have regard to-
- (a)** the nature and quality of the access, if any, to the landlocked land when the applicant first occupied the land;
 - (b)** the circumstances in which the land became landlocked;
 - (c)** the nature and conduct of the negotiations, if any, between the owners of the landlocked land and any adjoining or other land with respect to any attempt by the owner of the landlocked land to obtain an easement from one or more owners of the adjoining or other land;
 - (d)** the hardship that may be caused to the applicant by the refusal of the access order, in comparison to the hardship that may be caused to any other person the making of the order;
 - (e)** the purposes for which access is or may be required;
 - (f)** Any other matters which appear to the court to be relevant.
- (5)** An access order may be made subject to any conditions which the court may think fit and without prejudice to the generality of this provision, such conditions may include-
- (a)** the period for which the access order is to be made;
 - (b)** the payment of reasonable compensation by the applicant to an[^] Other person;
 - (c)** the allocation of the costs of any work necessary to give effect to the order between the applicant and any other person;
 - (d)** the fencing of any land and the upkeep and maintenance of any such fence;

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- (e) the upkeep and maintenance of any land over which the access order has been granted;
- (f) the execution of any instrument or the completion of any prescribed form or the doing of any other thing necessary to give effect to the order;
- (g) any conditions set out in subsection (5) of section 146 which in the opinion of the court are applicable to an access order;
- (h) any other relevant matter.

(6) An access order made under this section shall be deemed to have all the characteristics and incidents of an easement and the land over which it has been granted shall be deemed to be the servient land and landlocked land shall be deemed to be the dominant land in respect of that easement.

Enjoyment of easement and analogous rights

- 148. (1)** The benefit of an easement, and an analogous right granted under this part shall, during the term of its existence, be enjoyed by the owner of the dominant land and his successors in title and by-
- (a) any lessee of the dominant land, or so far as the nature of the easement, or analogous right permit, and part of it, and
 - (b) any lender on the security of a charge for the time being in possession of the dominant land, or so far as the nature of the easement or analogous right permit, any part of it.

(2) Any person referred to in paragraphs (a) and (b) of subsection (1) who is by this section entitled to the benefit of an easement or analogous right may take in his own name any proceedings necessary to enforce that easement or those analogous rights.

Cancellation and extinguishment of easements and analogous rights

- 149. (1)** Subject to subsection (3), any easement granted under this part or any analogous right created under this part may be cancelled by the person occupying the dominant land.

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- (2) Any cancellation referred to in subsection (1) shall be effected by the prescribed form and the easement, or analogous right shall be extinguished on the date that form is recorded in the register.
- (3) On the application of any person occupying servient land under a land, the Registrar may cancel any easement or an analogous right where he is satisfied that-
 - (a) the period of time for which the easement of analogous right was intended to subsist had expired; or
 - (b) the event upon which the easement or analogous right was intended to terminate has occurred.
- (4) The consent of any lessee or lender for the time being entitled to the benefit of any easement or analogous right shall be necessary for any cancellation of any such easements or rights and such consent shall be signified in the prescribed form.

PUBLIC RIGHTS OF WAY

Power of cabinet secretary to create public rights of way

150. (1) The Commission may, subject to and in accordance with sections 151 and 152 create rights of way which shall be known as public rights of way.
- (2) A public right of way may be-
 - (a) a right of way created for the benefit of the National or County Government, a local authority, a public authority or any corporate body to enable all such organisations, authorities and bodies to such organisations, authorities, and bodies to carry out their functions, referred to in this Act as a wayleave; or
 - (b) a right of way created for the benefit of the public, referred to in section 99 of this Act as a communal right of way.
- (3) A public right of way shall attach to and run with the servient land in respect

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of which it has been created and shall be binding on all owners from time to time of the servient land, any manner they are occupying the land, whether under a land or a derivative right thereof, or under customary law or as a successor in title to any such owner or as a trespasser.

- (4) A wayleave shall authorize persons in the employment to or who are acting as agents of or contractors for any of the organizations, authorities and bodies to enter on the servient land for the purpose of executing works, building and maintain installations and structures and insetting all such works, installations and structures on the servient land and to pass and repass along that way leave in connection with purposes of those organisations, authorities or bodies.
- (5) A communal right of way created for the benefit of the public shall entitle the public to pass and repass along that right of way and in areas designated for that purpose, to undertake recreational activities or other prescribed activity of the kind permitted in that designated area.

Application for wayleave

- 151.** (1) Except where the Commission is proposing of his own motion to create a wayleave, an application from any ministry or department of government, or the county government, or public authority or corporate body shall be made to the Commission.
- (2) An application shall be made on the prescribed form and shall be accompanied by any information which may be prescribed or which the Commission may, in writing require the applicant to supply and the Commission shall not begin the process of creating a wayleave until all information which is prescribed or required is submitted to him.
- (3) In order to enable a proposed wayleave to be created by the Commission of its own motion to comply with the provisions of this section, the Commission shall complete an application form as if he were applying to create a

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wayleave and references to "the applicant" in this Sub-part in relation to an application to create a wayleave shall be taken to apply as well to the Commission.

- (4) The applicant shall serve a notice on-
- (a) all persons occupying land under a land over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights;
 - (b) The county government in whose area of jurisdiction land over which the proposed way leave is to be created is located;
 - (c) all persons in actual occupation of land in an urban and per-urban area over which the proposed way leave is to be created;
 - (d) any other interested person.
- (5) The Commission shall give publicity to the application along the route of the proposed wayleave calculated to bring the application clearly and in a comprehensible manner to the notice of all persons using land over which the proposed wayleave is likely to be created.

Application for communal
right of way

152. (1) A county government, an association, or any group of persons with an interest in the environment or land may apply to the Commission for the creation of a communal right of way.
- (2) An application made under subsection (1) may include an application to recognise and convert a right of way under customary law to a communal right of way created under this section
- (3) The provisions of subsections (2), (4) and (5) of section 151 shall apply to an application by a county government for the creation of a communal right of way as they apply to an application to create a way leave under that section.
- (4) The Commission may of its own motion where it is of the opinion that it is

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expedient or desirable that a communal right of way be created initiate the procedures referred to in subsection (2).

Determination on creation
of public right of way

- 153. (1)** The Commission shall-
- (a) on receipt of all information prescribed or required under sections 151 and 152; and
 - (b) after not less than ninety days from the date of the serving of notices under subsection (3) of section 151 or subsection (2) of section 152, consider all the information so received and all representations and objections made by any person served with a notice under the aforesaid subsections and recommend to the Cabinet Secretary whether to-
 - (i) appoint a public inquiry to give further consideration to the representations and objections; or
 - (ii) refer the application to the County Government for its opinion on whether to approve the application; or
 - (iii) initiate and facilitate negotiations between those persons who have made representations on the application and the applicant with a view to reaching a consensus on that application.
- (2)** Where the Commission has of its own motion proposed the creation of a public right of way and representations have been made on that proposal which are concerned with the matters other than the compensation payable for the use of the land for that public right of way, the Commission shall recommend to the Cabinet Secretary only that the Cabinet Secretary exercise powers under subparagraphs (i) or (ii) of subsection (1).
- (3)** The Cabinet Secretary shall, after taking account, as the case may be, of-
- (a) the recommendations of the Commission; or
 - (b) the advice of the County government ;

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- (c) the outcome of any negotiations initiated under subparagraph (iii) of subsection (1),

determine whether to create or refuse to create a public right of way.

- (4)** The Cabinet Secretary may, by order, create a public right of way under this section subject to any amendments, limitations and conditions, including conditions as to the costs of constructing and maintain a public right of way as he shall think fit.
- (5)** Where an agreement has been reached between the parties to any negotiations initiated under subparagraph (iii) of subsection (1) the Cabinet Secretary shall, if he is minded to create a public right of way but not to accept any amendment, limitation or condition of that agreement, refer the matter back to the parties for their reconsideration and take no decision on the creation of that right of way until not less than thirty days have elapsed from the date of the referral of the matter back to the parties or the parties have resubmitted their agreement, with or without amendments, to the Cabinet Secretary whichever is the shorter period.
- (6)** The order of the Cabinet Secretary to create a public right of way shall-
 - (a)** delineate the route of that public right of way;
 - (b)** be published in the Gazette;
 - (c)** be notified to a county government having jurisdiction along the route of the public right of way;
 - (d)** be publicized in any manner which is calculated to bring it to the attention of people occupying and using land along the route of the public right of way;
 - (e)** come into force thirty days after it has been published in the Gazette.
- (7)** Any person who made any representations or objections to an application

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to create a public right of way, within six weeks of the order being made, appeal to the Court on a point of law against an order made by the Cabinet Secretary under this section, but apart from such an appeal, an order of the Cabinet Secretary shall not be questioned by way of judicial review or otherwise in any court.

Power of registrar with respect to public right of way

- 154. (1)** Where the Cabinet Secretary has made an order to create a public right of way the Commission shall cause to be delivered to the Registrar all the necessary documents, plans, demarcations and surveys of the route of that public right of way to enable the registrar to exercise his powers under this section.
- (2)** On receipt of the information referred to in subsection (1), the Registrar shall, after the expiry of the time allowed in subsection (6) of section 100 to appeal against the order of the Cabinet Secretary, take any action which he may consider necessary and desirable or which may be prescribed-
- (a)** to cause to be recorded, using such forms as may be prescribed, the route of the public right of way on any certificate of occupancy or other document of title held in any office of the land registry having reference to land over which the public right of way has been created; and
- (b)** to cause to be delivered to him all certificates of occupancy having reference to land over which the public right of way has been created held by;
- (i)** persons occupying such land under such right of occupying; or
- (ii)** by any lender of money secured by a charge or lien who is holding that certificate of occupancy as part of the security for that loan, so as to amend that certificate of occupancy by recording the route of the public right of way on that certificate of occupancy.

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Compensation in respect of
public right of way

- 155.** (1) Subject to the provisions of this section, compensation shall be payable to any person for the use of land, of which he is in lawful or actual occupation, as a communal right of way and, with respect to a way leave, in addition to any compensation for the use of land for any damage suffered in respect of trees crops and buildings as shall be determined by a qualified valuer.
- (2) Reference to damage caused as a result of the creation of a way leave shall include any preliminary work undertaken in connection with surveying or determining the route of that way leave, whether the trees, crops or buildings so damaged were included in the route of the wayleave as delineated in the order of the Cabinet Secretary.
- (3) The duty to pay compensation payable under this section shall lie with the Government department or Ministry, county government, public authority or corporate body which applied for the public right of way and that duty shall be complied with promptly.
- (4) Where the person entitled to compensation under this section and the body under a duty to pay that compensation are unable to agree on the amount or method of payment of that compensation or where the person entitled to compensation is dissatisfied with the time taken by the body under a duty to pay that compensation to make, negotiate or process an offer of compensation, that person may apply to the Court to determine the amount and method of payment of compensation and the Court may in making any award, make any additional costs and inconvenience incurred by the person entitled to compensation through the dilatory or other unsatisfactory procedures of that public authority.

POWERS OF COURT

Power of courts to enforce
public rights of way

- 156.** A court may in determining any question or dispute concerning the existence or effect of a public right of way make an order on any conditions, which it thinks

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fit on all or any of the following matters:

- (a) the existence of a public right of way;
- (b) the enforceability a public right of way by or against any person;
- (c) the extent of the use of the easement, analogous right or public right of way and whether that use exceeds what is reasonable or is permitted under the terms of the grant of the easement or the terms of the order creating the analogous right or public right of way;
- (d) the question whether any work is required to be done under the terms of an easement, analogous right or public right of way; and, if so, the nature and extent of the work required to be undertaken;
- (e) the reasonable and proper cost of any such work as is required to be undertaken;
- (f) the person or persons by whom the costs of any such work is to be borne and if the cost is to be shared between two or more persons, the shares to be borne by each such person;
- (g) the date by which and the manner in which any such work is to be undertaken;
- (h) the entry on to any land, whether or not it is land over which an easement, analogous right or public right of way has been created, for the purpose of doing the work and the use over or on that land of any vehicles, plant, machinery and installations for the purpose of carrying out that work;
- (i) any other matter arising in relation to question or dispute about an easement, analogous right or public right or way.

Power of courts to modify or extinguish easements or analogous rights

- 157. (1)** This section applies to every easement, analogous right, restrictive covenant or agreement whensoever and in any manner created including

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easements, profits, restrictive agreements and other similar rights created under customary law.

- (2)** The Court may, by order, on the application of-
- (a) the Commission; or
 - (b) any person having an interest in land benefited or burdened by one or more of the rights or restrictions referred to in subsection (1), make an order modifying or extinguishing in whole or in part the right or restriction in respect of which the application has been made on any of the grounds set out in subsection (3).
- (3)** The grounds on which the court may make any order referred to in subsection (2) are that-
- (a)** by reason of any change since the creation of the right or restriction referred to in subsection (1) in:
 - (i) the nature or the extent of the use being made of the benefited to burdened land; or
 - (ii) the character of the neighborhood or of the benefited or burdened land; or
 - (iii) any other circumstance that the Court considers relevant, the aforesaid right or restriction ought to be modified or wholly or partly extinguished; or
 - (b)** the continuation of the right or restriction in its existing form impedes or would impede the reasonable use of the land for public or private purposes and does not secure to those persons entitled to the benefit of that right or restriction and practical benefits of substantial value or advantage to them; or
 - (c)** the development and use of land in accordance with-

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- (i) any development conditions contained in the certificate of title; or
 - (ii) any proposals for or restriction on development contained in any general planning scheme, detailed scheme, or general development order made or approved under and in accordance with the provisions of any development plan ; or
 - (iii) any land use plan made by the community under the Community Land Act
 - (iv) the general pattern of the development and use of land in the area of the benefited and burdened land, makes it necessary and desirable that the aforesaid right or restriction be modified or wholly or partly extinguished; or
- (d)** every person entitled to the benefit of the right or restriction-
- (i) has agreed that the right or restriction should be modified or wholly or partly extinguished; or
 - (ii) may reasonably be considered by his acts or omissions to have abandoned or waived the right the aforesaid right or restriction; or
- (e)** the proposed modification or extinguishments in whole or in part will not substantially disadvantage any person entitled to the benefit of the right or restriction; or
- (f)** in so far as any person is disadvantaged by a proposed modification or extinguishment in whole or in part, the payment of compensation will be an adequate substitute for the modification or loss in whole or in part of that right or restriction.
- (4)** An application under this section shall be served on-
- (a)** the county government having jurisdiction in the area where the land the

subject of the application is situate; and

- (b) any other persons whom the Court may direct.
- (5) The Court may award any compensation to any persons referred to in paragraph (f) of subsection (3) as it considers just and reasonable and that compensation shall be payable by the person applying to the court for the modification or extinguishment in whole or in part of that right or restriction.
- (6) The Court may exercise any of the powers conferred upon a court by section 156 in order to arrive at a decision under ad in accordance with this section.
- (7) Where any proceedings are commenced in any court under section 103 to enforce an easement or analogous right or public right of way, the party against whom the proceedings have been taken may in those proceedings apply to the court for an order giving leave to apply to the Court under this section and staying those proceedings in the meantime, and the court may grant that application.
- (8) An order made under this section shall be binding on all persons entitled or thereafter becoming entitled to benefit from the right or restriction thereby modified or extinguished in whole or in part, whether those persons were parties to the proceedings or not or were served with a notice of the proceedings or not.
- (9) The Court shall cause to be delivered to the Registrar a copy of the order made under this section and the Registrar shall have in relation to that order all the powers that are conferred on him by this Act in relation to an order creating a public right of way, modified in any way which the Registrar shall consider necessary to enable him to record the modification or as the case may be the extinguishment in whole or in part of any right or

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restriction recorded on the certificate of occupancy or other document of title held by the land registry or by any person holding the land the subject of the application under a land.

PART XVI-MISCELLANEOUS

Jurisdiction of Land and
Environment Court

158. The Land and Environment Court established in the Land and Environment Court Act is vested with exclusive jurisdiction to hear and determine all manner of disputes, actions and proceedings concerning land under this Act.

Substituted service

159. (1) Where the Commission is satisfied that a notice effected and cannot be served personally or by post, either because the person to be served is evading service or for some other reason he may order service to be effected by-

(a) affixing a copy of the notice in a conspicuous place-

(i) on or as near as may be to the land where possible; and

(ii) where the land is community land, at the offices of the Community Land Committee or other public place within the village, or

(iii) where the land is public land, at the offices of the county government having jurisdiction in the area where the land is located or other public place in the area where the land is located; and

(b) publishing a copy in the Gazette and if it thinks fit, one or more newspapers circulating in Kenya.

(2) A notice displayed or published under this section may be in English or Kiswahili or both.

Rights of entry

160. (1) Any person authorised in that behalf by Commission shall have power, on the giving of not less than 48 hours notice, to enter and inspect at all reasonable times between the hours of 6.00 am and 6.00 p.m. any public

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land, other than land occupied exclusively as a dwelling house, for any purpose connected with the implementation of this Act.

- (2) The notice which is required by subsection (1) to be given prior to any entry on to land shall specify clearly the purpose for which and the time at which the authorised person will enter the land.
- (3) Every person authorised to enter or inspect land under this section shall be furnished with a written authorization signed by the Commission and if so required by any person having an interest in or occupying the land which he enters and inspects, shall produce the same to that person.
- (4) Where any person authorised under this section causes any damage to land or anything on the land during his entry and inspection, the Commission, shall forthwith appoint a person to assess the damage and pay promptly compensation based on that assessment to the person whose land or thing on the land have been damaged.

Land Compensation Fund

161. (1) There shall be established a Land Compensation Fund, to be known as the Fund.
- (2) The Fund shall be managed by the Trustees whose composition shall be as is prescribed by regulations made under this Act.
- (3) The Trustees shall be a body corporate capable of suing and being sued, of making contracts and of acquiring, holding and disposing of property.
- (4) The objects and purposes of the fund is to provide compensation to any person who, as a result of the implementation of any of the provisions of this Act by the Government or any public or local authority, suffers any loss or deprivation or diminution of any rights or interests in land or any injurious affection in respect of any ownership of land.
- (5) The Cabinet Secretary shall by regulations made under this Act have regard

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to the exercise and functions of the Trust.

Fees

- 162.** (1) The Cabinet Secretary shall prescribe the rates of fees for all matters in respect of which, by this Act, prescribed fees are required to be paid by any person and shall keep such fees under continuous review.
- (2) Fees prescribed under this section shall be at a rate per centum rate of the value of the land the subject of the application or other matter in respect of which fees are required to be paid.
- (3) The Registrar shall refuse to make any entry on the register or register any document in respect of any grant of a land or any disposition of or arising in connection with a land in respect of which a fee has not been paid in whole or in part, unless he is satisfied on the basis of written evidence produced before him that that fee has been waived in whole or in part or that it has been agreed between the payer and payee that fee may be paid in installments and there are no arrears in those installments.
- (4) Unpaid fees or expenses incurred by the Government in connection with any attempt to recover those unpaid fees shall constitute civil debt recoverable summarily.

Unlawful occupation of land

- 163.** (1) Any person who, without lawful authority or without any right or license, express or implied under customary or statutory land law so to do-
- (a) occupies, or erects any building on any public land;
- (b) clears, digs, ploughs, cultivates, or grazes animals over, any public land or part of it;
- (c) cuts or removes any timber or other produce on or from any public land or part of it, shall be taken to be in unlawful occupation of that land.
- (2) Where, with respect to public land the Commission is of the opinion that a

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person is in unlawful occupation of public land, the Commission may serve on that person a notice in the prescribed form or give to that person an oral communication, in a language calculated to be understood by that person requiring that person to show cause as to why he should not be required to vacate that land within any time and subject to any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters which the justice of the case may require, which may be specified in the notice or oral communication.

- (3) Any notice as referred to in subsection (2) shall inform the person to whom it is addressed that if he so desires it, he shall be given an opportunity of being heard in connection with his showing cause as to why he should not vacate the land to which the notice relates.
- (4) In determining whether to serve a notice or oral communication and the period of time to be specified in the notice by the end of which the person is required to vacate the land, the Commission shall take account of-
 - (a) whether any belief by the person that he is in lawful occupation of land is a reasonable belief;
 - (b) the use which the person is making of the land, including any crops being grown by that person and when they may reasonably be expected to be ready to be harvested;
 - (c) the length of time that person has been on that land and his age and general circumstances;
 - (d) whether that person has any dependants living with him;
 - (e) whether that person or any dependants of that person are in employment near to that land;
 - (f) whether the occupation of the land took place peaceably or by force and whether the occupation is, as a consequence, depriving and person of

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the lawful occupation and use of that land which that person could take up immediately the land was vacated;

- (g) whether the occupation of the land is preventing some necessary or desirable development or public works;
 - (h) the nature and environment of the land and where the land is land reserved for the primary use of wildlife, whether the occupation of the land is hindering or preventing the use of the land by wildlife or is in practice in harmony with that use;
 - (i) whether in all the circumstances, it would be reasonable to pay any sum of money to the person on account of his being required to vacate the land;
 - (j) any other factors, which seem relevant include any matters which the person occupying the land brings to the attention of the Commission.
- (5)** A person served with a notice or oral communication under this section shall, within not more than sixty days, show cause to the Commission as to why he should not vacate the land to which the notice relates.
- (6)** Where a person does not within sixty days show cause as to why he should not vacate the land to which the notice relates and has no reasonable excuse for not so complying, he shall be deemed to have accepted the notice and shall be under a duty to comply with that notice.
- (7)** Where the Commission after considering any representations made by the person attempting to show cause determine that he has failed to show cause as to why he should not be required to vacate the land to which the notice relates, the Commission shall inform that person by notice or oral communication that he is required to vacate the land within the time specified in the notice served under subsection (2).
- (8)** A person who responded to the notice to show cause but who failed so to

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do in terms of subsection (5) may apply to the court for relief against the operation of that notice or oral communication, within thirty days of being notified that he has failed to show cause.

- (9)** An application for relief is not to be taken as an admission by the person applying for relief that-
- (a) he is in unlawful occupation of the land;
 - (b) by reason of that unlawful occupation, the Commission has the right to require him to vacate the land in respect of which the application for relief has been made;
 - (c) all notices and oral communications which were required to be served by the Commission were properly served;

the period by which the land must be vacated specified in the notice or oral communication was reasonable or had expired.

- (10)** The court may, taking into account all those matters set out in subsection (4), grant relief to the person applying for the same on any terms and conditions which appear to the court to be just and reasonable and, without prejudice to the generality of this provision, the court may-
- (a) cancel the notice or oral communication and declare that the person is entitled to remain on the land;
 - (b) postpone the operation of the notice or oral communication and grant the person a license to remain on the land until the notice or oral communication shall come into operation;
 - (c) where the person is a pastoralist, vary the operation of the notice or oral communication by granting the person an easement of grazing of any terms and conditions which the court shall think fit;
 - (d) vary any of the terms of the notice or oral communication or the period

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within which the person is required to vacate the land;

(e) vary the amount of any payment to be paid, or where no payment has been offered, order that payment as the court shall think just be made to the person on his vacating of the land.

(11) Where the court has confirmed, with or without any variations, alterations or additions in the exercise of its powers under subsection (10), the notice or oral communication, the person on whom the notice or oral communication has been served shall be under a duty to comply with that notice or oral communication as confirmed by the court.

Obstruction of public rights
of way

164. (1) Where the Commission is satisfied that there has been any wrongful obstruction of or encroachment on any public right of way, he may make an order requiring the person responsible for that obstruction or encroachment to remove that obstruction or encroachment within the time specified in the order, which shall be not less than fourteen days, and if that order is not complied with within the time specified, he may take any steps which may be necessary for the purpose.

(2) Any notice made by the Commission under subsection (1) shall be served on or otherwise communicated to the person alleged by the notice to be responsible for the obstruction or encroachment in such a manner as that person will understand that notice and what he is required to do under the notice.

(3) A person served with a notice under subsection (1), may within the time specified in the notice and on giving reasons, request the Commission to reconsider the notice.

(4) A person who does not take action under subsection (3) shall be taken to have accepted the notice and shall be under a duty to comply with it.

(5) Where the Commission has reconsidered the notice in response to a

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request made in accordance with subsection (3) so to do, and determines to confirm the notice, he shall inform the person who made the request for a reconsideration that he has confirmed the notice.

(6) A person whose request for a reconsideration of the notice has resulted in the notice being reconfirmed may appeal to a court against that reconfirmed notice, but if he does not so appeal within the time specified in the notice for compliance with the notice, he shall be deemed to have accepted the notice and shall be under a duty to comply with it.

(7) A court hearing an appeal under this section may:-

- (a) confirm the notice and order the person to desist from obstructing or encroaching on the public right of way; or
- (b) suspend the operation of the notice for any period which the court shall determine; or
- (c) quash the notice,

and may make any ancillary orders which the circumstances of the case may require.

Offences

165. (1) Any person who-

- (a) knowingly makes any false statement, orally or in writing, in connection with any disposition or other transaction affecting land or any other matter arising under this Act, or
- (b) knowingly gives any false information or makes any false statement, either orally or in writing, in connection with any call for information made under this Act or in connection with any investigation into the commission of any offence under this Act;
- (c) fraudulently procures-
 - (i) the registration or issue of any certificate of ownership, or any

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other document or instrument relating to the land; or

(ii) the making of any entry or the endorsement of any matter on any document or instrument referred to in subparagraph (i);

(iii) the cancellation or amendment of any of the documents referred to in this paragraph instruments our entries or endorsements;

(d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument; suppresses or conceals from the Commission, the Registrar, or any authorized officer exercising powers under this Act or assists or joins in so doing, any material document, fact or matter,

commits an offence and on conviction is liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or to both the fine and imprisonment

(2) Any person who unlawfully occupies public land commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings, and in the case of a continuing offence to an additional fine not exceeding ten thousand shillings for every day during which the offence shall have continued.

(3) Any person who wrongfully obstructs or encroaches on to a public right of way and who does not within the time specified in any notice served on him under section 111 or where he has appealed against the notice, within the time specified in the notice after the hearing of the appeal where the court has rejected that appeal, remove that obstruction or cease that encroachment commits an offence and upon conviction is liable, on conviction to a fine not exceeding one million shillings and in the case of a continuing offence to an additional fine not exceeding one hundred

thousand shilling for every day during which the offence continues.

(4) Any person who willfully-

- (a) delays; or
- (b) obstructs; or
- (c) hinders; or
- (d) intimidates; or
- (e) assaults,

any person authorized under this Act and inspect any land in the lawful exercise of the power in that behalf commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding one year or to both the fine and imprisonment.

(5) Any person who, being an authorized officer under this Act, whether generally or for a specific function, in the course of any official function or otherwise, unlawfully or with force enters on the land of any person or while on land, willfully commits any damage to the land or anything on the land, whether naturally on the land, or stock owned by any person using the land or crops planted or buildings erected on the land commits an offence and upon conviction is liable, to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding three months or to both the fine and imprisonment.

(6) Where a court has convicted any person of an offence under this section and the commission of that offence enabled that person to obtain or retain or regain any interest in land which he would otherwise not have been able to obtain, retain or regain, the court may in addition to any punishment provided for by this section imposed on such person, make any such order in relation to that interest in land so obtained, retained or regained by such person as appears to the court necessary to ensure that such person does

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not profit by the offence of which he has been convicted and without prejudice to the generality of this provision, any such order may:-

- (a) direct the Commission to commence proceedings to-
 - (i) revoke the allocation ; or
 - (ii) terminate a lease;
- (b) direct the Registrar to cancel any entry in any register which has been obtained by virtue or on account of the offence;
- (c) require that person to make restitution to any person who has suffered loss by virtue or on account of the offence, including taking all necessary action to transfer to any such person any interest in land obtained, retained or regained by such offence from that person, and any such order may be made subject to any conditions which the court

Corrupt Transactions

- 166.** (1) Nothing in this Act shall be taken or construed to validate, affirm, authenticate or give any legal effect to any grant of public land, or any issue of a certificate of ownership of land , or any disposition, or any contract for any of the earlier mentioned transactions which was obtained or induced by any corrupt action, on the part of any government official, county government official or employee of the Commission whether that government official, county government official or employee of the Commission was directly involved in that transaction or not, and, notwithstanding any rule of law in Kenya to the contrary such a transaction is hereby declared to be and to have been from its inception an illegal transaction, void and having no legal effect.
- (2) For purposes of this section, a transaction shall be taken to be affected or tainted by corruption when either-
- (a) any part to or involved directly or indirectly in the transaction in respect of which it is alleged that an action was corrupt is convicted of corruption

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- and all final appeals arising from that conviction have been concluded; or
- (b) any civil servant, employee of the Commission or other public official is interdicted, or is retired in the public interest, from his post on the grounds that he has been engaged in corrupt actions and that these actions involved that transaction; or
 - (c) an investigatory body reports that it is satisfied or that that transaction was procured by corrupt practices.
- (3) Any person occupying land which he obtained as a consequence of participating in any of the transactions covered by subsections (1) and (2) shall be liable to forfeit that land to the government without any entitlement to any compensation that land to the government without any entitlement to any compensation.
- (4) Notwithstanding that a transaction covered by this section is void, a person occupying land as a consequence of that transaction shall be obliged to comply with all the terms and conditions of the transaction as if it had been a valid transaction and shall be liable to all the remedies which may be applied to a person who fails to comply with the terms and conditions of a valid transaction in addition to any penalties which may be applied under this section.

Land sizes

- 167.** (1) Within one year of the coming into force of this Act, the Cabinet Secretary shall commission a scientific study to determine the economic viability of minimum and maximum acreages in respect of private land for various land zones in the country.
- (2) The findings of the study shall be available for the public to make observations and should be modified based on valid representations.
- (3) Within three months after the publication of the final report of the scientific study commissioned under subsection (1) the Cabinet Secretary shall table

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the report to Parliament for debate and adoption.

- (4) The Cabinet Secretary shall prescribe the rules and regulations on the minimum and maximum acreages in respect of private land solely based on the recommendations in the report.
- (5) The Registrar shall not accept for registration any instrument of dispositions which confers interest in land that has the effect of breaching the prescribed guidelines on minimum and maximum acreages in respect of private land.

General power to make
Regulations

- 168.** (1) The Commission or the Cabinet Secretary, where applicable, make regulations prescribing anything which may be prescribed under this Act and generally for the better carrying into effect of the purposes and provisions of this Act and removing any difficulties occasioned by the coming into operation of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe-
- (a) the forms to be used in connection with this Act;
 - (b) the management of the Land Compensation Fund;
 - (c) the use and management of public rights of way created under this Act;
 - (d) procedures to be followed with respect to the making of any claim for compensation and the payment of any compensation under this Act;
 - (e) the manner of assessing value of an interest in land; or
 - (f) The minimum and maximum land holding acreages in respect of private land.

Repeals

- 169.** The written laws set out in the Schedule herein are hereby repealed.

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Savings and transitional provisions with respect to rights, actions, dispositions etc

- 170.** (1) Unless the contrary is specifically provided for in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.
- (2) Unless the contrary is specifically provided for in this Act or the circumstances are such that the contrary must be presumed to be the case, where any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.
- (3) Any instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and-
- (a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and
- (b) Subject to the provisions of paragraph (a), the provisions of this Act shall apply to that Act shall apply to that instrument as if it had been executed after the commencement of this Act.
- (4) Where any step has been taken to forfeit a lease or to foreclose a charge before the enactment of this Act, a court may, if it considers it just and reasonable so to do, on and after the commencement of this Act, on the application of the lessee or, as the case may be, the borrower to issue an injunction to the lessor or, as the case may be, the borrower to issue an injunction to the lessor or, as the case may be, the lender to stop the continuation of any such step and where a court has issued an injunction

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under this subsection, the lessor or lender to whom the injunction has been issued may commence any action under this Act to terminate that lease or bring that charge to an end.

Saving and transitional provisions with respect to rules ,orders etc

171. Any rule, order, regulation, direction, notice, notification or other administrative act made, given, issued or undertaken before the commencement of this Act under any law repealed if it could have been made, given, issued or undertaken under any corresponding provision of this Act, continue in force and have the like effect as if it had been so made, given, issued or, as the case may be, undertaken.

Application of common law, doctrines of equity and customary law

172. Subject to this Act and except as may be provided by any written law for the time being in force, the common law of England as modified by the doctrines of equity, and customary law practices of Kenyan communities shall extend and apply to in relation to land, leases and charges registered under this Act and interests therein, but without prejudice to the rights, liabilities and remedies of the parties under any instrument subsisting immediately before the application.

SCHEDULE

(Section 116)

REPEALED ACTS

The following Acts are repealed—

- (a) The Government Lands Act, Chapter 280 Laws of Kenya
- (b) The Way leaves Act, Chapter 292 of the Laws of Kenya

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(c) The Lands Title Act, Chapter 282 Laws of Kenya