

**CHAPTER 113**  
**THE LAND ACT**  
[PRINCIPAL LEGISLATION]  
**ARRANGEMENT OF SECTIONS**

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**SCHEDULE  
CHAPTER 113  
THE LAND ACT**

**An Act to provide for the basic law in relation to land other than the village land, the management of land, settlement of disputes and related matters.**

[1st May, 2001]  
[G.N. No. 485 of 2001]

Act No. 4 of 1999

**PART I  
PRELIMINARY PROVISIONS (ss 1-2)**

- 1. Short title**  
This Act may be cited as the Land Act.
- 2. Interpretation**  
In this Act, unless the context requires otherwise—  
"access order" means an order made under section 148 of this Act;  
"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;

**"the Allocations Committee"** means the Land Allocations Committee established by section 12 of this Act;

**"appointing authority"** means the person or organisation having the authority under any law to appoint persons to the public service;

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

**"Assistant Commissioner"** means an Assistant Commissioner appointed under section 11 of this Act;

**"authorised officer"** means an officer authorised by the Commissioner or the Registrar to perform any functions of the Commissioner or, as the case may be, the Registrar which may be specified in the document of authorisation delivered to that officer;

**"borrower"** means a person who obtains an advance of money or money's worth or agrees to the fulfilment of a condition on the security of a mortgage of his right of occupancy or lease;

**"building"** means any building or other structure made or assembled on, in or under any land and includes the land on, in or under which the building or structure is situate;

**"caveat"** means a notice in the form of an entry on a register that no action of a specified nature in relation to the right of occupancy in respect of which the notice has been entered may be taken without first informing the person who gave the notice;

**"certificate of approval"** means the certificate granted under section 41 of this Act;

**"certificate of occupancy"** means a certificate issued under section 29 of this Act;

**"certificate of validation"** means a certificate issued under section 53 of this Act;

**"the Commissioner"** means the Commissioner of Lands appointed under section 9 of this Act;

**"communal right of way"** has the meaning ascribed to it by section 153 of this Act;

**"co-occupancy"** has the meaning ascribed to it by section 159 of this Act;

**"Council"** means the National Land Advisory Council established by section 17 of this Act;

**"Court"** means the any body established by or under any written law which is referred to in section 167 of this Act as having jurisdiction to determine land disputes;

**"customary law"** has the meaning ascribed to it by the Interpretation of Laws Act<sup>i\*</sup>;

**"customary right of occupancy"** includes deemed right of occupancy;

**"dealing"** includes disposition and transmission;

**"deemed right of occupancy"** means the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land under and in accordance with customary law;

**"deliver"** includes to transmit by post or by hand;

**"derivative right"** means a right to occupy and use land created out of a right of occupancy and includes a lease, a sub-lease, a licence, a usufructuary right and any interest analogous to those interests;

**"Deputy Commissioner"** means a Deputy Commissioner appointed under section 11 of this Act;

**"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, mortgage, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the creation of an easement, a usufructuary right, or other servitude or any other interest in a right of occupancy or a lease and any other act by an occupier of a right of occupancy or under a lease whereby his rights over that right of occupancy or lease are affected and an agreement to undertake any of the dispositions so defined;

**"district authority"** means a district council, a township authority or a village council;

**"District Land and Housing Tribunal"** means a court referred to in section 167 of this Act;

**"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;

**"easement"** has the meaning ascribed to it by section 143 of this Act;

**"entry order"** means an order made under section 155 of this Act;

**"foreign company"** means a company classified as a foreign national by the Tanzania Investment Act<sup>1</sup>;

**"the Fund"** means the Land Compensation Fund established by section 18 of this Act;

**"general land"** means all public land which is not reserved land or village land and includes unoccupied or unused village land;

**"granted right of occupancy"** means a right of occupancy granted under and in accordance with Part VI of this Act;

**"hazardous land"** means land declared to be hazardous land under section 7 of this Act;

**"head lease"** means a lease in respect of which a sublease is entered into;

**"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 an 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 right of occupancy;

**"land"** includes the surface of the earth and the earth below the surface and all substances other than minerals or petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water;

**"the Land Division of the High Court"** means the Land Division of the High Court established by section 167 of this Act;

**"lease"** means a lease or sublease, whether registered or unregistered, of a right of occupancy and includes a short-term lease and agreement to lease;

**"lender"** means a person to whom a mortgage has been given as security for the repayment of an advance of money or money's worth or to secure a condition;

**"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;

**"letter of offer"** means a letter of offer issued under section 27 of this Act;

**"licence"** means a permission given by the Government or an occupier of land under a right of occupancy or a lessee which allows the person to whom the licence is given to occupy or use or do some act in relation to the land comprised in the right of



occupancy or the lease which would otherwise be a trespass but does not include an easement;

"**licensee**" means the person granting or giving the licence;

"**lien**" means the holding by a lender of any document of title relating to a right of occupancy or a lease as security for an advance of money or money's worth or the fulfilment of a condition;

"**local government authority**" means a district authority or an urban authority;

"**the Minister**" means the Minister responsible for land;

"**mortgage**" means an interest in a right of occupancy or a lease securing the payment of money or money's worth or the fulfilment of a condition and includes a sub-mortgage and the instrument creating a mortgage;

"**occupier in common**" has the meaning ascribed to it by section 159 of this Act;

"**partition**" means the separation by formal legal instrument of the shares in a right of occupancy or a lease held by occupiers in common so that each such occupier takes his shares free of the rights of the others and includes partition carried out in accordance with section 149 of this Act;

"**periodic lease**" means a lease from year to year, half year to half year, quarter to quarter, month to month, week to week or the like;

"**peri-urban area**" means an area which is within a radius of ten kilometres miles outside the boundaries of an urban area or within any larger radius which may be prescribed in respect of any particular urban area by the Minister;

"**Permanent Secretary**" means the Permanent Secretary in the Ministry responsible for land;

"**primary land court**" means a court established by section 167 of this Act;

"**public land**" means all the land of Tanzania;

"**public right of way**" has the meaning ascribed to it by section 151 of this Act;

"**qualified valuer**" means a valuer with a professional or academic qualification in land valuation or with a professional or academic qualification in a subject that includes land valuation;

"**register**" means a register prescribed under this Act for the recording of rights and interests in and dispositions of and in connection with rights of occupancy and includes the land register established under the Land Registration Act, and the registry of documents established under the Registration of Documents Act;

"**Registrar**" has the meaning ascribed to it by the Land Registration Act, and includes the registrar of documents as appointed and defined in the Registration of Documents Act;

"**regularisation area**" means an area in respect of which a scheme of regularisation has been declared;

"**reserved land**" means land referred to by section 6 of this Act;

"**residential licence**" has the meaning ascribed to it by section 23 of this Act;

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

"**right of occupancy**" means a title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land in accordance with customary law;

"**the Rules Committee**" means the Land Court Rules Committee established by section 167 of this Act;

**"scheme of regularisation"** means a scheme declared by the Minister under section 59 of this Act;

**"short term lease"** has the meaning ascribed to it by section 80 of this Act;

**"small mortgage"** has the meaning ascribed to it by section 114 of this Act;

**"transfer"** means the passing of a right of occupancy, a lease or a mortgage 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 right of occupancy, lease or mortgage passed by an act of transfer;

**"transfer land"** means general or reserved land which is to be transferred from one category of land;

**"transferor"** means the person who passes the right of occupancy, lease or mortgage by an act of transfer;

**"transmission"** means the passing of a right of occupancy, a lease or a mortgage from one person to another by operation of law on death or insolvency or otherwise;

**"trustee"** means a person having a nominal title to the ownership of land or other property which he is under a legal duty to hold for the benefit of some other person or persons includes a trustee appointed under the Trustees (Incorporation) Act <sup>iii\*</sup>;

**"Trustees"** mean the Trustees of the Land Compensation Fund established by section 173 of this Act;

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

**"urban area"** means an area within the jurisdiction of an authority established or deemed to have been established under and governed by the Local Government (Urban Authorities) Act <sup>iv\*</sup> and the Local Government (District Authorities) Act <sup>v\*</sup>;

**"village council"** has the meaning ascribed to it by the Local Government (District Authorities) Act <sup>vi\*</sup>;

**"village land"** means the land declared to be village land under and in accordance with section 4 of this Act and includes any transfer land transferred to a village;

**"Village Land Council"** has the meaning ascribed to it by section 60 of the Village Land Act <sup>vii\*</sup>;

**"village transfer land"** means village land which is to be transferred to become part of general or reserved land;

**"wayleave"** has the meaning ascribed to it by section 151 of this Act.

## PART II

### FUNDAMENTAL PRINCIPLES OF LAND POLICY (s 3)

#### 3. Fundamental principles of the National Land Policy

(1) The fundamental principles of the National Land Policy which it is the objective of this Act to promote and to which all persons exercising powers under, applying or interpreting this Act are to have regard to, are—

- (a) to recognise that all land in Tanzania is public land vested in the President as trustee on behalf of all citizens;
- (b) to ensure that existing rights in and recognised long-standing occupation or use

- of land are clarified and secured by the law;
- (c) to facilitate an equitable distribution of and access to land by all citizens;
- (d) to regulate the amount of land that any one person or corporate body may occupy or use;
- (e) to ensure that land is used productively and that any such use complies with the principles of sustainable development;
- (f) to take into account that an interest in land has value and that value is taken into consideration in any transaction affecting that interest;
- (g) to pay full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act <sup>viii\*</sup>:

Provided that in assessing compensation land acquired in the manner provided for in this Act, the concept of opportunity shall be based on the following—

- (i) market value of the real property;
- (ii) disturbance allowance;
- (iii) transport allowance;
- (iv) loss of profits or accommodation;
- (v) cost of acquiring or getting the subject land;
- (vi) any other cost loss or capital expenditure incurred to the development of the subject land; and
- (vii) interest at market rate will be charged;
- (h) to provide for an efficient, effective, economical and transparent system of land administration;
- (i) to enable all citizens to participate in decision-making on matters connected with their occupation or use of land;
- (j) to facilitate the operation of a market in land;
- (k) to regulate the operation of a market in land so as to ensure that rural and urban small-holders and pastoralists are not disadvantaged;
- (l) to set out rules of land law accessibly and in a manner which can be readily understood by all citizens;
- (m) to establish an independent, expeditious and just system for the adjudication of land disputes which will hear and determine cases without undue delay;
- (n) to encourage the dissemination of information about land administration and land law as provided for by this Act through programmes of public awareness, using all forms of media.

(2) The right of every adult woman to acquire, hold, use, and deal with land shall to the same extent and subject to the same restrictions be treated as a right of any man.

### **PART III**

#### **CLASSIFICATION AND TENURE OF LAND (ss 4-7)**

#### **4. All land vested in the President as trustee**

(1) All land in Tanzania shall continue to be public land and remain vested in the President as trustee for and on behalf of all the citizens of Tanzania.

(2) The President and every person to whom the President may delegate any of his functions under this Act, and any person exercising powers under this Act, shall at all times exercise those functions and powers and discharge duties as a trustee of all the land in Tanzania so as to advance the economic and social welfare of the citizens.

(3) Every person lawfully occupying land, whether under a right of occupancy, wherever that right of occupancy was granted, or deemed to have been granted, or under customary tenure, occupies and has always occupied that land, the occupation of such land shall be deemed to be property and include the use of land from time to time for depasturing stock under customary tenure.

(4) For the purposes of the management of land under this Act and all other laws applicable to land, public land shall be in the following categories—

- (a) general land;
- (b) village land;
- (c) reserved land.

(5) A grant of a right of occupancy shall be made in the name of the President and shall be sealed with a seal of a nature and pattern which the President may, by order published in the *Gazette*, approve.

(6) Nothing in this section shall be construed to affect the validity of any right of occupancy lawfully granted or deemed to have been granted or consented to under the provisions of any law in force in Tanzania before the commencement of this Act.

(7) The President may, subject to the provisions of this part, by order published in the *Gazette*, transfer or exchange land from one category of land described in subsection (4) to another category of land so described.

#### **5. Transfer of general or reserved land to village land**

(1) Where the President is minded to transfer any area of general or reserved land to village land he may direct the Minister to proceed in accordance with the provisions of this section.

(2) The Minister shall cause to be published in the *Gazette* and sent to the Village Council of the village to which general or reserved land may be transferred, hereinafter referred to as "transferred land" a notice specifying—

- (a) the location of the transferred land;
- (b) the boundaries and extent of the transferred land;
- (c) a brief statement of the reasons for the proposed transfer;
- (d) the date, being not less than sixty days from the date of the publication of the notice, on which the President may exercise his powers to transfer the transferred land or part of it.

(3) Where the transferred land is—

- (a) reserved land, a copy of the notice shall be sent to—
  - (i) the Minister responsible for that reserved land; or
  - (ii) where a local authority is responsible for that land, to that local authority; and
  - (iii) where there are any persons occupying and using that land, to those persons in a manner and form that will enable them to understand the information contained in the notice;
- (b) general land, a copy of the notice shall be served on—
  - (i) the local authority in whose area the land is situate;
  - (ii) the holder of any right of occupancy in that land;
  - (iii) the holder of any derivative right in that land;
  - (iv) any person occupying or using that land under customary law, and in the case of the persons referred to in subparagraphs (ii), (iii) and (iv) the notice shall be in a manner and form that will enable those persons to understand the information contained in the notice.

(4) Any person who has received a notice under subsection (3) may, within not less than twenty nor more than forty days from the date of the receipt of the notice, make

representations to the Commissioner or an authorised officer who shall be under a duty to hear and record the representations and take them into account in any report prepared for the President on the proposed transfer.

(5) The Commissioner shall, after taking account of any representations received under subsection (4), prepare a report for the Minister to submit to the President on the proposed transfer.

(6) Where the subject of a report referred to in subsection (5) is reserved land, a copy of the report shall be conveyed to the Minister responsible for that reserved land.

(7) Where a granted right of occupancy exists in any transferred land or a part thereof, a transferred land shall, unless the instrument of transfer provides otherwise, operate as a compulsory acquisition of that right of occupancy and compensation on it shall be payable.

(8) Where persons are occupying and using the general transferred land or a part of it under a customary right of occupancy, the transfer of that land to village land shall not, of itself, operate to determine or affect the rights of such persons to continue to occupy and use that land under that customary right of occupancy but that land shall, after the transfer, be under the jurisdiction of the Village Council of the village to which the land has been transferred.

(9) After receiving the report of the Commissioner prepared under subsection (5) and any representations made by the Minister in any case to which subsection (6) applies, the President may exercise his power to transfer the transferred land or a part of it, and allocate that land to a village named in the document of transfer.

(10) The President may direct the Minister to appoint an inquiry under section 18 into a proposed transfer under this section and where such an inquiry has been appointed, no further action shall be taken on the proposed transfer until the inquiry has reported.

(11) A transfer of general or reserved land to village land shall be notified in the *Gazette* and shall come into effect thirty days after the date of the publication of the notice.

(12) Village land may be transferred to general land in accordance with the provisions of the Village Land Act <sup>ix\*</sup>.

## **6. Categories of reserved land**

(1) Reserved land is—

- (a) land reserved, designated or set aside under the provisions of the—
  - (i) Forests Act <sup>x\*</sup>;
  - (ii) National Parks Act <sup>xi\*</sup>;
  - (iii) Ngorongoro Conservation Area Act <sup>xii\*</sup>;
  - (iv) Wildlife Conservation Act <sup>xiii\*</sup>;
  - (v) Marine Parks and Reserves Act <sup>xiv\*</sup>;
  - (vi) Town and Country Planning Act <sup>xv\*</sup>;
  - (vii) Highway Act <sup>xvi\*</sup>;
  - (viii) Public Recreation Grounds Act <sup>xvii\*</sup>;
  - (ix) Land Acquisition Act <sup>xviii\*</sup>;
- (b) land parcel within a natural drainage system from which the water resource of the concerned drainage basin originates;
- (c) land reserved for public utilities;
- (d) land declared by order of the Minister, in accordance with the provisions of this Act, to be hazardous land.

(2) Where a right of occupancy has been acquired, revoked or surrendered in

general land which is within or contiguous to an area of reserved land, the President may declare that general land to be reserved land of the same nature and subject to the same law as the reserved land of which it has, by that declaration, become a part.

#### **7. Declaration of hazardous land**

(1) For the purposes of this Act, hazardous land is land the development of which is likely to pose a danger to life or to lead to the degradation of or environmental destruction on that or contiguous land and includes but is not limited to—

- (a) mangrove swamps and coral reefs;
- (b) wetlands and off-shore islands;
- (c) land designated or used for the dumping of hazardous waste;
- (d) land within sixty metres of a river bank or the shoreline of an inland lake, beach or coast;
- (e) land on slopes with a gradient exceeding any angle which the Minister shall, after taking account of proper scientific advice, specify;
- (f) land specified by the appropriate authority as land which should not be developed on account of its fragile nature or of its environmental significance.

(2) The declaration of any land to be hazardous land shall be in accordance with the provisions of this section.

(3) Where the Minister considers that an area of land should be declared to be hazardous land, in this section referred to as "proposed hazardous land" he shall publish a notice in the *Gazette* specifying—

- (a) the location of the proposed hazardous land;
- (b) the boundaries and extent of the proposed hazardous land;
- (c) a brief statement of the reasons for the proposed declaration;
- (d) the date, being not less than sixty days from the date of the publication of the notice, when the declaration may be made.

(4) A copy of the notice referred to in subsection (3) shall be—

- (a) served on all persons occupying and using the proposed hazardous land in a manner and form as will be understandable to those persons;
- (b) served on all local authorities having jurisdiction in the area of the proposed hazardous land;
- (c) put up in conspicuous places within the area of the proposed hazardous land.

For the purpose of this subsection "*Gazette*" shall include official *Gazette* or local newspapers.

(5) All persons and authorities on whom a notice has been served and all persons and organisations on whom a notice should have been served but was not and any other person or organisation with an interest in land may, within not less than thirty days after the date of the service of the notice, make representations to the Commissioner on the proposed declaration and the Commissioner shall be under a duty to hear and record the representations and take them into account in determining whether to recommend to the Minister that the land or any part of it be declared to be hazardous land.

(6) Where the Minister, after considering a report prepared by the Commissioner under subsection (5), determines that the proposed hazardous land or a part of it shall be declared to be hazardous land, he may, subject to subsection (7), make a declaration accordingly.

(7) Where the proposed hazardous land or a part of it is occupied and used by any person under a granted or customary right of occupancy, the Minister shall, if he considers that that land or a part of it should be declared to be hazardous land, report the matter to the President.

(8) The President may, after considering the report of the Minister, declare any land to which subsection (7) applies to be hazardous land and any such declaration shall operate to compulsorily acquire, subject to compensation, any right of occupancy in that land.

(9) A notice of a declaration of hazardous land shall be published in the *Gazette* in the manner provided for under sections 169 and 170 of this Act and shall come into force thirty days after the date of the publication of the notice.

#### **PART IV ADMINISTRATION (ss 8-18)**

##### **8. Minister's responsibilities**

The Minister shall be responsible for policy formulation and for ensuring the execution by officials in the Ministry of the functions connected with the implementation of the National Land Policy and of this Act which are allocated or delegated to him by the President and in pursuance of this responsibility, the Minister may—

- (a) give any advice, guidance and directives to the officials in the Ministry which will in his opinion be conducive to the efficient, effective, economical, impartial and transparent administration of land under this Act;
- (b) seek advice from any official in the Ministry concerning the implementation of the National Land Policy and of the administration of land under this Act;
- (c) seek advice from other knowledgeable persons concerning the administration of land and the implementation of this Act;
- (d) take all other necessary actions and decisions which will enable him to discharge all the functions which are allocated or delegated to him by the President in connection with the implementation of the National Land Policy and of the administration of land under this Act.

##### **9. Appointment of Commissioner for Lands**

(1) There shall be a Commissioner for Lands who shall be appointed by the President.

(2) In appointing the Commissioner, regard shall be had to the need to appoint a person of proven probity with qualifications, skill and practical experience in land management or law in the public or private sector.

##### **10. Functions of the Commissioner**

(1) The Commissioner shall be the principal administrative and professional officer of, and adviser to, the Government on all matters connected with the administration of land and shall be responsible to the Minister for the administration of this Act and the matters contained in it.

(2) The President may, by notification in the *Gazette*, delegate any of the specific functions under this Act which are vested in him, in accordance with any terms and conditions which he sees fit, to the Commissioner.

(3) The President may, through the Minister, give directives in writing to the Commissioner concerning the proper discharge by the Commissioner of the functions conferred by this Act on the President which the President has, under subsection (2), delegated to the Commissioner and the Commissioner shall comply with those directives.

(4) The Commissioner may from time to time, as he sees fit, issue and publish circulars and directives on the administration of this Act but no such circulars or directives shall purport to alter, amend or depart from the provisions of this Act or any regulations made under this Act or contradict any advice, guidance or directives issued by the Minister under section 9.

(5) Where the Commissioner is required or empowered by this Act to make a determination affecting or likely to affect the rights of any person or the opportunity for any person to exercise any powers conferred on that person by this Act, the Commissioner shall, where he makes a determination which is adverse to that person give that person reasons for that determination.

(6) The Commissioner shall prepare and publish an annual report on the management of land for which he is responsible and each report shall include all directives given to the Commissioner under subsection (3) together with a brief statement of the action taken to comply with any of those directives.

#### **11. Appointment of officers**

(1) There shall be appointed a Deputy Commissioner of Lands and one or more Assistant Commissioners and, after obtaining the advice of the Commissioner, any other officers whom the appointing authority shall consider necessary.

(2) In appointing officers under subsection (1) of this section, regard shall be had to the need to appoint a person of proven probity with qualifications, skill and practical experience in land management or law in the public or private sector.

(3) Officers appointed under this section shall be allocated any functions and shall be located in any offices in any areas as the Commissioner considers will contribute to the proper management of land.

(4) Officers appointed under this section shall be subject to the directions of and answerable to the Commissioner.

(5) Functions vested in the Commissioner by this or any other legislation may be exercised by any officers whom the Commissioner shall, on any terms as he may specify in writing, authorise to do so and those officers shall be referred to as "authorised officers".

(6) Where the Commissioner delegates any of his functions connected with the signing and execution of rights of occupancy, that delegation shall—

- (a) be to a named officer;
- (b) be published in the *Gazette*;
- (c) not take effect until publication in the *Gazette*.

(7) Any local authority officer or officer appointed to and working in any other public organisation allocated any functions relating to land arising out of or under or in connection with this Act by that local authority or other public organisation shall comply with any directives of the Commissioner issued to him specifically or generally, and shall have regard to any circulars issued by the Commissioner.

(8) All courts, judges and persons acting judicially shall take judicial notice of the signature of the Commissioner and any person to whom he has delegated his functions under subsection (6).

#### **12. Land Allocations Committees**

(1) The Minister shall establish Committees at appropriate levels of Government to be called the Land Allocations Committees to advise the Commissioner on the exercise of his powers to determine applications for rights of occupancy.

(2) The Land Allocations Committee shall be composed of any persons with any tenure of office which the Minister shall by regulations made under section 179 of this Act prescribe and may, subject to the approval of the Minister concerned, include officials from any other Ministry.

(3) Land Allocations Committees shall be established at Central, Urban or District Authorities.

(4) The names of the members of the Land Allocations Committees shall be published in the *Gazette* and posted up in the Ministry's headquarters and district offices.



### **13. Information from the Commissioner to members of the public**

(1) The Commissioner and all officers appointed under this Act shall, where it is practical to do so, provide information and guidance of a general character either orally or in writing, to members of the public in connection with land matters and the implementation of this Act.

(2) Where the information required to be provided under subsection (1) above is of confidential character, regard shall be given to the provisions of the National Security Act <sup>xix\*</sup>.

(3) Subject to the provisions of section 15, unless otherwise specifically stated in writing and signed by the Commissioner or an authorised officer, information, guidance, advice and assistance provided under this section shall not create any legal liability in the Government, the Commissioner, or the officer giving the advice and assistance.

### **14. Functions and roles of local government authorities under this Act**

(1) A local government authority, shall not, unless specifically authorised by this Act or any regulation made under the authority of this Act, make an offer of or grant any right of occupancy to any person or organisation and any such purported offer or grant shall be void.

(2) No officer of a local government authority, other than an officer authorised by this Act or in writing by the Commissioner shall make or sign an offer of a right of occupancy and any such purported offer shall be void.

(3) A local government authority, acting through a duly constituted committee or through duly appointed offices may make representations in writing or orally to the Commissioner on any matter connected with the administration of land under this Act situate within their area of jurisdiction and the Commissioner shall have regard to that representation.

(4)(a) A District Council may provide advice and guidance to any Village Council situate within its area of jurisdiction concerning the administration by that Village Council of village land, either in response to a request for such advice and guidance from a Village Council or of its own motion and any Village Council to which such advice and guidance is given, shall have regard to such advice and guidance;

(b) No advice and guidance given by a Village Council under paragraph (a) shall contradict or conflict with any directive or circular issued by the Commissioner under subsection (4) of section 10.

(5) Where a local government authority receives an application for a granted right of occupancy, it shall forward that application to the Commissioner and may include comments and recommendations about that application which it considers appropriate and the Commissioner shall have regard to the comments and recommendations received.

(6) The Commissioner shall use his best endeavours to ensure that all local government authorities and associations of local authorities are consulted and kept informed about the administration of land under this Act and all other laws connected with the administration of land.

### **15. Conflict of interests**

(1) Where any matter concerning land in which any officer exercising functions under this Act or any member of his immediate family has an interest is allocated to, referred to or otherwise comes to that officer for his advice, assistance or decision, that officer shall not exercise any functions under this Act in respect of that land.

(2) Where the officer referred to in subsection (1) is the Commissioner, he shall declare his interest to the Permanent Secretary, and where the officer referred to in subsection (1) is an officer appointed under section 11, shall declare his interest to the

Commissioner and the Permanent Secretary or the Commissioner, as the case may be, shall appoint some other officer to exercise functions under the Act in respect of that land.

(3) Where any land is advertised or offered for a right of occupancy in pursuance of any provision of this Act, any officer exercising functions under this Act who wishes to apply for or bid for that right of occupancy or who has knowledge that any member of his immediate family wishes to apply for or bid for that right of occupancy shall forthwith inform the Commissioner or if he is the Commissioner, inform the Permanent Secretary and such officer or the Commissioner, as the case may be, shall not exercise any functions in respect of that land.

(4) A person to whom subsection (1), (2) or (3) applies shall not influence or seek or attempt to influence any officer exercising functions under this Act or any other legislation to show any undue favour or preference to him or any member of his immediate family in respect of the land the subject of the declaration of interest under subsection (1) or advertised or offered for a right of occupancy under subsection (3).

(5) Any person exercising functions under this Act to whom this section applies who contravenes any of the provisions of this section shall render himself liable to disciplinary proceedings in accordance with the Civil Service Regulations and including dismissal from the public service with reduction or loss of pension entitlements.

(6) Where a conflict of interest as described in subsection (1) or subsection (3) arises in respect of the administration of village land, any member of a Village Council or a committee of the council dealing with land who is covered by any such description shall declare his conflict of interest and shall take no further part in nor attend any meeting of the Village Council or its committee where the land of which the subject of the conflict of interest is on the agenda, and the person who fails to declare his conflict of interest or who contravenes the provisions of subsection (4) shall render himself liable to—

- (a) criminal proceedings;
- (b) forfeiture of any benefits which he or any member of his immediate family have or may have obtained as a result of any contravention of this section.

(7) In this section "immediate family" means, any other person related to that person as a father or mother, son or daughter, wife or husband, and brother or sister whether born in or out of wedlock, whether born in or outside Tanzania, and where any person referred to above has had more than one spouse, shall include all those spouses.

## **16. Protection of officers**

No officer appointed under this Act shall be personally liable for any act or matter done or ordered to be done or omitted to be done by him in good faith and without negligence and in the intended or purported exercise of any power, or the performance of any duty, conferred or imposed on or allocated or delegated to him by or under this Act.

## **17. National Land Advisory Council**

(1) There is hereby established a National Land Advisory Council which shall have not less than seven members and not more than eleven members appointed by the Minister and the Chairman of the council shall be appointed by the President.

(2) In appointing members to the Council, the Minister shall have regard to the importance of ensuring a fair balance of men and women in the Council.

(3) The composition and procedures of the Council shall be as provided for in the regulations made under this Act.

(4) The functions of the Council shall be—

- (a) to review and advise the Minister on the National Land Policy and recommend changes where necessary;
- (b) to review institutional framework and advise the Minister on jurisdiction and organisational structures of the institutions involved in land matters.

## **18. Inquiries**

(1) The Minister may, for any purpose for which he thinks fit appoint one or more persons to hold an inquiry into any matter concerning land or arising out of the operation of this Act.

(2) Where the Minister considers that the matters to be inquired into are so serious that it would be desirable that a judge of the High Court hold the inquiry, he shall seek and act on the advice of the Chief Justice as to the judge who shall hold the inquiry.

(3) Every inquiry shall be held at any time, being not less than one month from the date of the notification of the holding of an inquiry, and place which the Minister shall direct.

(4) Every inquiry shall be open to the public provided that the person holding or chairing the inquiry, may for good cause certify in writing that any particular evidence which the inquiry wishes to hear shall be taken in private.

(5) Every person whose conduct is or may be called into question at an inquiry shall be entitled to be represented at and heard by the inquiry.

(6) An inquiry shall be conducted in accordance with the principles of natural justice, but subject to that, the person holding or chairing the inquiry shall exercise his own discretion in determining the procedures of the inquiry.

(7) The person holding or chairing the inquiry shall have all the powers of a judge of the High Court to summon witnesses, call for the production of books, plans and documents and to examine witnesses and parties on oath.

(8) The inquiry shall be deemed to be a judicial proceeding for purposes of sections 102 to 110, 114 and 114A of the Penal Code <sup>xx\*</sup>.

(9) The person or persons holding the inquiry shall as soon as may be after the conclusion of the hearing prepare and submit to the Minister a report of the inquiry which shall include any advice and recommendations to the Minister which the terms of reference for the inquiry require or which the person or persons aforesaid think necessary to make.

(10) The report of the inquiry shall be published and the defence of qualified privilege shall attach to that report.

## **PART V**

### **RIGHTS AND INCIDENTS OF LAND OCCUPATION (ss 19-23)**

#### **19. Rights to occupy land**

(1) The rights to occupy land which a citizen, a group of two or more citizens whether formed together in an association under this or any other law or not, a partnership or a corporate body, in this Act called "right holders", may enjoy under this Act are hereby declared to be—

- (a) a granted right of occupancy;
- (b) a right derivative of a granted right of occupancy, in this Act called a derivative right.

(2) A person or a group of persons, whether formed into a corporate body under the Companies Act <sup>xxi\*</sup> or otherwise who is or are non-citizens, including a corporate body the majority of whose shareholders or owners are non-citizens, may only obtain a

right of occupancy or derivative right for purposes of investment prescribed under the Tanzania Investment Act <sup>xxii\*</sup>.

## **20. Occupation of land by non-citizen restricted**

(1) For avoidance of doubt, a non-citizen shall not be allocated or granted land unless it is for investment purposes under the Tanzania Investment Act <sup>xxiii\*</sup>.

(2) Land to be designated for investment purposes under subsection (1) of this section shall be identified, gazetted and allocated to the Tanzania Investment Centre which shall create derivative rights to investors.

(3) Subject to section 37(8), all lands acquired prior to the enactment of this Act shall be deemed to have no value, save for unexhausted improvements for which compensation may be paid under this Act or any other law.

(4) For the purposes of this Act, any body corporate of whose majority shareholders or owners are non-citizens shall be deemed to be non-citizens or foreign company's.

(5) At the expiry, termination or extinction of the right of occupancy or derivative right granted to a non-citizen or a foreign company, reversion of interests or rights in and over the land shall vest in the Tanzania Investment Centre or any other authority as the Minister may prescribe in the "Gazette".

## **21. Ceiling on land occupancy**

(1) The Minister shall make regulations prescribed under section 179 of this Act providing for an area of land that a person can hold under single right of occupancy or derivative right or in any way otherwise disposed of to any person or body corporate.

(2) The regulations made under the provisions of section 179 and subsection (1) of this section shall provide for consultation in determining land ceilings under this section.

## **22. Incidents of granted right of occupancy**

(1) A granted right of occupancy shall be—

- (a) granted by the President;
- (b) in general or reserved land;
- (c) of land which has been surveyed;
- (d) required to be registered under the Land Registration Act <sup>xxiv\*</sup>, to be valid and, subject to the provisions of that law and this Act, indefeasible;
- (e) for a period up to but not exceeding 99 years;
- (f) at a premium;
- (g) for an annual rent which may be revised from time to time;
- (h) subject to any prescribed conditions;
- (i) capable of being the subject of dispositions;
- (j) liable, subject to the provisions of this Act, to revocation;
- (k) liable, subject to the prompt payment of full compensation, to compulsory acquisition by the state for public purposes.

(2) A granted right of occupancy shall not confer on the holder any water rights or rights over the foreshore unless those rights are expressly mentioned nor shall it confer on the holder or any person acting under the authority of the holder any rights to mines, minerals, or gas or the right to appropriate and remove from the country for gain or for purposes of research of any kind any flora or fauna naturally occurring or present on the land or any palaeontological or archaeological remains found on the land.

## **23. A residential licence and its incidents**

(1) A derivative right, in this Act referred to as a residential licence, confers upon the licensee the right to occupy land in non-hazardous land, land reserved for public utilities and surveyed land, urban or peri-urban area for the period of time for which the

residential licence has been granted.

(2) Any person who at the commencement of this Act, has, without any official title, acquired and occupied as his home for not less than three years, land in an urban or peri-urban area other than land held for a granted or customary right of occupancy or as a tenant of a person so holding land or land to which subsection (2) of section 51 applies, shall by virtue of this Act be deemed to occupy that land as a residential licensee under a licence granted from year to year to that person by the local authority having jurisdiction in the area where that land is situate.

(3) Subject to the provisions of this Act, a residential licence may be granted by a local authority—

- (a) to any person occupying land without official title or right within the area of jurisdiction of that local authority as his home;
- (b) for a term which shall be not less than six months but not more than two years which may be renewed for a similar term;
- (c) subject to any conditions, including conditions as to the payment of any fees or charges which may be specified in the licence or which may be prescribed.

(4) A residential licence shall not be assignable by the licensee.

(5) A residential licence shall bind the successor in title to the licensor who obtains the land with actual or constructive notice of the licence.

(6) Where a person or family has occupied land in the same location under a residential licence for not less than three years, he or they shall be entitled to compensation under the Land Acquisition Act <sup>xxv\*</sup> where that land is to be acquired for a public purpose or where that person or family is to be removed from the land as if that person or family had a right of occupancy in the land and section 12 and Part III of that Act did not apply to that land.

**PART VI**  
**GRANTED RIGHTS OF OCCUPANCY (ss 24-52)**  
**SUBPART 1**  
**GRANT OF RIGHT OF OCCUPANCY (ss 24-30)**

**24. Application of this Part**

This Part applies to granted rights of occupancy hereafter referred to as "rights of occupancy".

**25. Procedure for application for right of occupancy**

(1) An application for a right of occupancy shall be—

- (a) submitted on a prescribed form and accompanied by a photograph;
- (b) accompanied by the prescribed fee;
- (c) signed by the applicant or a duly authorised representative or agent of the applicant;
- (d) sent or delivered to the Commissioner or an authorised officer;
- (e) contain or be accompanied by any information which may be prescribed or which the Commissioner may in writing require the applicant to supply;
- (f) accompanied by a declaration in the prescribed form of all rights and interests in land in Tanzania which the applicant has at the time of the application;
- (g) where any law requires the consent of any local authority or other body before an application for a right of occupancy may be submitted to the Commissioner, accompanied by a document of consent, signed by the duly authorised officer of that local authority or other body;
- (h) if made by a non-citizen or foreign company, accompanied by a Certificate of

Approval granted by the Tanzania Investment Centre under the Tanzania Investment Act <sup>xxvi\*</sup> and any other documentation which may be prescribed by that Act or any other law;

- (i) If an application for a right of occupancy or a derivative right, which is made by a non-citizen or a foreign company, is for residential purposes, the use of such land shall be secondary or ancillary to the investment approved under the Tanzania Investment Act <sup>xxvii\*</sup>.

(2) The Commissioner may require an applicant to submit information relevant to that application, additional to that already submitted with the application, and shall not be obliged to determine the application until that additional information has been submitted or a satisfactory explanation provided as to why it is not practical or possible to submit that additional information.

(3) Where an application is for a right of occupancy in reserved land, the Commissioner shall refer that application to the official or the public body having jurisdiction over that reserved land and shall take account of any representations that such official or such public body shall make on that application.

(4) Where an application is for a right of occupancy the development of which in accordance with the application will have, in the opinion of the Commissioner, a substantial effect on the activities and services provided by the local authority in the area where the land the subject of the right of occupancy is situate, the Commissioner shall refer that application to that local authority and shall take account of any representations made by that local authority on that application.

(5) Any official to whom or public body or local authority to which an application is referred under subsection (3) or (4) may make any such representations on that application within twenty days of the receipt of that application.

(6) The Commissioner shall maintain a register of applications in the prescribed form which shall be available to inspection by the members of the public at reasonable times during office hours.

## **26. Determination of application by Commissioner**

(1) The Commissioner shall be responsible for determining any application for a right of occupancy under the provisions of sections 27, 28 and 29 of this Part.

(2) Where the power to recommend whether a right of occupancy be granted has been allocated or delegated to a local authority or other body by or under this Act or any other law, the Commissioner shall, in any case—

- (a) if he approves of the recommendation, act on it;
- (b) if he is disposed to reject the recommendation, return it to the local authority or other body which made the recommendation with a statement of his reasons for rejecting that recommendation and a request for that local authority or other body to reconsider its recommendation.

(3) Where a local authority or other body has reconsidered a recommendation referred back to it under paragraph (b) of subsection (2), and submits the same or a substantially similar recommendation to the Commissioner, he shall either—

- (a) act on that recommendation; or
- (b) reject that recommendation and inform the local authority or other body of his reasons for so rejecting that recommendation.

(4) The Commissioner may determine whether to—

- (a) grant subject to the conditions set out in section 34 and any other conditions which may be prescribed the right of occupancy;
- (b) grant subject to those conditions and any additional condition which he considers necessary or desirable to endure the beneficial occupation and use of

- (c) the land the subject of the right of occupancy; or
- (c) grant subject to any conditions as he may be asked to impose by any public authority having jurisdiction over any reserved land in respect of which an application for a right of occupancy has been made; or
- (d) grant, subject to any conditions which he may be asked to impose by any local authority having jurisdiction over the area where the land the subject of the application is situate; or
- (e) reject the application for a right of occupancy.

(5) Any person aggrieved by a decision made under this section shall appeal to the Minister.

#### **27. Offer of a right of occupancy**

(1) The Commissioner shall, where it has been determined that a right of occupancy shall be granted to an applicant, make an offer in writing, hereinafter referred to as a "letter of offer" to that applicant setting out the terms and conditions upon which a grant may be made to that applicant.

(2) A letter of offer shall—

- (a) be in a prescribed form;
- (b) contain all the terms and conditions subject to which a grant of a right of occupancy may be made;
- (c) be signed by the Commissioner or an authorised officer;
- (d) bear an official stamp;
- (e) be delivered or sent by registered mail to the applicant or his duly authorised representative or agent.

(3) The Commissioner may withdraw a letter of offer after an affirmative reply to the offer has been received and shall be liable to compensate the applicant for any losses which the applicant has suffered by reason of the withdrawal of the letter of offer, unless within fourteen days of that withdrawal, he makes an alternative offer to the applicant which is in substantially the same terms as the offer which has been withdrawn.

#### **28. Acceptance of offer of right of occupancy**

(1) An acceptance of offer of a right of occupancy in writing shall—

- (a) be in a prescribed form;
- (b) be accompanied by any fee or deposit, or bankers' draft, letter of credit or other irrevocable commitment to pay such fee or deposit which has previously been agreed upon in writing as is required by the letter of offer;
- (c) be signed by the applicant or his duly authorised representative or agent.

(2) A document which does not comply in every respect with the provisions of paragraphs (a) and (c) of subsection (1) and which is not accompanied by the necessary monies in one of the ways provided for in paragraph (b) of subsection (1), shall not be taken to be and shall have no effect whatsoever as an acceptance in writing.

#### **29. Grant of right of occupancy**

(1) Where the Commissioner determines to grant a right of occupancy to a person who—

- (a) has accepted a letter of offer of a right of occupancy; or
- (b) is in occupation of land under a right of occupancy or under an acceptance of an offer of a right of occupancy; or
- (c) is otherwise entitled to a right of occupancy,

he shall issue a certificate, referred to as a 'certificate of occupancy' to that person.

(2) A certificate of occupancy shall be issued in the name of the President and shall be in a prescribed form.

(3) A certificate of occupancy shall be deemed to be duly and validly executed if it is signed by the Commissioner and sealed with his official seal and purports to be signed and sealed by the President and further proof of such execution shall not be required for the purpose of registration under the Land Registration Act <sup>xxviii\*</sup>.

(4) The occupier to whom a certificate of occupancy is issued shall sign at the bottom of the certificate as acceptance of the terms and conditions of that certificate and no certificate of occupancy shall be valid or give rise to any liabilities on the part of the state or any rights on the part of the occupier to whom the certificate has been issued until it is so signed.

### **30. Registration of letter of offer**

(1) Where a certificate of occupancy in respect of a plot of general or reserved land is not issued to a person who has accepted a letter of offer in respect of that plot of general or reserved land within one hundred and eighty days of the receipt of that acceptance by the Commissioner, the offeree may apply to the Registrar of Documents in the prescribed form to register the letter of offer for the purposes of creating a notice of impending ownership delivered to the Registrar under section 27 of the Land Registration Act <sup>xxix\*</sup>, and, subject to the provisions of this section, the provisions of that Act shall apply to that letter of offer as if it were a certificate of occupancy.

(2) The registration of a letter of offer, registered under the Registration of Documents Act, which is delivered to the Registrar for registration under subsection (1), shall cease to have any force or effect under the Registration of Documents Act from the date on which it is registered under the Land Registration Act <sup>xxx\*</sup>, provided that any priority of documents which came into effect in respect of and as a consequence of the registration of a letter of offer under the Registration of Documents Act <sup>xxxi\*</sup> shall not be affected by the provisions of this subsection.

(3) The registration of a letter of offer under the Land Registration Act <sup>xxxii\*</sup> shall cease to have any force or effect from the date on which a certificate of occupancy delivered to the Registrar under section 27 of the Act is registered and the Registrar may exercise his powers under section 109 of the Act in respect of any such registered letter of offer provided that any priority of interests which came into effect in respect of and as a consequence of the registration of a letter of offer under the Act shall not be affected by this subsection.

(4) The Registrar shall take any steps and make any decisions which are in his opinion necessary and desirable to ensure that a letter of offer registered under the Land Registration Act provides the holder of a right of occupancy with the same security of title of, and the same facility for dealing with, that right of occupancy as would be the case if a certificate of occupancy had been registered in the name of that holder of the right of occupancy.

## **SUBPART 2**

### **CONDITIONS ON RIGHT OF OCCUPANCY (ss 31-35)**

#### **31. Payment of premium on grant of right of occupancy**

(1) The Minister may require the payment of a premium on the grant of a right of occupancy.

(2) A premium shall be paid in one or more instalments as may be determined by the Minister.

(3) In determining the amount of a premium, the Minister shall have regard to—

- (a) the use of the land permitted by the right of occupancy which has been granted;
- (b) the value of the land as evidenced by sales, leases, and other dispositions of land in the market in the area where the right of occupancy has been granted,



- whether those sales, leases and other dispositions are in accordance with this Act or any law relating to land which this Act replaces;
- (c) the value of land in the area as evidenced by the price paid for land at any auction conducted by or on behalf of the government;
  - (d) the value of land as evidenced by the highest officer made in response to a request made by or on behalf of the government, a local authority or parastatal for a tender for the development of land in the area;
  - (e) any unexhausted improvements on the land;
  - (f) an assessment by a qualified valuer given in writing of the value of land in the open market.

(4) Where the payment of a premium is required, a demand for that payment shall be sent or delivered to the person to whom the certificate of occupancy is to be sent or delivered at the same time as or before the certificate of occupancy is sent or delivered to that person.

(5) Failure to pay a premium or any instalment and on the date at which the payment of that premium or instalment falls due shall be deemed to be a breach of a condition of the right of occupancy which shall give rise to revocation of a right of occupancy.

### **32. Length of term of right of occupancy**

- (1) A right of occupancy may be granted—
- (a) for a term up to but not exceeding ninety-nine years;
  - (b) for a term together with an option for a further term or terms which together with the original term may be up to but shall not exceed, ninety-nine years;
  - (c) from year to year or for periods of less than a year determinable by the Commissioner by one year's notice or less, whether or not the grant includes an initial fixed term, so long as that initial fixed term does not exceed four years.

(2) Where a right of occupancy has been granted for a term certain, with or without an option for a further term or terms certain, no reduction in the length of that term certain or the term or terms certain contained in the option or options shall be made to or introduced into that right of occupancy by the Commissioner without the agreement of the occupier.

(3) Where a right of occupancy comes to an end through affliction of time, the person or organisation occupying the land under that right of occupancy shall, if he has complied with the terms and conditions of that right of occupancy in a satisfactory manner and it is practical so to do, be offered a renewal of that right of occupancy on any terms and conditions which the Commissioner may determine before that right of occupancy is offered to any other person or organisation.

(4) The provisions of subsection (3) shall not operate to preclude the Government or a local authority or other public body from causing the land occupied under the right of occupancy to which subsection (3) refers to be developed or redeveloped in such a way that it is impractical to grant a right of occupancy of that land to the former holder of that right of occupancy and where such development or redevelopment takes place, the former holder of the right of occupancy shall not be entitled to any compensation for the loss of any expectation created by the provisions of subsection (3).

### **33. Rent**

(1) The holder of a right of occupancy shall, subject to the provisions of this section, pay an annual rent for that right of occupancy in the manner provided for under the provisions of the Public Finance Act <sup>xxxiii\*</sup>.

(2) Rent shall be paid in any instalments and at any intervals of time during the

year as the Commissioner shall determine or which is provided in the certificate of occupancy.

(3) Rent shall be paid to the Commissioner or an authorised officer at the office of the Commissioner or any other place which the Commissioner determines or which may be prescribed.

(4) In determining the amount of any rent, the Commissioner shall have regard to—

- (a) the area of the land which is the subject of the right of occupancy;
- (b) the use of land permitted by the right of occupancy which has been granted;
- (c) the value of land as evidenced by sales, leases and other dispositions of land in the market in the area where the right of occupancy has been granted, whether those sales, leases and other dispositions are in accordance with this Act or any law relating to land which this Act replaces;
- (d) where the right of occupancy has been granted for any commercial or residential development in any urban or peri-urban area and there has been no such development in that area or no or insufficient sales, leases or other dispositions of land or no or insufficient evidence of same in that area from which an assessment of the value of land may be arrived at, an assessment by a qualified value of the value of land in the open market in that area which may be developed for the purpose for which the right of occupancy has been granted;
- (e) the amount of any premium required to be paid on the grant of a right of occupancy.

(5) For the purpose of computing the rent payable in respect of any land in connection with any subdivisions, partition, amalgamation or any other transaction which reduce the area of the land after the determination of the rent for that land, the Commissioner shall where two or more plots of land are created out of the land for which the rent was determined, apportion the rent payable between the two or more plots of land in the same proportion as the two or more plots of land bear to the whole of the land for which the rent was originally determined.

(6) Notwithstanding anything to the contrary contained in any certificate of occupancy or in any of the provisions of any conditions of a right of occupancy, in every case in which the Commissioner requires the payment of a rent, the Commissioner shall have the power to revise that rent at intervals of not less than three years and in any exercise of that power, the determination of any revised rent shall be in accordance with subsection (2) of this section.

(7) The Commissioner may grant a right of occupancy free of rent to any person or organisation if the land is to be used exclusively for religious worship or for burial or exclusively both for religious worship and for burial.

(8) The Commissioner may grant a right of occupancy at a nominal rent if the land is to be used exclusively for a charitable purpose.

(9) In any case referred to in subsections (7) and (8), where the land ceases to be used exclusively for the purposes specified in those subsections, the Commissioner shall charge any rent or make any adjustment to the rent which appears to him to be necessary and desirable in all the circumstances.

(10) The Minister may direct the Commissioner to establish arrangements to review, and if the case is made out to remit in whole or in part the rent of any person who claims that by reason of poverty, infirmity, the effects of a natural or other disaster or other similar cause, he cannot pay the rent required to be paid under the right of occupancy and thereafter to keep such case under continuous review and, where

necessary, make further adjustments, either to increase or reduce the rent which is to be paid.

(11) Where any rent or instalment of rent payable in respect of a right of occupancy, or any part of such rent or instalment, remains unpaid for a period of six months after the date on which the same is required to be paid, interest at the rate of one per centum per month shall be payable on the unpaid amount until payment of the amount is made, and such interest shall be collected and recoverable in the same manner as rent.

(12) The acceptance by or on behalf of the Commissioner of any rent shall not be held to operate as a waiver by the Government of any right to revoke the right of occupancy accruing by reason of the breach of any covenant or condition, express or implied in any contract for a right of occupancy or in any certificate of occupancy granted under this Act or under any law repealed and replaced by this Act.

### **34. Conditions**

(1) Every right of occupancy shall be granted subject to the provisions of this section and to any development or other conditions which may be prescribed, or which the Commissioner may impose and any of those conditions the Commissioner may impose may be in or addition to, subtraction from or variation of the prescribed conditions.

(2) It shall be a condition in every grant of a right of occupancy where the purpose for which the grant has been made is to construct buildings on the land that the grantee of such right shall, in any case where any consents and permissions are required, apply for planning consent under the Town and Country Planning Act <sup>xxxiv\*</sup>, and apply for a building permit under the Township (Building) Rules within six months of the grant of the right of occupancy.

(3) Where a right of occupancy includes land which is occupied by persons under customary law, it shall be a condition of that right of occupancy that those customary rights shall be recognised and those persons so occupying the land shall be moved or relocated only—

- (a) so far as is necessary to enable the purpose for which the right of occupancy was granted to be carried out; and
- (b) in accordance with due process and principles of fair administration, being given—
  - (i) not less than one hundred and eighty days' notice of any requirement to move; and
  - (ii) the opportunity to reap crops sown before any notice to move was given to those persons; and
  - (iii) the right to continue to use water which those persons had a right to use before being given notice to move; and
  - (iv) prompt payment of full compensation for loss of any interests in land and any other losses that are incurred due to any move or any other interference with their occupation or use of land.

(4) Until the time conditions are prescribed by regulations made under this Act, all those conditions which immediately before the enactment of this Act had been enacted or prescribed as conditions to be imposed on the grant of a right of occupancy, other than any conditions which expressly or impliedly require any approval for a change of use or disposition of a right of occupancy, shall be deemed to be conditions prescribed under this Act and shall, unless they conflict with any provisions of this Act or it is otherwise specifically provided for in the letter of offer or the certificate of title, be implied in every such grant of a right of occupancy and shall be binding on the grantee of

that right of occupancy and his successors in title.

(5) Before imposing, amending or adding to any conditions in respect of a right of occupancy granted in reserved land, the Commissioner shall consult with the official or organisation having jurisdiction over that reserved land and shall have regard to any representations and recommendations that such official or such organisation may make in respect of the proposals of the Commissioner.

(6) Before imposing, amending or adding to any conditions in respect of a right of occupancy which would be likely to have a significant effect on the activities and services provided by the local authority having jurisdiction in the area where the land, the subject of the right of occupancy, is situate, the Commissioner shall consult with that local authority and shall have regard to any representations and recommendations that such local authority may make in respect of the proposals of the Commissioner.

(7) A person who signs a certificate of occupancy in accordance with the provisions of section 29 shall, where he signs on his own behalf be deemed to have bound himself and, where he signs as the authorised representative of a local authority, corporate body or other organisation, be deemed to have bound that local authority, corporate body or other organisation to the President to observe and comply strictly with each and every condition contained in that certificate of occupancy or subject to which that right of occupancy was granted.

(8) The Commissioner and any authorised officer may, subject to section 170, enter on land the subject of a right of occupancy to inspect that land and to investigate that the conditions subject to which the right of occupancy has been granted have been complied with.

### **35. Change of use**

(1) An occupier of land under a right of occupancy may apply to the Commissioner for a change or variation to the conditions of that right of occupancy so as to enable him to undertake a development on or a use of that land or a disposal of the whole or a part of that land in connection with a development on or a use of that land which is not permitted by the conditions subject to which the right of occupancy was granted.

(2) An application under this section shall be—

- (a) submitted on a prescribed form and accompanied by a photograph;
- (b) accompanied by the prescribed fee;
- (c) signed by the applicant or his duly authorised representative or agent;
- (d) sent or delivered to the Commissioner or an authorised officer;
- (e) accompanied by any other information which may be prescribed or which the Commissioner may, in writing, require.

(3) The Commissioner shall consult with and take account of the views of—

- (a) the authority having responsibility for town and country planning in the area where the land is situate;
- (b) the local authority having jurisdiction in the area where the land is situate;
- (c) any other authority whose consent to that change of use is necessary.

(4) Where the Commissioner determines to approve a proposed change of use, he shall in writing, using the prescribed form—

- (a) inform the occupier of that fact;
- (b) request the occupier to bring or send the certificate of occupancy to the Commissioner for endorsement on it of the change of use; and
- (c) inform the occupier of any premium or additional rent that is payable as a consequence of the change of use.

(5) No approved change of use shall take effect and no action may be taken by

an occupier in pursuance of a proposed or approved change of use until—

- (a) that change of use is endorsed on the certificate of occupancy;
- (b) the endorsement is signed by the Commissioner with his official seal and by the occupier;
- (c) all premia and additional rent have been paid by the occupier in accordance with the terms and conditions subject to which the change of use is granted.

(6) The provisions of sections 30 and 32 apply to the payment of any premium and any rent under this section as they apply to the payment of premia and rent under those sections.

(7) The grant by the Commissioner of a consent to a change of use shall not—

- (a) absolve the occupier from any obligation to obtain the consent of any other authority to that change of use;
- (b) require any other authority whose consent to that change of use is necessary to grant that consent.

### **SUBPART 3**

#### **DISPOSITIONS OF RIGHT OF OCCUPANCY (ss 36-43)**

##### **36. General provisions as to dispositions**

(1) A disposition of a right of occupancy shall—

- (a) comply with the provisions of this section and sections 37, 38, 39 and 40;
- (b) be void if the provisions of this section and sections 37, 38, 39 and 40 are not complied with.

(2) Unless otherwise provided for by this Act or regulations made under this Act, a disposition of a right of occupancy shall not require the consent of the Commissioner or an authorised officer.

(3) Any person proposing to carry out a disposition, other than a disposition to which section 38 applies, shall send or deliver a notification in the prescribed form to the Commissioner or an authorised officer before or at the time the disposition is carried out together with the payment of all premia, taxes and dues prescribed in connection with that disposition.

(4) The Commissioner shall, subject to the provisions of section 37, on receipt of a notification under subsection (3) and the payment of all premia, taxes and dues which may be prescribed, with all due dispatch, endorse that notification with his signature and official seal and send or deliver a copy to the registrar.

(5) The Register shall not make any entry on the register in respect of any disposition or any right of occupancy transferred as a result of a disposition to which subsection (3) applies unless and until he is in receipt of a copy of a notification endorsed in accordance with subsection (4).

##### **37. Approval for dispositions**

(1) The Commissioner shall have power to consider and approve categories of dispositions of land under this Act.

(2) Any assignment of a right of occupancy which was granted to the assignor less than three years before the proposed assignment is to take effect shall require the approval of the Commissioner, which approval shall not be unreasonably withheld.

(3) A loan granted on the security of a mortgage by a prescribed lender or a disposition of a right of occupancy or a lease made by a prescribed lender of monies on the security of a mortgage of land in the exercise of the power of leasing under section 115 or the power of sale under section 118 shall not require any approval under this section whatever the value of the mortgage or disposition, at the time the disposition is

made, but that disposition shall come within the provisions of section 38.

(4) Where the Commissioner has reasonable cause to believe that a disposition has taken place or is about to take place which in order to avoid the requirement to obtain approval under this section has been agreed between the parties to be for a value less than the market value of the interest in land which is the subject of the disposition, he may take any such action in relation to dispositions to which that section applies.

(5) A disposition has been carried out without first obtaining the approval of the Commissioner shall be inoperative.

(6) The requirement to obtain approval to a disposition under this section shall not absolve an applicant for that approval from any other requirement to obtain any other consent, approval, permit, licence, or other authorisation in respect of that disposition or for the use and development of the land to be acquired through that disposition under any other law.

(7) The Minister may, after seeking and taking into account the views of the Commissioner, by regulations under this section—

- (a) provide for dispositions or classes of dispositions which do not require approval under this section to require approval from the Commissioner;
- (b) provide for dispositions or classes of dispositions which require approval under this section—
  - (i) not to require approval at all;
  - (ii) to require approval from the Commissioner;

(8) Unless otherwise provided by this Act, no sale of land without unexhausted improvements shall be approved, and such shall be deemed to have no value.

(9) Any disposition in contravention of subsection (8) of this section shall be void *ab initio*.

### **38. Supervisory powers over dispositions**

(1) The Commissioner may on receipt of a notification of a disposition under subsection (3) of section 36 issue a notice in the prescribed form to the parties requiring them not to proceed with the disposition until—

- (a) they have sent or delivered to him any additional information and documentation about the disposition which is specified in the notice; or
- (b) they have applied for and received approval for that disposition.

(2) Where the Commissioner has reasonable cause to believe that a disposition is about to take place or has taken place of which he has not received a notification under subsection (3) of section 36 of the parties to the transaction of which he has knowledge requiring them—

- (a) to comply with section 36;
- (b) not to proceed with the disposition until—
  - (i) they have sent or delivered to him any additional information and documentation about the disposition which is specified in the notice; or
  - (ii) they have applied for and received approval to the disposition.

(3) Where the Commissioner has reasonable cause to believe, either of his own motion or as a result of representations made to him by or on behalf of one of the parties to the disposition, that a disposition has been or is in the process of being or is likely to be affected by fraud, or undue influence, or lack of good faith, or the fact that one party appears to have taken unfair advantage over another party to the disposition or that the disposition, not being a gift, is not for value, he may—

- (a) where the disposition has taken place and not more than two years have elapsed since the conclusion of the formalities necessary to complete the disposition, apply to the Registrar of Titles to enter injunction under section 79

- of the Land Registration Act <sup>xxxv\*</sup> for rectification of the land register;
- (b) where the disposition has not yet taken place—
    - (i) apply to the Registrar to enter an injunction to prevent the disposition from taking place; or
    - (ii) issue any notice that he can issue under subsection (2); or
    - (iii) issue a notice requiring the parties to the disposition to appear before him and give an explanation of the circumstances of the disposition.

(4) Where the Commissioner issues a notice under subparagraph (iii) or paragraph (b) of subsection (3), he may after hearing the parties to the disposition, issue a notice under subparagraph (i) or (ii) of paragraph (b) of subsection (3).

### **39. Application for grant of approval for disposition**

- (1) An application for a grant of approval for a disposition shall be—
- (a) made on a prescribed form;
  - (b) signed by all the applicants;
  - (c) accompanied by any other information which is prescribed or which may be required by the Commissioner;
  - (d) accompanied by any fees which may be prescribed.

(2) One application may be made for a grant of approval for two or more dispositions and where that application is made, the provisions of this section shall apply to each disposition as if a separate application had been made in respect of an approval for each disposition.

(3) The Commissioner may require relevant information additional to that which is referred to in paragraph (c) of subsection (1) and shall not be under any obligation to determine an application in respect of which he has required additional information until that additional information has been submitted to him or a satisfactory explanation of why that additional information cannot be submitted to him has been submitted to him.

(4) The Commissioner may consult with any person or organisation on an application for a grant of approval for a disposition but shall not be obliged to accept any advice received as a result of that consultation, nor, where that advice has been requested within a certain time, shall the Commissioner be obliged to delay the determination on the application where that advice has not been submitted within that certain time.

- (5) The Commissioner shall—
- (a) grant approval, subject to any conditions which may be prescribed which apply to that disposition; or
  - (b) grant approval, subject to the conditions referred to in paragraph (a) and any other conditions which he may determine to impose; or
  - (c) refuse to grant approval,

to the application.

(6) A consent under subsection (5), in this Act referred to as a "certificate of approval" shall—

- (a) be personal to the applicant;
- (b) not be assignable;
- (c) be valid for one year from the date on which it was given.

- (7) A determination by the Commissioner under subsection (5) shall be—
- (a) in the prescribed form;
  - (b) signed by the Commissioner;
  - (c) where it is a certificate of approval, accompanied by a demand for any premium, taxes or dues which may be prescribed or which is or are determined by the Commissioner;

- (d) copied to the Registrar;
- (e) delivered or sent by registered letter to the applicant to his last known abode or his usual place of business.

(8) A person who has received a certificate of approval shall pay all premia, taxes and dues which are required to be paid in connection with the disposition to which the certificate of approval refers and no such disposition shall be valid or effective to transfer any interest in any land or give rise to any rights in the transferee unless and until all the premia, taxes and dues have been paid accordingly.

(9) The Commissioner, an authorised officer or any other officer to whom any premium, taxes or dues is or are required to be paid under this section shall endorse and sign a receipt for that premium, tax or due on the certificate of approval.

(10) The Registrar shall not make any entry on the register in respect of any disposition or any right of occupancy the subject of a disposition to which this section applies unless and until he is satisfied that all premia, taxes and dues in respect of that disposition have been paid and a receipt for the same has been validly endorsed on the certificate of approval.

#### **40. Reconsideration of application for approval for disposition**

(1) Where the Commissioner has refused an application for approval for a disposition or has granted it subject to conditions, the applicant may request the Commissioner to reconsider that application with a view to granting it, or granting it free of or with amended conditions.

(2) A request for a reconsideration of an application shall be—

- (a) made on a prescribed form signed by the applicant; and
- (b) accompanied by any information which may be prescribed and which the Commissioner may require; and
- (c) accompanied by any fee which may be prescribed.

(3) In determining an application under this section, the Commissioner shall have all the powers and take account of all the criteria set out in this Subpart which apply to an application for a grant of approval for a disposition.

#### **41. Criteria for determining application for grant of approval for a disposition**

(1) Subject to the provisions of this section, there shall be a presumption that an application for a grant of an approval for a disposition shall be granted.

(2) In determining whether to grant an approval for a disposition, the Commissioner shall, taking into account the presumption set out in subsection (1), have regard to—

- (a) whether the occupier of land which is the subject to the proposed disposition has complied with all the conditions in the right of occupancy subject to which he occupies that land;
- (b) where a right of occupancy is to be transferred or a lease is to be granted out of a right of occupancy, whether the price at which the transfer or grant is to be made is at a significant undervaluation of the land;
- (c) where the applicant already occupies or has at some time in the past occupied land in Tanzania under a right of occupancy, the amount of land occupied and whether that land is being or was occupied and used in accordance with the conditions of the right of occupancy for which it is or was held;
- (d) whether the person or body to whom or which the land is to be disposed has any criminal convictions relating to dishonesty, fraud or corruption;
- (e) whether the disposition concerns the interest of risk groups such as displaced persons, children and any low income persons.

(3) Where the Commissioner is of the opinion that a right of occupancy in land is



to be transferred at a significant undervaluation or a lease is to be granted at a premium or for a rent which is significantly below the value of that lease in the open market, the Commissioner may require the parties to the disposition to obtain, at the expense of the proposed transferee, a valuation of that land from a qualified valuer whom the Commissioner shall nominate, and consent shall not be granted to any disposition to which this subsection applies at a price which is less than the value put upon the land by the nominated valuer.

(4) An application of a grant of approval for a disposition shall be determined by the Commissioner within sixty days or any longer period which may be agreed upon between the Commissioner and the parties to the proposed disposition.

(5) Where a determination has not been made within the period specified in subsection (4) and no agreement has been reached between the parties to the disposition and the Commissioner to extend the specified period, the approval to the disposition shall be deemed to have been refused.

(6) Nothing in this section shall be taken to dispense with the requirement to obtain permission to develop land under the Town and Country Planning Act, and any other laws relating to the erection of buildings on land.

(7) The Minister may, after consulting with the Minister of Agriculture, by regulations set out by reference to regions, districts or agro-ecological zones the amounts of land necessary for a smallholder to feed himself and his family and when such regulations have been made, the Commissioner shall comply with them when exercising his functions under paragraph (e) of subsection (2).

#### **42. Power to surrender right of occupancy**

(1) An occupier of land under a right of occupancy may surrender the whole or a part of the land comprised in that right of occupancy.

(2) The Commissioner shall not accept any surrender of the whole or a part of any occupied land unless the following circumstances apply—

- (a) all rent, taxes and dues owed to the Government in respect of that land are fully paid up;
- (b) the land will not create, cause or give rise to or a transfer of, any liability in contract, tort or otherwise to the Government;
- (c) the land is not subject to any subsisting mortgage, charge or encumbrance;
- (d) the land is not subject to any action in court by a lender to possess and sell the land;
- (e) the land is not subject to any action by a trustee in bankruptcy on behalf of creditors or is not otherwise subject to an order of attachment by any court;
- (f) the surrender is not designed to defeat the rights of a spouse to share in or obtain part of the land;
- (g) every co-occupier and person or body having any interest in that land has consented in writing to the surrender;
- (h) the land is surrendered in consideration of natural love and affection.

(3) Where the Commissioner is satisfied that an application for the surrender of the whole or a part of the land is due to hardship or poverty and by reason of that hardship or poverty, the applicant is not able to pay any rent, taxes and other dues which he owes to the Government, the Commissioner may remit the whole or a part of any monies which the applicant owes the Government.

#### **43. Procedure for surrender of right of occupancy**

(1) A deed of surrender of a right of occupancy shall be in writing using the prescribed form and signed by the person surrendering the right of occupancy and shall be accompanied by—

- (a) any fee which may be prescribed;
- (b) any written consents which are required under paragraph (g) of subsection (2) of section 42;
- (c) the certificate of occupancy, or where the certificate of occupancy is in the possession of a lender, charge or lien-holder, a written notice, signed by that lender, charge or lien-holder as evidence of that fact.

(2) On receipt of the deed of surrender and all accompanying documents, the Commissioner shall, if it appears to him that the conditions specified in section 42 are satisfied and that the documents are all in order, accept the surrender by signing the deed of surrender.

(3) In any case where it appears to the Commissioner that one or more of the matters referred to in subsection (2) are not satisfied or in order, he shall refuse to accept the deed or surrender.

(4) Where the Commissioner has made a determination in terms of either subsection (2) or (3), he shall—

- (a) notify the occupier;
- (b) where the surrender is of a part of the land—
  - (i) notify the occupier of any revision to the rent for the remaining portion of the land;
  - (ii) cancel the existing certificate of occupancy;
  - (iii) issue a new certificate of occupancy to the occupier;
- (c) present any deed of surrender and certificate of occupancy to the Registrar.

(5) The Registrar shall take steps which are necessary to amend the register in the light of the information of which he is notified by the Commissioner.

#### **SUBPART 4**

#### **BREACH OF CONDITIONS OF RIGHT OF OCCUPANCY (ss 44-51)**

#### **44. When breach of condition of right of occupancy arises**

(1) A breach of a condition requiring continuous performance shall arise as soon and continue as long as the condition is not complied with.

(2) A breach of a condition subject to a fixed term shall arise—

- (a) in the case of a condition requiring the doing of any act within any time specified in the condition or where that time has been extended by the Commissioner, within that extended time, upon the expiry of that time without that act having been done;
- (b) in the case of a condition requiring any act to be refrained from until any time specified in the condition or where that time has been extended by the Commissioner, within that extended time, upon the doing of that act before that time.

(3) Where any condition consists of two or more separate obligations or liabilities, a failure to fulfil any of those obligations or liabilities shall constitute a breach of the condition.

#### **45. Liability to revocation for breach of condition**

(1) Upon any breach arising from any condition subject to which any right of occupancy has been granted, the right of occupancy shall become liable to be revoked by the President.

(2) The President shall not revoke a right of occupancy save for the good cause. In this subsection "good cause" shall include the following—

- (i) there has been an attempted disposition of a right of occupancy to a non-citizen

contrary to this Act and any other law governing dispositions of a right of occupancy to a non-citizen;

- (ii) the land the subject of the right of occupancy has been abandoned for not less than two years;
- (iii) where the right of occupancy is of land of an area of not less than five hundred hectares, not less than eighty *per centum* of that area of land has been unused for the purpose for which the right of occupancy was granted for not less than five years;
- (iv) there has been a disposition or an attempt at a disposition which does not comply with the provisions of this Act;
- (v) there has been a breach of a condition contained or implied in a certificate of occupancy;
- (vi) there has been a breach of any regulation made under this Act.

(3) Notwithstanding the provisions of subsection (2) above, the President may revoke a right of occupancy if in his opinion it is in the public interest to do so.

(4) Before proceeding to take any action in respect of a breach of a condition of the right of occupancy, the Commissioner shall consider—

- (a) the nature and gravity of the breach and whether it could be waived;
- (b) the circumstances leading to the breach by the occupier;
- (c) whether the condition that has been breached could be amended so as to obviate the breach,

and shall in all cases where he is minded to proceed to take action on a breach, first issue a warning letter to the occupier advising him that he is in breach of the conditions of the right of occupancy.

(5) The Commissioner may, instead of proceeding to the enforcement of the revocation—

- (a) impose a fine on the occupier in accordance with section 46;
- (b) serve a notice on the occupier in accordance with section 47 requiring the breach to be remedied.

(6) The Commissioner may, at any time, withdraw from taking action under section 46 or withdraw a notice served under section 47 and proceed to the enforcement of the revocation under section 49.

(7) A right of occupancy which has become liable to be revoked under this section shall cease to be so liable if the breach is subsequently remedied.

#### **46. Fine for breach of condition**

(1) Where any breach of a condition has arisen, the Commissioner may serve a notice in the prescribed form on the occupier requiring him to show cause as to why a fine should not be imposed upon him in respect of such breach.

(2) The occupier shall, within the time specified in the notice, respond to the notice.

(3) Where the occupier has not responded to the notice or where he has failed to show cause as to why a fine should not be imposed to the satisfaction of the Commissioner, the Commissioner may serve a notice on the occupier in the prescribed form requiring him to pay a fine as prescribed by the Minister by regulations made under section 179 of this Act and in the case of a continuing breach, occupier shall be liable to a further notice to pay a further fine for each day during which the breach continues.

(4) The Commissioner may, and shall where the occupier has not committed any other breach of a condition of the right of occupancy, suspend the payment of any fine for up to two years and if the occupier does not commit that breach again within the period during which the fine is suspended, the fine shall lapse and shall no longer be

payable.

(5) Where the fine is paid in full and no notice has been served under section 48 in respect of the breach, no further action shall be taken by the Commissioner in respect of that breach.

(6) If the Commissioner is satisfied, after due inquiry, that the breach in respect of which a fine has been paid is continuing, or has recommenced, he may take action in respect of that continuing or recommenced breach under section 48 or 49.

#### **47. Summary action to remedy breach of condition**

(1) Where any breach of a condition has arisen, and it appears to the Commissioner that the breach is capable of being remedied by the occupier within a reasonable time, he may serve a notice in the prescribed form on the occupier specifying the action required for remedying the breach and requiring the occupier to take any action within the time specified in the notice.

(2) The occupier on whom a notice under this section is served shall be responsible for the compliance with that notice.

(3) Where a notice served under this section is complied with, no further action shall be taken by the Commissioner in respect of that breach.

(4) Where it appears to the Commissioner that the notice has not been complied with or that the breach in respect of which the notice was served is continuing or has recommenced, he shall proceed with the enforcement of the revocation of the right of occupancy in accordance with section 49.

#### **48. Action to enforce revocation for breach of condition**

(1) Where the Commissioner is satisfied that—

- (a) a notice served under section 47 has not been complied with; or
- (b) the breach of condition is so serious and of far-reaching consequences that—
  - (i) it would not be practicable for the occupier to remedy that breach within a reasonable time; or
  - (ii) the occupier has demonstrated a clear unwillingness to comply with the conditions of the grant of the right of occupancy made to him;
- (c) there has been an attempted disposition of a right of occupancy to a non-citizen contrary to this Act and any other law governing the disposition of a right of occupancy to a non-citizen;
- (d) the land the subject of the right of occupancy has been abandoned for not less than two years;
- (e) where the right of occupancy is of land of an area of not less than five hundred hectares, not less than eighty *per centum* of that area of land has been unused for the purpose for which the right of occupancy was granted for not less than five years;
- (f) there has been a disposition or an attempt at a disposition which does not comply with the provisions of this Act;
- (g) any rent, taxes or other dues remain unpaid six months after a written notice in the prescribed form was served on the occupier and subsection (8) of section 33 does not apply to the occupier,

he shall—

- (i) serve a notice of revocation in the prescribed form on the occupier;
- (ii) cause a copy of that notice to be served on all persons having an interest in the land; and
- (iii) notify the Registrar of the service of the notice which shall be recorded in the Land Register.

(2) A notice of revocation shall, subject to the provisions of this section, take

effect ninety days after it has been served on the occupier.

(3) As soon as the notice of revocation has come into effect the Commissioner shall recommend to the President to revoke the right of occupancy.

#### **49. Revocation and its effects**

(1) As soon as the President approves a revocation under section 48(3) of this Act, the Commissioner shall cause it to be published in the *Gazette* and in one or more newspapers circulating in the area where the land the subject of the revocation is situated a notification of that revocation.

(2) Upon the approval of the revocation by the President—

- (a) the right of occupancy to which it refers shall determine immediately and without further action;
- (b) all derivative rights, created out of the right of occupancy which has determined shall determine immediately and without further action;
- (c) all rights and interests in the land the subject of the right of occupancy shall revert to the President and the same shall be registered in the Land Register;
- (d) subject to subsection (3), all unexhausted improvements shall vest in the President without further action;
- (e) any rent, taxes or other dues owing to the Government arising out of or attributable to the grant of the right of occupancy shall be extinguished;
- (f) all proceedings relating to the right of occupancy or the land the subject of the right of occupancy which were or could have been commenced against the occupier and all proceedings which were or could have been commenced against any person, other than the Commissioner, by the occupier shall be taken over by the Government and thereafter shall be pursued against or by the Government as the case may be; provided that in any case in which the Government is a defendant, the Government may join the former occupier as a co-defendant and shall have a right to call upon or take any action which may be necessary to compel the former occupier to pay any damages or costs which may be awarded against the Government in such a case.

(3) There shall be payable to the former occupier whose right of occupancy has been revoked compensation which shall equal the value of unexhausted improvements made in accordance with the terms and conditions of the right of occupancy on the land at the time of the revocation less—

- (a) the costs to the Government of any proceedings for or taken in connection with the revocation;
- (b) any rent, taxes and dues together with any interest on the rent, taxes and dues which were owed to the Government immediately before the revocation;
- (c) any sums owed by the former occupier, or by the Government as a consequence of the revocation, to any person claiming a derivative right to the land through the former occupier;
- (d) any monies which the Government is obliged to spend or which it is reasonably necessary for the Government to spend to repair any damage to the land or any building on the land or to any contiguous land or to any persons lawfully occupying and using the land or any contiguous land as a result of any act or omission to act by the former occupier during his occupation, whether that act or omission to act was lawful or not;
- (e) any other expenses which the Government incurs or may reasonably anticipate incurring as a result of or on account of the revocation.

(4) Where, as a result of any calculation undertaken under subsection (3), the former occupier owes the Government any money, the Commissioner shall serve a

notice on that person demanding that money from that person within fourteen days of the service of the notice and if at the expiry of that period, that money has not been paid, an action may be commenced in the court in accordance with this Act to recover that money as a civil debt owed to the Government.

(5) The Commissioner may grant any relief including the payment of any sums of money which appear to him to be fair and reasonable to any person claiming a derivative right under the right of occupancy which has been revoked but no relief or sums of money shall be granted to any person who has contributed to or participated in or benefited from, directly or indirectly, any act or omission to act, the doing or not doing of which is the reason or one of the reasons for the revocation of the right of occupancy.

#### **50. Summary proceedings for recovery of rent**

(1) Subject to the provisions of this section but without prejudice to any other remedy for the recovery of rent and interest payable under section 33, where any person who is liable for rent for a right of occupancy granted under this Act fails to pay such rent or any instalment thereof on the due date, an authorised officer may serve or cause to be served on such person, a written notice calling upon such person to pay such rent or instalment, together with interest, if any, within fourteen days of the service of the notice and, if at the expiration of such period of fourteen days, the rent or instalment and interest, if any, has not been paid, the authorised officer may cause a copy of the notice to be filed in the court having jurisdiction within the area in which the land to which the right of occupancy relates is situate, and upon such copy being so filed, it shall be deemed to be a decree passed by such court against the person to whom the notice is addressed for payment by him to the President of the amount specified in such notice as being due from him together with such interest thereon at the court rate from the date on which such notice is so filed till payment and such decree may be executed by the court on the application made *ex parte* by the authorised officer, either by the issue of a warrant or in any other manner in which a decree passed by such court may be executed, and the court shall have jurisdiction to execute such decree notwithstanding that the amount involved may exceed the pecuniary jurisdiction of the district court.

(2) An application under this section shall be accompanied by—

(a) a copy of the demand containing a certificate by the person who served the same stating the time and place of service and the person on whom it was served;

(b) a certificate by the authorised officer of the amount due and owing, and upon production thereof such civil magistrate aforesaid shall have jurisdiction to grant such summary warrant, and it shall be executed in all respects as though it were both a warrant of attachment and a warrant of sale issued out of the court of such magistrate.

(3) The notice required to be served under subsection (1) shall be served either by delivering a copy thereof to the person to whom it is addressed or by leaving a copy thereof at his usual place of residence or business or by publishing such notice in such newspaper or newspapers as the authorised officer may determine.

(4) In this section "authorised officer" means the Commissioner for Lands and such other person as he may appoint in writing in that behalf.

#### **51. Abandonment of land held under a right of occupancy**

(1) Land held for a right of occupancy shall be taken to have been abandoned where one or more of the following factors are present—

(a) the occupier owes any rent, taxes or dues in respect of the land and has continued to owe such rent, taxes or dues or any portion of them for not less than five years from the date on which any rent, taxes or dues or any portion

- thereof first fell to be paid;
- (b) the occupier has left the country without making any arrangement for any person to be responsible for the land and for ensuring that the conditions subject to which the right of occupancy was granted are complied with and that occupier has not given any appropriate notification to the Commissioner;
  - (c) any building on the land has failed into a state of such disrepair that it has become a danger to the health and safety of any person occupying that building for any lawful purpose or a neighbour to the occupier;
  - (d) persons with no apparent lawful title so to do are occupying or using the land or any buildings on the land and one or more of those persons or a person from a community which contains one or more such persons have so occupied or used the land or any building on the land for a period of not less than two years immediately preceding the date on which in accordance with this section, the Commissioner publishes a notice of abandonment in the *Gazette*;
  - (e) by reason of the neglect of the land, the land is—
    - (i) no longer capable, without significant expenditure and remedial work, of being used for productive purposes; or
    - (ii) suffering serious environmental damage.

(2) Where it appears to the Commissioner that any land has been abandoned, he shall publish in the *Gazette* and in a newspaper circulating in the area where the land is situate a notice of abandonment which shall—

- (a) state the location of the land;
- (b) state the boundaries of the land;
- (c) set out briefly the grounds on which the Commissioner intends to rely in determining that the land has been abandoned;
- (d) state the time, being not less than sixty days from the date of the publication of the notice, within which any person claiming to have an interest in the land may show cause why the land should not be declared to be abandoned.

(3) Where the Commissioner after considering any representations received under paragraph (d) of subsection (2) determines that the land has been abandoned, the Commissioner shall issue in the prescribed form, a declaration of abandonment and shall send a copy of that declaration to the occupier of the land at his last known place of abode or last known address.

(4) Proceedings to revoke a right of occupancy under section 49 in respect of land which has been declared abandoned under subsection (3) shall be commenced forthwith.

(5) Where any person claiming to have an interest in land shows cause that the land is not abandoned, the Commissioner if satisfied as such shall take no further action.

## **SUBPART 5**

### **AUCTIONS OF RIGHT OF OCCUPANCY (s 52)**

#### **52. Auction of and tenders for rights of occupancy**

(1) The Minister may, after considering the advice of the Commissioner, direct that any portion of general land be made available for development through a right of occupancy by means of—

- (a) an auction; or
- (b) a process of tendering for the land.

(2) The Minister shall make regulations governing the holding and conduct of an auction and the process of tendering for land.

**PART VII**  
**CONVERSION OF INTERESTS IN LAND (ss 53-60)**  
**SUBPART 1**

**VALIDATION OF INTERESTS IN GENERAL LAND (ss 53-55)**

**53. Validation of certain dispositions completed before the coming into operation of this Act**

(1) This section applies to any disposition of a right of occupancy or of an interest in land held under customary tenure or any other form of informal tenure, wheresoever the land in respect of which the disposition has taken place is located, where the parties to that disposition—

- (a) should have but did not obtain a grant of approval from the Commissioner or other relevant authority;
- (b) applied for a grant of approval but notwithstanding the refusal of approval, carried out that disposition,

where the disposition has been completed before the coming into operation of this Act.

(2) A person who is occupying land which he has obtained under or as a consequence of a disposition to which subsection (1) applies, shall by virtue of this section be deemed to be in lawful occupation of that land for a period of six years from the date of the commencement of this Act or any longer period which the Minister, after seeking and taking account of the advice of the Commissioner shall by order published in the *Gazette* determine and may, within two years from the date of the commencement of this Act or any later date, being earlier than the period of six years or any longer period referred to in this subsection for which this occupation is lawful, as the Minister may, by order, prescribe, apply to the Commissioner for a certificate of validation of that occupation.

(3) An application for a certificate of validation shall be made—

- (a) on a prescribed form;
- (b) accompanied by the prescribed fee;
- (c) signed by the applicant or his duly appointed representative or agent;
- (d) accompanied by any other information which may be prescribed or which the Commissioner may require.

(4) The Commissioner shall, on being satisfied that—

- (a) the provisions of subsection (3) have been complied with; and
- (b) the provisions of paragraph (d) of subsection (2) of section 41 do not apply to the applicant,

issue a certificate of validation to the occupier in the prescribed form.

(5) Where the occupation which is validated by a certificate of validation is an occupation which was commenced after a disposition which purported to transfer a right of occupancy in the occupied land to the person who has obtained a certificate of validation or his predecessor in title, the receipt by the occupier of a certificate of validation shall entitle that person to apply for and obtain a right of occupancy for a period of not less than thirty-three years.

(6) Where the occupation which is validated by a certificate of validation is an occupation which was commenced by a transaction which purported to be a lease or sub-lease of the occupied land to the person who has obtained a certificate of validation or his predecessor in title, the receipt by the occupier of a certificate of validation shall operate—

- (a) as a grant of consent for a lease or, as the case may be, a sub-lease for a term of the same length as the lease which is being validated, retrospective to the date when the lease or, as the case may be, sub-lease in fact commenced



- (b) whether that lease or, as the case may be, sub-lease, was in writing or not; where the lease was granted out of an interest in land which is by this section validated as a right of occupancy for thirty-three years, and was for a period longer than thirty-three years, the validation of that lease shall operate to reduce the term to thirty-three years less ten days;
- (c) to bring the lease, other than a lease created out of customary tenure, within the provisions of the Registration of Documents Act <sup>xxxvi\*</sup>, or where the land out of which the lease or sublease has been created is held for a right of occupancy registered under the Land Registration Act <sup>xxxvii\*</sup>, under the provisions of that Act.

(7) Where the occupation which is validated by a certificate of validation is an occupation which was commenced as a result of a subdivision of land in favour of the person who has obtained a certificate of validation or his predecessor in title, the receipt by the occupier of a certificate of validation shall operate as a permission lawfully to occupy that subdivided land with any development on it which has been constructed during the period of occupation which is validated without the requirement to obtain any other permissions or consents under any other law for that subdivision or development on it; except that such permissions and consents shall be required for any subdivisions or developments on the land which commence after the commencement of this Act.

(8) Where the disposition for which a certificate of validation is issued was a purported mortgage, charge or lien on the land, the issue of a certificate of validation to the lender, charge or holder of the lien shall operate—

- (a) as a grant of approval for the mortgage, charge or lien;
- (b) to bring that mortgage or charge, not being a customary mortgage or charge, within the provisions of the Registration of Documents Act <sup>xxxviii\*</sup>, or where the mortgage was of an interest in land registered under the Land Registration Act <sup>xxxix\*</sup>, under the provisions of that Act.

(9) Where the occupation or transaction which is to be validated by a certificate of validation is an occupation or transaction which cannot with any certainty be related to any of the legal transactions referred to in subsections (5) to (8) or which was commenced as a result of a transaction governed by customary law, the Commissioner shall, after an investigation of the incidents of the occupation and any transactions relating to them of the land and taking any advice on customary law which he considers necessary, classify that transaction into one of the categories referred to in subsections (5) to (8) and issue a certificate of validation accordingly.

(10) Where a person has received a certificate of validation under subsections (5) to (9), he may pursue any action which may be required to obtain or register or otherwise perfect the interest in land referred to in those subsections and until he does so take any action referred to in this subsection, the interest in land which he has obtained through a certificate of valuation shall not be capable of being the subject of any disposition.

#### **54. Effect of non-application for certificate of validation**

(1) Where a person who occupies land under a disposition to which section 53 applies does not comply with that section immediately before the termination of the date referred to in that section or any later date which the Minister may prescribe, the interest by which the land was occupied by that person shall be deemed to be a licence, valid and irrevocable until the end of the period of six years referred to in section 53, without prejudice to any derivative rights which that person may have created during his occupation and which have been validated by a certificate of validation issued under section 53.

(2) At any time before the end of the period for which the licence referred to in subsection (1) is valid and irrevocable, the occupier under that licence may apply for a right of occupancy or as the case may be a lease and the provisions of sections 24 to 52 shall apply to that application as if it were an application for a right of occupancy or as the case may be an application for the disposition of a lease under sections 24 to 52.

(3) Where an occupier to which this section applies is refused a right of occupancy or a lease, he shall be entitled to compensation for the value of the unexhausted improvements on the land.

**55. Validated derivative rights where certificate of validation not applied for**

(1) Where a person who occupies land under an irrevocable licence created under the provisions of section 54 is granted a right of occupancy as a result of an application for a right of occupancy under subsection (2) of section 54, any derivative right in that land validated under and in accordance with the provisions of sections 53 to 57 shall be held to be that right of occupancy.

(2) Where a person who occupies land under an irrevocable licence created under the provisions of section 54 is refused a right of occupancy, a lease validated under and in accordance with the provisions of sections 53 to 57 held of the interest in land which was by section 54 converted into an irrevocable licence, shall, at the expiry of the period of the irrevocable licence, be converted into a right of occupancy for the same term as the lease was granted for, but if that term was more than thirty-three years or the term was indeterminate or unclear, then the term of the right of occupancy shall be for thirty-three years.

(3) A validated derivative right of occupation created out of an interest in land which was, until it was converted into an irrevocable licence by the provisions of section 54, a derivative right, shall as from the date of the termination of the irrevocable licence, be held of the next superior holder of a validated derivative right of occupation, or, where there is no such person, the holder of a validated right of occupancy, or as the case may be, a right of occupancy granted under the provisions of section 53.

(4) The terms and conditions on which a validated derivative right of occupation shall be held under this section shall be as near as may be the same as it was held of the unauthorised disposition immediately before the provisions of section 53 were applied to that unauthorised disposition; except that any terms and conditions that conflict with or are inconsistent with any of the provisions contained in sections 61 to 166 of this Act shall not be valid.

(5) Where the terms and conditions on which a validated derivative right of occupation is to be held of a person under this section are not clear or the parties cannot agree on them, either party or both of them may—

- (a) refer the matter to a court for its decision; or
- (b) request the Commissioner to assist the parties to reach an agreement on those terms and conditions.

(6) Where any land or interest in land to which this section applies has been made the subject of one or more mortgages during any time prior to the application of section 53 to the land or any interest in the land which has come into being through an unauthorised disposition, and those mortgages have been validated in accordance with section 53, the following rules shall apply to determine the priority of those mortgages—

- (a) where the mortgages have been registered under the Registration of Documents Act <sup>xl\*</sup>, their priority shall rank in accordance with the date of their registration;
- (b) where two or more mortgages have been validated through the issuing of a certificate of validation, their priority between themselves shall rank in

- accordance with the date, recorded on the certificate of validation, of when those certificates were issued but after any mortgage referred to in paragraph (a);
- (c) a mortgage registered under the Registration of Documents Act <sup>xli\*</sup>, shall rank before any validated derivative right of occupation irrespective of when those certificates were issued but after any mortgage referred to in paragraph (a);
  - (d) a mortgage validated by the issuing of a certificate of validation which was created before a derivative right of occupation validated by the issuing of a certificate of validation shall rank before that derivative right of occupation validated by the issuing of a certificate of validation shall rank before that derivative right of occupation irrespective of the date when the two certificates were issued.

## **SUBPART 2**

### **REGULARISATION OF INTERESTS IN LAND (ss 56-60)**

#### **56. Application of sections 56 to 60**

Sections 56 to 60 of this Act apply to land within the boundaries of any urban authority and to any land in a peri-urban area whether that land is within the boundaries of a village and is village land or not.

#### **57. Purpose of and criteria for declaring a scheme of regularisation**

(1) The purpose of a scheme of regularisation is to facilitate the recording, adjudication, classification and registration of the occupation and use of land by those persons living and working in an area declared by sections 56 to 60 of this Act to be subject to a scheme of regularisation.

(2) The criteria to be taken into account in determining whether to declare a scheme of regularisation in any area are—

- (a) Whether the area is used substantially for habitation in dwellings of their own construction or dwelling places adapted from buildings abandoned by their former occupiers by persons holding at the will or sufferance of a person having title to the land or as trespassers;
- (b) whether a substantial number of persons living in the area appear to have no apparent lawful title to their use and occupation of land notwithstanding that they have paid for or are paying for the land they are occupying and manage the land in accordance with rules generally recognised within the area;
- (c) whether the land, although part of an urban local authority is occupied under customary land law, where that customary land law is the law of one group of people living in the area;
- (d) whether the area is a substantially built-up area;
- (e) whether the area has been or is likely to be declared to be a planning area under the Town and Country Planning Act <sup>xlii\*</sup>;
- (f) whether the area has a substantial number of persons who have lived there for a substantial period of time so that the area is a well established and settled area from a social point of view;
- (g) whether there is evidence that despite the lack of any security of tenure for the persons living in the area, a considerable number of such persons appear to be investing in their houses and businesses and attempting to improve the area through their own initiatives;
- (h) whether a substantial number of people and community-based organisations within the area indicate that they wish to participate in a scheme of regularisation;

- (i) such other criteria which may be prescribed or which the Minister considers relevant.

#### **58. Determination of whether to declare a scheme of regularisation**

(1) The Minister may, of his own motion or at the request of an urban authority or a village council within an urban or peri-urban area, either direct the Commissioner to consider, or appoint an inquiry under section 18 to consider the question of whether any area to which sections 60 to 64 applies be declared to be an area of regularisation, shall—

- (a) cause to be convened one or more meetings in the area to explain to the residents of the area the nature and purpose of, and procedures to be followed in the declaration and implementation of a scheme of regularisation and to listen and take account of the views of the residents on the matter;
- (b) cause to be prepared a report on the existing state of land tenure in the area and the nature and basis of the tenure under which persons in the area occupy land in the area;
- (c) cause an estimate to be prepared to what will need to be undertaken, the time it will take and the costs to carry out a scheme of regularisation;
- (d) assemble any other information which the Commissioner considers necessary or which may be prescribed to enable a decision to be taken to proceed with a scheme of regularisation,

and submit to the Minister a report based on the matters referred to in paragraphs (a) to (d) on whether a scheme of regularisation should be declared.

(2) Where the Minister, after considering the report submitted to him under subsection (1) determines to proceed to declare a scheme of regularisation, he shall direct the Commissioner to cause to be prepared a draft of a scheme of regularisation.

(3) Any preparation of a scheme of regularisation which is referred to in subsection (2) shall involve the urban authority within whose jurisdiction the proposed scheme area is or contiguous to whose area the peri-urban area is in which the proposed scheme area is and shall take account of any report prepared under this section.

#### **59. Procedure for declaration of scheme of regularisation**

(1) Where a draft scheme of regularisation has been prepared—

- (a) a summary of the draft scheme of regularisation shall be published in at least one Kiswahili language newspaper circulating in the proposed regularisation area;
- (b) the Commissioner shall give publicity to the substance of the draft scheme within the area of the draft scheme in a manner which is customary in that area of which is likely to bring that fact to the attention of people living in that area where the content of the draft scheme may be explained to those people and their views on the draft scheme may be obtained;
- (c) the local authority referred to in subsection (4) of section 59 shall consider the draft scheme and send its comments to the Commissioner.

(2) Where a draft scheme will or is likely to involve the movement or relocation of people from their homes or places of work or the acquisition of land in the area or the redistribution of land or the readjustment of boundaries and areas of plots of land, the Commissioner shall serve a notice on every person occupying land affected or likely to be affected by any parts of that draft scheme and shall not reach any final conclusions on the draft scheme to which this subsection refers until all persons on whom a notice has been served who so desire it have had an opportunity of being heard on these proposals in the draft scheme.

(3) A Commissioner shall, after considering the views of people in the area, the urban authority for the area or contiguous to the peri-urban area and any other persons who have submitted comments on the draft plan and the views of people to whom subsection (4) applies, if he considers it necessary or desirable to do so, revise the draft scheme and submit the revised draft scheme to the Minister.

(4) A Commissioner shall give not less than fourteen days' notice of any public meeting at which any matter connected with a draft scheme is to be discussed and of the time by which any written or other submissions or representations may be made on the draft scheme.

(5) The Minister may, after considering the draft scheme submitted to him by the Commissioner—

- (a) approve the draft scheme and declare a scheme of regularisation by order published in the *Gazette* in terms of the draft scheme; or
- (b) refer the draft scheme back to the Commissioner for further work in accordance with any directions which the Minister may give the Commissioner; or
- (c) reject the draft scheme.

(6) A scheme of regularisation declared by the Minister under this Act shall be deemed to be a scheme under the Town and Country Planning Act <sup>xliii\*</sup>.

#### **60. Content of scheme of regularisation**

(1) A scheme of regularisation may contain all or any of the following matters, that is to say—

- (a) arrangements for the survey, adjudication and recording of the interests in land claimed by those persons occupying land in the regularisation area, which arrangements shall be based, as far as is practicable, on the provisions of sections 48 to 58 of the Village Land Act, 1998, relating to adjudication of interests in land;
- (b) arrangements for the readjustment of the boundaries of plots of land;
- (c) arrangements, within the framework of the rights in land provided for under paragraphs (a) and (b), for the better planning and layout of the land, including the pooling, sharing and redistribution of rights in land;
- (d) arrangements for the involvement of the local authorities having jurisdiction in the regularisation area in the implementation of the scheme;
- (e) arrangements for the involvement of the people whose land is the subject of the scheme of regularisation in the implementation of the scheme;
- (f) arrangement for the assessment and payment of any compensation that may be payable in connection with the implementation of the scheme;
- (g) a budget for the scheme;
- (h) any other matters which may be prescribed.

(2) The Commissioner shall be responsible for the implementation of a scheme of regularisation but he may, and if so directed by the Minister shall, delegate the whole or any part of the implementation of that scheme to the urban authority where the regularisation area is situate or, if in a peri-urban area, to the Village Council where the regularisation area is situate.

(3) For avoidance of doubt, no scheme of regularisation under this section shall be implemented until—

- (a) occupation and use of land by those persons living and working in the area declared by sections 56 to 60 have been recorded, adjudicated, classified and registered;
- (b) the President has acquired existing rights and interests in terms of section 45 of the Town and Country Planning Act <sup>xliv\*</sup>; and

- (c) fair compensation is paid promptly for the rights and interests to be acquired by the President.

**PART VIII**  
**DISPOSITIONS AFFECTING LAND (ss 61-76)**  
**SUBPART 1**  
**GENERAL PROVISIONS (ss 61-67)**

**61. Dispositions and dealings affecting land**

(1) No right of occupancy, lease, or mortgage shall be capable of being disposed of or dealt with except in accordance with this Act, and any attempt to dispose of any right of occupancy, lease or mortgage otherwise than in accordance with this Act shall be ineffectual to create, extinguish, transfer, vary or effect any right or interest in land, or in the right of occupancy, lease or mortgage.

(2) The provisions of sections 61 to 166 of this Act shall not, unless otherwise expressly declared to do so, apply to a disposition of or dealing with land carried out and executed in accordance with customary law.

(3) For avoidance of doubt dispositions of customary rights of occupancy shall be governed by customary law.

**62. Instruments of disposition**

(1) Every instrument effecting any disposition under this Act shall use any of the prescribed forms which is specified in relation to that disposition under this Act or any other law.

(2) No instrument effecting any disposition under this Act shall operate to sell or assign a right of occupancy or create, transfer or otherwise affect any right of occupancy, lease or mortgage until it has been registered in accordance with the laws relating to the registration of instruments affecting the land in respect of which the disposition has been made.

(3) The provisions of subsection (2) shall not apply to any dispositions exempt from registration.

(4) This section shall not apply to or affect the operation of any contract for a disposition under this Act.

**63. Execution of instruments in writing**

(1) Without prejudice to the provisions relating to attestations and execution under the Land Registration Act <sup>xlv\*</sup> and Registration of Documents Act <sup>xlvi\*</sup> every instrument effecting any disposition under this Act shall, subject to the provisions of this Act, be executed in accordance with the provisions of this section by each of the parties consenting to it.

(2) The execution of any instrument referred to in subsection (1) by a person shall consist of his signing it or affixing a thumbprint or other mark which shall evidence his personal acceptance of that instrument.

(3) The execution of any instrument referred to in by a corporate body, an association, a co-operative society or any other like organisation shall be effected in any manner authorised by the constitution of those organisations or by any law for the time being in force.

**64. Writing required for enforcement of contracts relating to land**

(1) A contract for the disposition of a right of occupancy or any derivative right in it or a mortgage is enforceable in a proceeding only if—

- (a) the contract is in writing or there is a written memorandum of its terms;
- (b) the contract or the written memorandum is signed by the party against whom

the contract is sought to be enforced.

(2) A contract for a disposition referred to in subsection (1) may be made using a prescribed form.

(3) The Minister may, after seeking and taking into account the recommendations of the Commissioner and any other organisations having an interest in the operation of dispositions of land, prescribe terms and conditions which shall, subject to any modification or limitation provided for in the contract, form a part of any contract for the disposition of a right of occupancy.

(4) This section shall not apply to—

- (a) a short term lease;
- (b) a disposition by order of a court;
- (c) a disposition by operation of laws.

(5) This section shall not affect—

- (a) the creation or operation of a resulting, implied or constructive trust;
- (b) the making or operation of a will;
- (c) an arrangement, recognised by customary law, for the temporary disposition of a customary interest in land.

#### **65. A person may make a disposition to himself**

(1) For avoidance of doubt it is hereby declared that any person may make a disposition to himself and any other person or together with any other person to himself alone.

(2) The sale, assignment or disposition referred to in subsection (1) is enforceable in the same manner as a sale, assignment or disposition to another person.

#### **66. Covenants to be implied in certain instruments**

(1) This section applies to an instrument coming into operation on or after the date of the coming into effect of this Part of the Act which for valuable consideration—

- (a) transfers or sells a right of occupancy in land;
- (b) creates, transfers or assigns a lease.

(2) Every instrument to which this section applies contains the implied covenants set out in section 67 unless a contrary intention is expressed in the manner provided for in this section.

(3) A covenant implied in an instrument under this Act has the same force and effect and may be enforced in the same manner as if it has been expressed in that instrument, subject, however, to subsection (4).

(4) A covenant implied in an instrument under this Act may be negated, varied or extended—

- (a) by the express terms of the instrument; or
- (b) by a written memorandum executed as the instrument was required to be executed, by the parties to the instrument; or
- (c) in the case of a short term lease that is not made in writing, by the express or implied agreement of the parties.

(5) The covenants implied in an instrument by the section relate only to the acts and omissions of—

- (a) the person who creates, transfers or assigns the right of occupancy, lease or mortgage;
- (b) all persons through whom that person derives title otherwise than by purchase for valuable consideration.

#### **67. The implied covenants**

The following are the covenants implied, subject to section 66, in every instrument to which section 66 refers—

- (a) a disposition of a right of occupancy or a lease is to be taken to include and to convey with the interest being conveyed all rights, easements, and appurtenances belonging to the land, or the interest being conveyed or usually held or enjoyed with the land or the interest being conveyed, but this covenant does not give a person a better title to any interest in land referred to in this covenant than the title which the disposition of which it is a part gives that person;
- (b) a person obtaining a right of occupancy or a lease by means of a disposition not prejudicially affected by notice of any instrument, fact or thing, unless—
  - (i) it is within that person's knowledge, or would have come to that person's knowledge if any inquiries and inspections had been made which ought reasonably to have been made by that person; or
  - (ii) it has in the disposition as to which a question of notice arises, come to the knowledge of the person's advocate or agent as such if such inquiries had been made as ought reasonably to have been made by that advocate or agent as such,

except that the covenant in this paragraph does not exempt the person referred to in this paragraph from any liability under or from any obligation to perform or observe any covenant, condition, provision or restriction contained in any instrument under which his title is derived, mediately or immediately, and that liability or obligation may be enforced in the same manner and to the same extent as if this covenant were not part of the disposition;
- (c) a person who by an instrument to which section 66 refers creates, transfers, or assigns an interest in land (which term shall be taken to include a sublease), covenants with the grantee, transferee, assignee or sublessee that—
  - (i) he has the right and the power to create, transfer or assign that interest free of all encumbrances except those to which the interest will remain subject as specified in the instrument or as is provided for by the law;
  - (ii) the person who becomes entitled to the interest and all persons claiming under that person will be able quietly to enjoy the interest without disturbance by the grantor, transferor, assignor or lessor or all persons through whom that a person derives title;
  - (iii) he will, at the request and expense of the person who becomes entitled to the interest, do all acts and execute all documents for the better assuring of the title to the interest as that person may reasonably require from time to time;
  - (iv) all rent due under the right of occupancy or lease, including, where relevant, a superior lease, has been paid and all covenants and conditions contained in it have been performed and observed.

## **SUBPART 2**

### **DISPOSITIONS TO PREJUDICE CREDITORS (ss 68-72)**

#### **68. Purpose of this Part**

The purpose of sections 68 to 76 is to enable a court to order that any interest in land acquired or received under or through certain prejudicial dispositions of those interests in land made by a debtor or the value of those interests in land be restored for the benefit of unsecured creditors but no order referred to in this section has effect so as to increase or prejudice the value of any security held by a creditor over the interest in land of the debtor.



## **69. Prejudicial dispositions**

(1) A disposition under this Act shall be taken to prejudice a creditor if it hinders' delays or defeats or is intended to hinder, delay or defeat the exercise by a creditor of any right of recourse to land or any interest in land in respect of which that disposition has been made in order to satisfy in whole or in part any debt owed to the creditor by the person making the disposition and that person is unable to pay all his debts without recourse to that land or any interest in it.

(2) A disposition shall not be taken to prejudice a creditor if it is made with the intention only of preferring one creditor over another.

## **70. Dispositions to prejudice creditors may be set aside**

(1) A creditor, and any public officer, Government department or parastatal body charged with the responsibility for collecting monies owing to the Government or any part of it by any person may apply to the court under this section for an order by the court to set aside a prejudicial disposition.

(2) An application made under this section shall—

- (a) specify the land to which it relates;
- (b) specify the disposition alleged to be prejudicial;
- (c) be served on—
  - (i) the person who has made the disposition;
  - (ii) the person in whose favour the disposition has been made;
  - (iii) any other person involved in the disposition from whom compensation is sought.

(3) A court may, subject to section 72, on being satisfied that an applicant has been prejudiced by a disposition to which this Subpart applies, make an order—

- (a) directing any person who acquired or received land under that a disposition or through a person who acquired or received land under such a disposition—
  - (i) to pay any amount of compensation within any time to the applicant which the court shall specify;
  - (ii) to re-assign a right of occupancy or a derivative right to the person who has made the prejudicial disposition;
  - (iii) to take any other action which the court may specify;
- (b) directing the debtor who made the prejudicial disposition—
  - (i) to hold the land restored to him through the re-assignment of a right of occupancy or derivative right under subparagraph (ii) of paragraph (a) of subsection (3) as a trustee for his creditors; and
  - (ii) to deal with the land so held only in accordance with any orders which the court may make for the purpose of enabling the creditors to be paid by the debtor.

## **71. Protection of persons receiving land under a prejudicial disposition**

(1) Where a person acquires or receives land in respect of which a court could make an order for restoration or the payment of reasonable compensation under section 70, the court shall not make that order against that person if that person proves that he—

- (a) acquired or received the land in good faith and without knowledge of the fact that it has been the subject of a disposition to which section 70 applies; or
- (b) acquired or received the land through a person who acquired or received it in the circumstances set out in paragraph (a).

(2) Reference to knowledge in this section shall be taken to include actual, constructive and imputed knowledge.

## **72. Application of this Subpart to customary dispositions**

A creditor for whose protection this Subpart of this Act applies who alleges and

provides *prima facie* evidence that a disposition made under customary law has been made with the same purpose and effect as a prejudicial disposition to which this Subpart applies may apply to the court under section 70 for that disposition to be set aside and the court shall, on being satisfied that that customary disposition is a prejudicial disposition, apply the provisions of this Subpart to that prejudicial disposition.

### **SUBPART 3 SALE OF RIGHT OF OCCUPANCY (ss 73-76)**

#### **73. Regaining possession of land after concluding contract for sale of right of occupancy**

(1) Where, under a contract for the sale of a right of occupancy, the purchaser has entered into possession of the land, the vendor may exercise any contractual right to rescind the contract by reason of a breach of the contract by the purchaser only by—

- (a) resuming possession of the land peaceably; or
- (b) obtaining an order for possession of the land from the court in accordance with the provisions of section 74.

(2) This section does not prevent the vendor from claiming damages for the breach of a contract for a sale or for breach of any other duty to the vendor which the purchaser may be under independently of the contract or affect the amount of damages which the vendor may claim by way of damages.

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

#### **74. Procedure for obtaining order for possession**

(1) Where the vendor proposes to seek to regain possession of land under section 73, 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 any thing 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 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 of compensation different to that proposed by the vendor in the notice;
  - (iii) propose alternative remedies to those set out in the notice;
  - (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.

**75. Relief against rescission of contract for sale of right of occupancy**

(1) Where the vendor, after serving on the purchaser a notice under section 74, 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 73, 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;
- (d) the time for remedying a breach or for paying an amount by way of 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.

**76. Purchaser of right of occupancy may seek relief against performance of contract to assign**

(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 a right of occupancy 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 IX  
LEASES (ss 77-110)  
SUBPART 1**

**GENERAL PROVISIONS (ss 77-87)**

**77. Application of this Part**

(1) Unless otherwise provided for, the provisions of sections 77 to 110 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 that 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.

#### **78. Power to lease right of occupancy**

(1) Subject to the provisions of this Act, the holder of a granted right of occupancy may lease that right of occupancy 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.

(2) Subject to the provisions of section 41(2) the maximum term for which any lease may be granted shall be ten days less than the period for which the right of occupancy has been granted where the right of occupancy has been granted for a definite period.

(3) Where part only of the land which is held of a right of occupancy is leased, the lease shall be accompanied by a plan or other description of the leased part which is sufficient to enable the part to be accurately identified and, where so required, registered.

#### **79. Periodic leases**

(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 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 subparagraph (i) continue in force until the lease is terminated in accordance with this section.

(2) Where the holder of a right of occupancy 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.

#### **80. Short term leases**

(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 79 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 but any lease of a short term lease may—
    - (a) where the short term lease has been granted out of a right of occupancy registered under the Land Registration Act <sup>xlvii\*</sup>, enter a caveat under Part IX of that Act to protect that lease;
    - (b) where the short term lease has been granted out of an interest in land registered under the Registration of Documents Act <sup>xlviii\*</sup>, enter a caveat under section 32 of that Act to protect that lease.

#### **81. Lease terminating on the occurrence of a future event**

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.

#### **82. Lessee remaining in possession after termination of lease without consent of lessor**

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

#### **83. Future leases**

(1) For the avoidance of doubt, it is hereby provided that a lease of a right of occupancy 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 law applicable to the registration of interests in the land out of which that future lease has been created.

#### **84. Lessor's consent to dealing with lease**

(1) Where a lease contains a condition, express or implied, by the lessee that he will not transfer, sublet, mortgage 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.

#### **85. Notice by joint occupiers**

If a lease is entered into by—

- (a) two or more lessors as co-occupiers; or
- (b) two or more lessees as co-occupiers,

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

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

(1) This section applies to a sublease coming into operation after the date of the commencement of this Act under which a lessee enters or purports to enter into a sublease for a term which will expire at the same time as or 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 sublessee, unless a contrary intention appears from the sublease 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 sublessee may have in respect of that reduction; or
- (b) if the term of the head lease is extended or renewed beyond the term for which the sublease was created, the sublease shall expire at the end of that original term; or
- (c) 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 sublessee than the original terms and conditions.

**87. Surrender to enable new head lease to be entered into not to affect sublease**

(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
- (b) all rights and obligations under the sublease, including those which relate to any period 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.

## **SUBPART 2**

### **COVENANTS, CONDITIONS AND POWERS IMPLIED IN LEASES (ss 88-93)**

#### **88. Covenants implied in leases on part of lessor**

(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 the 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 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 occupier under a right of occupancy 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 extent 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 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 purposes, 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 are or shall be payable exclusively by the lessor under any law.

(2) There shall be implied in every lease covenant 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 performance of which has been assumed by the lessee expressly or impliedly in the lease.

**89. Covenants implied in leases on part of lessee**

- (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 right of occupancy of the 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 88 and except where part only of a building is leased, to keep all 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 88, where part only of a building is 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, mortgage, 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 paragraphs (a), (b), (c), (g), (i) and (j).

#### **90. Application of covenants to customary leases**

(1) Subject to the provisions of section 21 of this Act, the parties to a customary lease may adopt and incorporate into such a lease any or all of the covenants set out in sections 88 and 89.

(2) The Minister may, after taking account of the advice of the Commissioner, prescribe that such of the covenants as are set out in section 88 and 89 as he shall determine shall be implied in a customary lease in the same manner and to the same extent as they are implied in the leases and the parties shall adopt provisions of section 62 of this Act.

#### **91. Meaning of "the usual covenants"**

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 88 and 89.

#### **92. Meaning of "in a reasonable state of repair"**

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.

#### **93. Consent by lessor to application by lessee under lease**

(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 mortgage over the lease;
- (g) take any of the actions referred to in subparagraph (a), (b), (c), (d), (e) or (f) in relation to any part of the leased land or buildings, or for any part of the 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 pre-condition;
  - (c) where the lessee proposes 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 pre-condition 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 person 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 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).

### **SUBPART 3**

#### **TRANSFERS, ASSIGNMENTS AND TRANSACTIONS (ss 94-98)**

##### **94. Merger of lessor's interest not to affect remedies**

Where a sublessor surrenders his head lease to or merges his head lease with the right of occupancy out of which it was created, the holder of the right of occupancy 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 sublease to the sublessee as the sublessor had before he surrendered or merged his head lease.

##### **95. Burden and benefit of covenants to run with the reversion**

(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 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 lease against 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).

**96. Effect of payment by lessee to assignor of reversion**

(1) If a lessor has transferred or assigned the reversion, payment of all or part of the rent or other moneys 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 reversion is not, in itself, actual notice to the lessee of the transfer, notwithstanding any other provision to the contrary in any other written law.

**97. Transferor or assignor of lease released from liability to pay rent and observe covenants thereafter**

(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 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 the 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, there 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.

#### **98. Transferee or assignee as lessee**

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

- (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 and remedy for and 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.

(4) Section 95 of the Land Registration Act <sup>xlix\*</sup> applies to any lease created or coming into effect under this Part.

### **SUBPART 4 REMEDIES AND RELIEF (ss 99-110)**

#### **99. Application of this Subpart to non-customary leases**

This Subpart shall apply to all leases and licences.

#### **100. Application of this Subpart to customary leases**

(1) Subject to the provisions of this section, the provisions of this Subpart shall not apply to customary leases.

(2) The provisions of this Subpart shall apply to the lease of a dwelling-house expressed to be leased by a customary lease where there is no rule of customary law applicable.

(3) Where any land or buildings have been leased by a customary lease which the parties to that lease have agreed shall be governed by any of the provisions or part of the provisions of this Part, then the provisions of this Subpart shall apply to that customary lease.

(4) Where, in any customary lease other than a customary lease to which subsections (2) and (3) apply, a lessor seeks to take possession of the leased land or buildings on the grounds that a lessee has not complied with the terms and conditions of that customary lease, then—

- (a) the lessor must act and act only in strict accordance with the customary law applying to leases;
- (b) the lessee who is alleged not to have complied with the terms and conditions of the customary lease may refer the matter to the Village Land Council and the Village Land Council shall in considering the matter—
  - (i) have regard to the extent to which the customary law applicable to the lease provides for a fair balance of rights and duties between the lessor and the lessee and in particular whether the lessee has been given notice that he is not complying with the terms and conditions of the lease and an opportunity to rectify the matter;
  - (ii) where it considers that the lessee ought to be granted relief against the lessor's demand for possession of the leased land or buildings, be guided by the provisions of sections 96 and 97 and in particular whether the lessor has conducted himself in relation to the lessee as respects the lease as a reasonable lessor should so conduct himself.

(5) In having regard to whether a lessor under a customary lease has conducted himself as a reasonable lessor should, the Village Land Council shall, while having regard to the customary law applicable to the lease, be guided by the provisions of this Part specifically applicable to lessors.

(6) A lessor or lessee who is dissatisfied with a determination by a Village Land Council may appeal to the district court which shall apply to that appeal, as far as the circumstances shall permit, the provisions of section 97.

#### **101. Abolition of determination of lease by re-entry or forfeiture**

(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 Subpart, 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 Subpart is of no effect.

#### **102. Abolition of distress for rent**

(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.

#### **103. Termination of lease for non-payment of rent or breach of covenant**

(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 Minister may make rules of the court providing 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.

**104. Notice of intention to terminate a lease for breach of covenant**

(1) Where a 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 of the following matters—

- (a) the nature and extent of the breach complained of;
- (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, for relief against the termination of the lease.

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

(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 serviced on a lessee under this section shall adequately inform the recipient of the following matters:

- (a) The nature and extent of the breach;
- (b) where the lessor considers that the breach is capable of being remedied—
  - (i) the action which the lessor must take or desist from taking to remedy the breach;
  - (ii) the 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 lessor 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.

**106. Consequential provisions relating to notices under sections 104 and 105**

(1) Where the lessor has served a notice on a lessee under sections 104 and 105, he shall at the same time or as soon as practicable serve a copy of that notice on—

- (a) the sublessee;
- (b) the spouse of the lessee;
- (c) the mortgagee of the lessee or of the 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 104 or 105 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 Minister may by regulations prescribe the form of the notices to be served under sections 104 and 105 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.

#### **107. Application for relief**

(1) An application for relief may be made to a district 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 of 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-occupiers, by one or more of them on their own behalf;
- (c) a sublessee;
- (d) a mortgagee of the lessee or 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-occupiers, then, unless the court orders otherwise, it must be served on all the co-occupiers.

(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 sections 104 and 105 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;
- (d) the period for remedying the breach specified in the notice served under section 104 was reasonable or had expired, and the court may grant relief without determining all or any of those matters.

#### **108. Power of the court with respect to order of termination and relief**

(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 <sup>1\*</sup>, 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 time within which it has to be taken or desisted from as specified in the notice served by the lessor under section 105,

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 105;
- (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 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 104;
- (c) alter the amount of compensation required to be paid by the lessee by a notice served under section 104;
- (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 105;
- (e) provide that any arrears of rent or other payments due under the lease be paid in such instalments 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 mortgagee of the lessee; or
  - (ii) a sublessee,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.

### **109. Remedies of lessor and lessee for breach of covenant**

(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
- (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 lease may—

- (a) commence an action against the lessor—
  - (i) for damages; or
  - (ii) for a decree of specific performance; or
  - (iii) for an injunction; or
- (b) in any case where the lessor has failed to comply with the covenants contained in paragraph (c) or (d) of subsection (1) of section 88—
  - (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
- (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 required.

(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 with 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.

### **110. Unlawful eviction**

(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 X**  
**MORTGAGES (ss 111-142)**  
**SUBPART 1**  
**GENERAL PROVISIONS (ss 111-119)**

**111. Application of this Part to mortgages**

(1) This Part applies to all mortgages of land or interests in land, made or coming into effect before, on and after the coming into operation of this Act and any other mortgages of land which are specifically referred to in any section in this Part and references to mortgages in this Part shall apply and apply only to mortgages of land and interests in land.

(2) References to a mortgage in this Part include, unless it is stated otherwise or the context makes plain that it is otherwise, a small mortgage.

(3) References in this Part to "the mortgaged land" shall be taken to mean and include a mortgaged right of occupancy, a mortgaged lease and sublease and a second or subsequent mortgage.

**112. Power to create mortgage**

(1) A occupier of land under a right of occupancy and a lessee may, by an instrument in the prescribed form, mortgage 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 fulfilment of a condition.

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

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

- (a) any document or form unused in applying for such a mortgage 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 mortgage is signed by or there is evidence that it has been assented to by the borrower living in that matrimonial home.

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

- (a) any prohibition or limitation imposed by this act or any written law;
- (b) any restriction contained in an instrument creating or affecting the interest in land which is to be the subject of a mortgage.

(5) In respect of a mortgage other than a mortgage of land registered under the Land Registration Act <sup>11\*</sup>, 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 mortgage if it is not so registered.

(6) Nothing in this section shall operate to prevent a borrower from offering and a lender from excepting—

- (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 a granted right of occupancy;
  - (ii) a certificate of a customary right of occupancy;
  - (iii) a document of a lease;
  - (iv) any other document which may be agreed upon evidencing a right to an interest land; or
  - (v) any other documents which may be agreed upon,

to secure any payments which are referred in subsection (1).

(7) The arrangement specified in paragraph (a) of subsection (6) may be referred to as an "informal mortgage" 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".

### **113. Application of this Part to customary mortgages**

(1) The creation and operation of customary mortgages of land shall, subject to the provisions of this section, continue to be in accordance with the customary law applicable to the land in respect of which the customary mortgage is created.

(2) Where the lender under a customary mortgage seeks to exercise any customary remedy which involves or may involve the borrower being disposed or permanently deprived of the occupation of the mortgaged land, the lender shall, after using the services of the Village Land Council, try and mediate on the application of the proposed or any other remedy, make an application to the Village Land Council for an order authorising the exercise of that remedy and the Village Land Council shall, in determining whether to authorise the exercise of that remedy, be guided by the provisions of sections 138 and 140 applying to small mortgages, whether the amount of the loan under the customary mortgage exceeds the amount that may be lent on a small mortgage or not.

(3) The borrower under a customary mortgage may, after making use of the services of the Village Land Council to try and mediate on the matter with the lender, apply to a Village Land Council for the mortgage to be reopened on the ground that the terms of the mortgage are—

- (a) unfair; or
  - (b) an unreasonable departure from the normal terms of a customary mortgage applicable in the area where the land is located; or
  - (c) disadvantageous to the interests of the dependants of the borrower,
- and the Tribunal shall, in considering and determining that application, be guided by the provisions of sections 141 and 142.

(4) In any case concerning a customary mortgage, the Tribunal determining the case shall, where it appears to the Tribunal that—

- (a) there is a *lacuna* in the customary law applying to that mortgage; and
- (b) no other system of customary law makes adequate or any provision for the matter in respect of which there is a *lacuna*,

be guided by the relevant provisions of this Part of this Act.

### **114. Small mortgages**

(1) In this Act, a "small mortgage" is a mortgage for a period of years not exceeding three years to secure any sum of money not exceeding the sum set out in subsection (2) or which shall from time to time be set by order made by the Minister, after consultation with—

- (a) the Commissioner;
- (b) any body or organisation whose principal business is to advance or to represent

those organisations whose principal business is to advance money on the security of a mortgage.

(2) The sum of money which may be secured by a small mortgage shall not, unless and until it is altered by order made by the Minister in accordance with subsection (1), be greater than half a million shillings.

(3) A small mortgage instrument and any other document which is ancillary to, or is to be used by the lender to inform the borrower of all the rights and obligations of the parties to, a small mortgage shall be in such a language and use such clear and simple words, typography and layout that the borrower is made fully aware—

- (a) of the rights and duties conferred or imposed on him by the mortgage or any document ancillary to the mortgage;
- (b) of the protection and remedies available to him under this Act and any other law applicable to small mortgages;
- (c) such other matters as may be prescribed.

(4) It shall be the duty of the lender of monies secured by a small mortgage to give to the borrower and, where the borrower is married, the spouse or spouses of the borrower and any other person who undertakes any obligation under that small mortgage, a copy of the mortgage instrument prepared in accordance with the provisions of subsection (3).

(5) If it appears to the court on an application to it under sections 138 to 142 that the small mortgage does not comply in every particular with the provisions of subsections (3) and (4) and any regulations made under this section which deal with the matters contained in those subsections, the court shall refuse to make the order applied for unless it appears to the court that—

- (a) every person to whom subsection (4) refers received, before the creation of the small mortgage, as full an explanation of the consequences of that mortgage as if those subsections had been complied with; or
- (b) there are exceptional circumstances which provide a satisfactory explanation of the failure to comply with those subsections.

(6) Any advance of money which purports to be under a small mortgage but which exceeds the maximum sum of money which may, under subsection (2) or any order made by the Minister under subsection (1), from time to time be advanced under a small mortgage shall cease to be a small mortgage.

(7) Any provision, term, covenant or condition in a small mortgage which purports to exclude and provision of this Act which specifically applies to a small mortgage shall be void.

(8) The Minister may make regulations as to the form, content and layout of small mortgages and where such regulations set out a model form complying with subsection (3) which may be used to create a small mortgage, any person or organisation advancing money on a small mortgage shall, be under a duty to use documents in connection with their small mortgage no less clear and comprehensive than that model form.

### **115. Mortgage of land to take effect as security only**

(1) On and after the date of the commencement of this Act, a mortgage 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 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 mortgage 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 mortgage had been by way of a sublease.

#### **116. Priority**

- (1) Mortgages shall rank according to the order in which they are registered—
  - (a) in respect of mortgages of land registered under the Land Registration Act <sup>lii\*</sup>, in accordance with section 60(1) of that Act;
  - (b) in respect of all other mortgages, in accordance with the appropriate register.
- (2) Informal mortgages shall rank according to the order in which they are made provided that where an informal mortgage is registered under section 11 of the Registration of Documents Act <sup>liii\*</sup>, it shall take priority over any unregistered informal mortgage.
- (3) For purposes only of determining the priority of mortgages, a customary mortgage shall be deemed to be an informal mortgage, and registration of a customary mortgage in a register of village land shall have the same effect as regards the priority of such a mortgage as if it were registered under section 11 of the Registration of Documents Act <sup>liiv\*</sup>.
- (4) Where two informal mortgages are made on the same day or are registered on the same day, the mortgage 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 mortgage, lends money or money's worth on the security of a mortgage 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 mortgage shall be postponed to the rights of the subsequent lender.
- (6) The rules of priority for informal mortgages shall apply as far as the circumstances shall permit to liens by deposit of documents.

#### **117. Tacking**

- (1) A lender may, subject to the provisions of this section, make provision in the mortgage 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 mortgage unless—
  - (a) the provision for further advances is noted in the register in which the mortgage is registered; or
  - (b) the subsequent lender has consented in writing to the priority of the further advance.
- (3) Subsections (1) and (2) shall not apply to a small mortgage.
- (4) Except as provided for in this section there is no right to tack.
- (5) Where a mortgage provides for the payment for a principal sum by way of instalments, the payment of those instalments shall not be taken to be a further advance.

#### **118. Consolidation**

- (1) Unless there is an express provision to the contrary clearly set out in the mortgage instrument, where a borrower has more than one mortgage with a single lender on several securities he may discharge any or some of the mortgages without having to redeem all mortgages.
- (2) A lender who has made provision in accordance with subsection (1) for the consolidation of his mortgage shall record that right in the register or registers against all the mortgages so consolidated which are registered.

(3) Notwithstanding subsection (1), no right to consolidate shall be exercisable to the prejudice of any person acquiring any right of occupancy 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 mortgage and any attempt to provide for or exercise any powers of consolidation in a small mortgage shall be void.

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

### **119. Variation of a mortgage**

(1) The rate of interest payable under a mortgage 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 mortgage.

(2) The amount secured by a mortgage 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 moneys intended to be secured by the mortgage 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 mortgage 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 mortgage is shortened, extended or renewed, as the case may be, to the date or in the manner specified in the memorandum.

(4) The covenants, conditions and powers expressed or implied in a mortgage 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 mortgage instrument; and
- (b) when so endorsed or annexed to the mortgage instrument, operates to vary the mortgage in accordance with the terms of the memorandum.

## **SUBPART 2 DISCHARGE OF MORTGAGES (ss 120-122)**

### **120. Right to discharge**

(1) Subject to the provisions of this section, on payment of all moneys and the performance of all other conditions and obligations secured by the mortgage the borrower shall be entitled to discharge the mortgage at any time before the mortgaged land has been sold by the lender or a receiver under a power of sale and any agreement or provision in the mortgage 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 mortgage instrument that where a borrower wishes to exercise his right to discharge the mortgage at any time before the expiry of the term of the mortgage—

- (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 mortgage or at any lesser rate which may be agreed,

as well as paying all other monies secured by the mortgage.

(3) A discharge whether of the whole or a part of a mortgage shall be as prescribed under this Act or any other law.

(4) Section 63 of the Land Registration Act <sup>lv\*</sup> shall apply to any mortgage made under this Part.

### **121. Transfer of mortgage**

(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 mortgaged land, in writing request the lender to transfer the mortgage 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 right of occupancy, lease or mortgage that has been mortgaged;
- (b) any surety for the payment of the amount secured by the mortgage;
- (c) any creditor of the borrower who has obtained a decree for sale of the mortgaged right of occupancy, lease or mortgage.

(3) The lender, on receiving a written request made under subsection (1) and on payment by the person or persons making the request of all monies which would have been payable if discharge of the mortgage had been made under section 120, and the performance of all other obligations secured by the mortgage, shall transfer the mortgage to the person named in the written request.

### **122. Lender's consent to transfer**

Where a mortgage 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 right of occupancy 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.

## **SUBPART 3**

### **COVENANTS, CONDITIONS AND POWERS IMPLIED IN MORTGAGES (s 123)**

#### **123. Implied covenants by the borrower**

(1) There shall be implied in every mortgage covenants by the borrower with the lender binding the borrower—

- (a) to pay the principal money on the day appointed in the mortgage 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 mortgage agreement;
- (b) to pay all rates, charges, rent, taxes and other outgoings which are at all times

- (c) payable in respect of the mortgaged land held for a right of occupancy; to repair and keep in repair all buildings and other improvements upon the mortgaged land or to permit the lender or his agent at all reasonable times until the mortgage is discharged and after reasonable notice to the lender, 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 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 mortgage 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 right of occupancy 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 mortgaged 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 right of occupancy 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 mortgage of a lease, during the continuance of the mortgage, 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 of 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 mortgage is a second or subsequent mortgage, that the borrower will pay the interest from time to time accruing on each prior mortgage when it becomes due and will at the proper time repay the principal money or part 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 mortgage.

(2) Reference to the obligation of the borrower in paragraph (b) of subsection (1) to keep all buildings upon the mortgaged 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 92.

(3) The provisions of section 93 shall apply to an application by a borrower to a lender for consent under paragraphs (f) and (g) of subsection (1).

#### **SUBPART 4 POWERS OF THE LENDER (ss 124-142)**

##### **124. Foreclosure abolished**

- (1) Any rule of law, written or unwritten, entitling a mortgagee (lender) to



foreclose the equity of redemption in mortgage 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 mortgaged land held for a right of occupancy or a mortgaged 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 mortgage, other than in accordance with the provisions of this Subpart.

### **125. Remedies of the lender**

(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 mortgage or in the performance or observation of any covenant, express or implied, in any mortgage 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 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 monies due under the mortgage, 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 mortgage, 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 Subpart;
- (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 mortgage;
- (b) where the mortgage is not a small mortgage—
  - (i) appoint a receiver of the income of the mortgaged land;
  - (ii) lease the mortgaged land or where the mortgage is of a lease, sublease the land;
  - (iii) enter into possession of the mortgaged land;
  - (iv) sell the mortgaged land;
- (c) where the mortgage is a small mortgage, apply to the court for an order—
  - (i) to appoint a receiver of the income of the mortgaged land;
  - (ii) to lease the mortgaged land or where the mortgage is of a lease, sublease the land;
  - (iii) to enter into possession of the mortgaged land;
- (d) where the mortgage is a mortgage of land held for a customary right of occupancy—
  - (i) appoint a receiver of the income of the mortgaged land;
  - (ii) apply to the court for an order to—
    - (aa) lease the mortgaged land or where the mortgage is of a lease, sublease the land;

- (bb) enter into possession of the mortgaged land;
- (cc) sell the mortgaged land to any person or group of persons referred to in section 30 of the Village Land Act <sup>lvi\*</sup>.

(4) The Minister shall, by regulations, prescribe the form and content of a notice to be served under this section and where the notice to be served under this section has been so prescribed, a notice served under subsection (1) shall be in that form and shall be void if it is not in that form.

#### **126. Lender's action for money secured by mortgage**

(1) The lender may sue for the money secured by the mortgage 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 a reasonable opportunity to provide further security is 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 125 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 mortgaged land, unless the lender agrees to discharge the mortgage.

#### **127. Appointment, powers, remuneration and duties of receiver**

(1) It shall be an implied condition in every mortgage, other than a small mortgage, that the lender shall have the power to appoint a receiver of the income of the mortgaged 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 mortgage 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 mortgage, 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 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 moneys 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 mortgaged property;
- (b) second, in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage 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 mortgaged land, including but not limited to—
    - (i) the payment of any premiums on any insurance policy properly payable under the mortgage instrument; and
    - (ii) the costs of undertaking necessary and proper repairs to any buildings comprised in the mortgaged land as directed in writing by the lender;
  - (e) 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 mortgage;
  - (f) sixth, in payment of the interest accruing due in respect of any principal sum secured by the mortgage;
  - (g) seventh, in and towards the discharge of the principal sum secured by the mortgage,

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

#### **128. Lender's power of leasing**

(1) A lender who has appointed a receiver under section 127, shall, unless the mortgage 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 mortgaged 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 mortgage, 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 mortgaged land;
- (e) contain a declaration that the lender has appointed a receiver, with the 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 mortgage which has priority to the mortgage of the lender who has granted the lease.

(5) Where money has been advanced on the security of a small mortgage, a lease created out of that mortgaged 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 basic shelter and sustenance for himself and his dependants living with him; and
  - (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.

(6) A lease of mortgaged village land held by a villager for a customary right of occupancy shall comply with the provisions of paragraphs (a) and (b) of subsection (5).

### **129. Power of lender to take possession of mortgaged land**

(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 125, 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 mortgaged land at a date not earlier than one month after the date of the service of the notice.

(2) A lender may exercise the power of entering into possession of the mortgaged land by—

- (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 or the borrower or any other occupier of the land to pay to the lender any rent or profits which would otherwise 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); or
- (b) on which he first receives any rent or profit from the land.

(4) A lender who has entered into possession may remain in possession, without prejudice to the right to withdraw from possession, so long as the mortgaged land continues to be subject to any liability under the mortgage.

(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 (1) of section 122 as if that lender were the borrower referred to in that subsection.

(6) A lender in possession of any mortgaged 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 businesslike 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 mortgaged land.

(7) A lender in possession shall apply all the moneys received by him to the same payments and in the same order as apply to a receiver and which are set out in subsection (9) of section 127, except that a lender in possession shall not be entitled to receive any payments under paragraph (c) of that subsection.

(8) Any person on whom a notice under subsection (3) has been served shall

forthwith comply and continue to comply with that notice until—

- (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.

### **130. Withdrawal of lender from possession**

(1) A lender may, not sooner than one month after the service of a notice of withdrawal in the prescribed form on the borrower and on all persons served with a notice under subsection (3) of section 129, withdraw from possession of the mortgaged land.

(2) A lender shall withdraw from possession of the mortgaged land—

- (a) where a court makes an order directing the lender to withdraw;
- (b) where the lender appoints a receiver under section 127;
- (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 131;
- (e) where the borrower has discharged all liabilities under the mortgage.

(3) A lender in possession shall be taken to have withdrawn from possession of all or a part of the mortgaged 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 127;
- (c) by paragraph (c) of subsection (2), when the lender has either—
  - (i) ceased to occupy the mortgaged land; or
  - (ii) where he is not in occupation, served a notice of withdrawal on all persons served with a notice under subsection (3) of section 129;
- (d) by paragraph (d) of subsection (2), when the purchaser of the mortgaged 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 mortgaged land may not again enter into possession of that land, otherwise than by complying with the provisions of sections 125 and 129, where the borrower is in a fresh default under the mortgage.

### **131. Lender's power of sale**

(1) Where a borrower is in default of his obligations under a mortgage 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 125, a lender may exercise his power to sell the mortgaged land.

(2) Before exercising the power to sell the mortgaged 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 mortgaged land until a period of forty days has 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 Commissioner where the mortgaged land is held for a granted right of occupancy;
- (b) the Village Council of the village where the mortgaged land is located where that land is held for a customary right of occupancy or is held under customary tenure;
- (c) where the mortgaged land is a lease, the holder of the right of occupancy out of

- which the lease has been granted;
- (d) any spouse of the borrower;
  - (e) any lessee and sublessee of the mortgaged land or of any buildings on the mortgaged land;
  - (f) any person who is a co-occupier with the borrower;
  - (g) any other lender of moneys secured by a mortgage on the mortgaged land of whom the lender proposing to exercise the power of sale has actual notice;
  - (h) any guarantor of the moneys advanced under the mortgage;
  - (i) any other person with a right to enter on and use the land or the natural resources in, on, or under the mortgaged 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 mortgaged land.

(4) The exercise by a lender of this power of sale shall be a disposition which is subject to the provisions of section 38.

### **132. Duty of lender exercising power of sale**

(1) A lender who exercises a power to sell the mortgaged 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 mortgage including a customary mortgage or under a lien to obtain the best price reasonably obtainable at the time of sale.

(2) Where the price at which the mortgaged 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 reputable presumption that the lender is in breach of the duty imposed by subsection (1) and the borrower whose mortgaged 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 mortgaged land is sold by the lender at an undervalue being 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 village land occupied by a villager shall conform to the provisions of sections 30 and 31 of the Village Land Act <sup>lviii\*</sup>, save that such a sale shall not require any approval from a village council.

(6) Any attempt by a lender to exclude all or any of the provisions of this section in any mortgage instrument or any agreement collateral to a mortgage or in any other way shall be void.

### **133. Powers incidental to the power of sale**

(1) Where a lender or a receiver becomes entitled to exercise the power of sale, that sale may be—

- (a) of the whole or a part of the mortgaged land;
- (b) subject to or free of any mortgage or other encumbrance having priority to the lender's mortgage;
- (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 instalments;
- (g) subject to any other conditions which the lender shall think fit, having due regard to the duty imposed by subsection (1) of section 132.

(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 mortgaged land and that the provisions of section 52 (relating to auctions and tenders for right of occupancy) are, as near as may be, followed in respect of that sale.

(3) A sale of the mortgaged 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 right of occupancy 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 mortgage, or on account of any other mortgage or encumbrance to which the mortgage has priority, other than a lease or easement to which the lender had consented in writing.

#### **134. Protection of purchaser**

(1) This section applies to—

- (a) a person who purchases mortgaged land from the lender or receiver, excluding a case where the lender is the purchaser;
- (b) a person claiming the mortgaged land through the person who purchases mortgaged 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 mortgaged 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 mortgaged land;
- (b) is not obliged to see to the application of the purchase price;
- (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.

#### **135. Sale by lender to himself**

(1) A lender exercising the power of sale may sell to himself, other than in the circumstances provided 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 mortgaged 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 132.

(3) Where the mortgaged land is to be sold by public auction, the lender may bid for and purchase the mortgaged land at that public auction so long as the price bid for the mortgaged 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,  
whichever amount is the greater.

(4) Where a lender who has sold mortgaged land to himself applies to the Registrar to be registered as the lawful occupier of land under a right of occupancy 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 right of occupancy or lease until the lender has so satisfied the Registrar.

### **136. Application of proceeds of sale of mortgaged land**

(1) 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 mortgaged land;
- (b) second, in discharge of any prior mortgage 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 mortgage or so much of it as remains outstanding, interest, costs and all other moneys due under the mortgage, including any moneys advanced to a receiver in respect of the mortgaged land under section 127;
- (e) fifth, in payment of any subsequent mortgages 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 mortgage.

### **137. Right of borrower to discharge mortgage on payment of sum due any time before sale**

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

(2) Where payment is made under subsection (1), the lender shall deliver to the borrower—

- (a) a discharge of the mortgage in the prescribed form over the whole or that part of the mortgaged land to which the payment relates;
- (b) all instrument and documents of title held by the lender in connection with the mortgaged land.

### **138. Remedies in connection with small mortgage**

(1) Where, in any case, a borrower under a small mortgage remains in default after the end of the period set out in any notice served on that borrower by the lender under section 125, and the lender, at the end of that period, decides to exercise any of the remedies provided for under sections 127 to 133, the lender may proceed only by making an application to a court for an order authorising him to exercise the remedy or remedies applied for.

(2) Where a lender makes an application to a court under subsection (1), he shall serve a notice in the prescribed form on—

- (a) the borrower;
- (b) any spouse of the borrower;
- (c) any person with whom the borrower jointly mortgaged the land to the lender;
- (d) any person with a prior mortgage or encumbrance on the mortgaged land of



whom he has actual notice,  
informing those persons of the application and the remedy being applied for.

(3) In determining whether to authorise the remedy, a court shall comply with the provisions of sections 140 and 141.

(4) A lender shall take no action in connection with any remedy or otherwise against the borrower unless the court has issued an order authorising the exercise of the remedy applied for.

### **139. Application for relief by borrower**

(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 125 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 125, or subsection (2) of section 128, or subsection (1) of section 129 or subsection (2) of section 131, 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 mortgage by the borrower;
- (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 125 was reasonable or had expired,

and the court may grant relief without determining all or any of those matters.

### **140. Power of the court in respect of remedies and relief thereto**

(1) In considering whether to make an order under section 138 authorising a lender to exercise any remedy referred to in paragraphs (a) or (c) of subsection (3) of section 125 in respect of a small mortgage or to grant relief against any of the remedies of the lender in relation to a mortgage, other than a small mortgage in respect of which an application for relief has been made, a court—

- (a) shall, where the mortgaged land consists of agricultural land or commercial premises, and the remedy proposed is to appoint a receiver, or to take possession of or lease the land or a part thereof, 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 mortgaged land or to reverse any such reduction as has already occurred;
- (b) shall, where the mortgaged land consists of or includes a dwelling-house, and the remedy proposed is to appoint a receiver, or take possession of 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 of 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 occupiers, 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 mortgage; and
- (ii) the borrower has persistently been in default of his obligations under the mortgage; and
- (iii) where the sale is of land held for a customary right of occupancy, the lender has had regard to the age, means, and circumstances 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 mortgaged land in order to enable the lender to recover the moneys owing to him under the mortgage;
- (v) in all the circumstances, it is reasonable to approve, or as the case may be, to make the order to sell the mortgaged 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 125;
- (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 113;
- (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 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 mortgage, the borrower is entitled or is to be permitted to pay the principal sum secured by the mortgage by instalments or otherwise to defer payment of it in whole or in part but provision is also made in the mortgage 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 mortgage 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 had 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 125;
- (d) the lender has taken or attempted to take some action against the borrower in contravention of subsection (4) of section 138.

**141. Powers of Court to reopen certain mortgages and revise terms**

(1) The Court may reopen—

- (a) a small mortgage; or
  - (b) a mortgage for a sum equal to or less than the amount that may be lent on the security of a small mortgage; or
  - (c) a mortgage of whatever amount secured on a matrimonial home,
- in the interests of doing justice between the parties.

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

- (a) that principles of fair dealing were contravened when the terms of the mortgage were agreed to;
- (b) that the effect of the terms of the mortgage, 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 mortgaged land provides adequate security for the principal sum advanced on the security of that land;
- (c) that the mortgage 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 mortgage includes a term which postpones the right to discharge the mortgage or otherwise impedes the discharge of the mortgage which appears to contravene the provisions of subsection (1) of section 116;
- (e) that the mortgage imposes terms on the borrower that are significantly disadvantageous to the borrower compared to terms imposed on other borrowers in respect of similar mortgages and that these terms have been imposed solely or mainly because of the gender of the borrower.

**142. Exercise of powers to reopen certain mortgages**

(1) The court may exercise the powers conferred on it by section 141 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—
  - (i) to enforce the mortgage; or
  - (ii) to commence an action under section 126; or
  - (iii) to obtain an order authorising the exercise of a remedy in connection with a default by the borrower under a small mortgage; or
- (c) 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 mortgage;
- (d) by the Commissioner in respect of—
  - (i) mortgages 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 mortgages on terms to which paragraph (e) of subsection (2) of section 141 applies, or by refusing to grant mortgages 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 mortgage 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 mortgage, the court may—

- (a) direct that the mortgage 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 mortgage or any related or collateral agreement by the borrower or any guarantor or other person who assumed an obligation under the mortgage 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 mortgages.

(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 transactions, and health of the borrower at the time when the mortgage 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 mortgage;
- (c) the degree to which, at the time of the creation of the mortgage, 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 mortgage and during the continuation of the mortgage and the relationship of those interest rates to the interest rate applying from time to time in the mortgage;
- (e) the degree of risk accepted by the lender, having regard to the value of the mortgaged 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 mortgages;
- (g) any other factors which the court considers relevant.

## **PART XI EASEMENTS AND ANALOGOUS RIGHTS (ss 143-158)**

### **SUBPART 1**

#### **GENERAL PROVISIONS (ss 143-145)**

#### **143. Application of this Part**

(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 entry order made under section 170 and an access order made under section 148.

#### **144. Nature of easement**

(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 right to do something over, under or upon the servient land; or

- (b) any right that something should not be so done; or
- (c) any right to require the occupier 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;
- (b) any right to the exclusive possession of any land or any part of it.

(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 right of occupancy 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 right of occupancy or lease out of which it was created.

#### **145. Terminology**

(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 right of occupancy or lease out of which they were created.

### **SUBPART 2**

#### **CREATION, ETC., OF EASEMENTS AND ANALOGOUS RIGHTS (ss 146-150)**

##### **146. Creation of easement**

(1) An occupier of land under a right of occupancy or a lessor may, by an instrument in the prescribed form, grant an easement over the land comprised in the right of occupancy or lease or a part of any that land to the occupier under a right of occupancy or a lessee of other land for the benefit of that other land.

(2) Any occupier referred to in subsection (1) or any lessor transferring, assigning or leasing land or a lease may in the transfer, assignment or lease grant an easement for the benefit of the land transferred, assigned or leased over land retained by him or reserve an easement for the benefit of land retained by him.

(3) An instrument creating an easement shall specify clearly—

- (a) the nature of the easement and any conditions, limitations, and restrictions subject to which it is granted;
- (b) the period of time for which it is granted;
- (c) the land, or the particular part of it burdened by the easement;
- (d) the land benefited by the easement,

and shall, if so required by the Registrar, include a plan sufficient to define the easement.

(4) Where a co-occupier, by any disposition, severs any building or part of it or any land separated by a common dividing wall or other structure, then, whether that wall or other structure is a party wall or other structure, there shall be implied in the

disposition cross-easements of support of the dividing wall or other structure in respect of the severed buildings or land and the occupiers of the severed buildings or land and their successors in title shall be entitled to the benefit and subject to the burdens of the cross-easements.

(5) There shall be implied in every grant of an easement the grant of all ancillary rights which may be reasonably necessary for the full and effective enjoyment of it.

(6) Any grant of an easement may contain an agreement between the occupiers of the dominant and servient lands binding either or both of them to pay for or contribute towards the cost of constructing, maintaining or repairing any way, wall, drain, or other installation or work forming the subject matter of the easement.

(7) No easement and no right in the nature of an easement shall be capable of being acquired by any presumption of a grant from long and uninterrupted user.

(8) Nothing in this section shall be taken to prevent the lawful use of a right of way for persons and for stock acquired and that right of way shall be deemed to be property.

#### **147. Entry on neighbouring land where easement refused**

(1) An occupier 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 neighbouring 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 occupier of the servient land; and
- (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 any 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 required 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 occupiers of the dominant and servient land with respect to any attempt by the occupier of the dominant land to obtain an easement for the purposes for which the entry order is applied for from the occupier of the servient land;
- (b) the urgency, importance and desirability of the work for which the entry order is being applied;
- (c) the scope of the work and the length of the time for which the entry order is being applied;
- (d) whether the applicant has applied for or obtained all permissions, licences and consents required from all relevant public authorities to execute the 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 authorised;
- (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 occupier of the servient land for any costs, expenses or loss arising from the entry;
- (h) any other relevant matter.

(6) Where, as a result of 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 occupier of the dominant land may, on giving not less than twenty-four hours, notice in writing to the occupier 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 occupier of the servient land from applying to court for an order requiring the occupier of the dominant land to make good any damage caused by the entry and works and to reimburse the occupier of the servient land for any costs, expenses or fees arising from the entry and works.

(7) In this section—

- (a) an occupier of land shall be taken to include an occupier under a right of occupancy, a lessor and lessee; and
- (b) neighbouring 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.

#### **148. Access to landlocked land**

(1) An occupier 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 occupiers 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 persons 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 piece of land, the occupier 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 occupiers of the landlocked land and any adjoining or other land with respect to any attempt by the occupier of the landlocked land to obtain an easement from one or more occupiers 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 by 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 any 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;
- (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 147 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.

#### **149. Enjoyment of easement and analogous rights**

(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 occupier 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 any part of it; and
- (b) any lender on the security of a mortgage for the time being in possession 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.

#### **150. Cancellation and extinguishment of easements and analogous rights**

(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 under a right of occupancy.

(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 that form is recorded in the register.

(3) On the application of any person occupying servient land under a right of occupancy, the Registrar may cancel an easement or an analogous right where he is satisfied that—

- (a) the period of time for which the easement or analogous right was intended to subsist has 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.

### **SUBPART 3 PUBLIC RIGHTS OF WAY (ss 151-156)**

#### **151. Power of Minister to create public rights of way**

(1) The Minister may, subject to and in accordance with sections 152 and 153 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 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 its 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 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 of which it has been created and shall be binding on all occupiers from time to time of the servient land, any manner they are occupying the land, whether under a right of occupancy or a derivative right thereof, or under customary law or as a successor in title to any such occupier or as a trespasser.

(4) A wayleave shall authorise persons in the employment of or who are acting as agents of or contractors for any of the organisations, authorities and bodies to enter on the servient land for the purpose of executing works, building and maintaining installations and structures and insetting all such works, installations and structures on the servient land and to pass and repass along that wayleave 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 of the kind permitted in that designated area.

#### **152. Application for wayleave**

(1) Except where the Commissioner is proposing of his own motion to create a wayleave, an application from any ministry or department of Government, or local authority or public authority or corporate body shall be made to the Commissioner.

(2) An application shall be made on the prescribed form and shall be accompanied by any information which may be prescribed or which the Commissioner may, in writing, require the applicant to supply and the Commissioner 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 Commissioner of

his own motion to comply with the provisions of this section, the Commissioner shall complete an application form as if he were applying to create a wayleave and references to "the applicant" in this Subpart in relation to an application to create a wayleave shall be taken to apply to the Commissioner as well.

(4) The applicant shall serve a notice on—

- (a) all persons occupying land under a right of occupancy over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights;
- (b) all local government authorities in whose area of jurisdiction land over which the proposed wayleave is to be created is located;
- (c) all persons in actual occupation of land in an urban and peri-urban area over which the proposed wayleave is to be created;
- (d) any other interested person.

(5) The Commissioner 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.

### **153. Application for communal right of way**

(1) A local government authority, an association, or any group of persons with an interest in the environment or land may apply to the Commissioner 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 which subsection (7) of section 146 applies to a communal right of way created under this section.

(3) The provisions of subsections (2), (4) and (5) of section 152 shall apply to an application by a local government authority for the creation of a communal right of way as they apply to an application to create a wayleave under that section.

(4) The Commissioner may of his own motion, where he is of the opinion that it is expedient or desirable that a communal right of way be created, initiate the procedures referred to in subsection (2).

### **154. Determination on creation of public right of way**

(1) The Commissioner shall—

- (a) on receipt of all information prescribed or required under sections 152 and 153; and
- (b) after not less than six days from the date of the serving of notices under subsection (3) of section 152 or subsection (2) of section 153,

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 Minister whether to—

- (i) appoint an inquiry under section 18 to give further consideration to the representations and objections; or
- (ii) refer the application to the local authority 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 the application.

(2) Where the Commissioner has of his 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 Commissioner shall recommend to the Minister only that

the Minister exercise powers under subparagraph (i) or (ii) of subsection (1).

(3) The Minister shall, after taking account, as the case may be, of—

- (a) the recommendations of the Commissioner; or
- (b) the report of an inquiry appointed under section 18; or
- (c) the advice of the local authority; or
- (d) 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 Minister 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 maintaining 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 Minister 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 Minister, whichever is the shorter period.

(6) The order of the Minister 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 all local government authorities having jurisdiction along the route of the public right of way;
- (d) be publicised 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 to create a public right of way, may, within six weeks of the order being made, appeal to the High Court on a point of law against an order made by the Minister under this section, but apart from such an appeal, an order of the Minister shall not be questioned by way of judicial review or otherwise in any court.

### **155. Powers of Registrar with respect to public right of way**

(1) Where the Minister has made an order to create a public right of way, the Commissioner 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 144 to appeal against the order of the Minister, 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 occupancy; or
  - (ii) any lender of money secured by a mortgage 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.

**156. Compensation in respect of public right of way**

(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 wayleave, in addition to any compensation for the use of land for any damage suffered in respect of trees, crops and buildings as a result of the creation of such wayleave.

(2) Reference to damage caused as a result of the creation of a wayleave shall include any damage caused as a result of any preliminary work undertaken in connection with surveying or determining the route of that wayleave, whether the trees, crops or buildings so damaged were included in the route of the wayleave as delineated in the order of the Minister.

(3) The duty to pay compensation payable under this section shall lie with the Government Department or the Ministry, local or 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 High Court to determine the amount and method of payment of compensation and the High Court may in making any award, make an award for any additional costs and inconvenience incurred by the person entitled to compensation through the dilatory or other unsatisfactory procedures of that public authority.

**SUBPART 4  
POWERS OF COURT (ss 157-158)**

**157. Power of court to enforce easements and analogous rights**

A court may in determining any question or dispute concerning the existence or effect of an easement or an analogous right or a public right of way, make an order on any conditions which it thinks fit on all or any of the following matters:

- (a) The existence of an easement or an analogous right or a public right of way;
- (b) the enforceability of an easement, whether the easement is created under this Act or otherwise, or an analogous right or 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 of way.

**158. Power of court to modify or extinguish easements and analogous rights**

(1) This section applies to every easement, analogous right, restrictive covenant or agreement whensoever and in any manner created including easements, profits, restrictive agreements and other similar rights created under customary law.

(2) The Court may, by order, on the application of—

- (a) the Commissioner; 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 neighbourhood or of the benefited, 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 user 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—
  - (i) any development conditions contained in the certificate of occupancy; or
  - (ii) any proposals for or restrictions 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 the Town and Country Planning Act <sup>lviii\*</sup> or any development plan made and approved under any law replacing that written law; or
  - (iii) any land use plan made by a village under section 8 of the Village Land Act, <sup>lix\*</sup>;
  - (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 to the aforesaid right or restriction; or
- (e) the proposed modification or extinguished in whole or in part will not

- substantially disadvantage any person entitled to the benefit of the right or restriction; or
- (f) insofar 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 local government authority 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 157 in order to arrive at a decision under and in accordance with this section.
- (7) Where any proceedings are commenced in any court under section 157 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 subsection (2) of section 155 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 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 right of occupancy.

## **PART XII**

### **CO-OCCUPANCY AND PARTITION (ss 159-166)**

#### **159. Meaning and incidents of co-occupancy**

(1) In this Act, co-occupancy means the occupation of land held for a right of occupancy or a lease by two or more undivided shares and may be either joint occupancy or occupancy in common.

(2) Where, subject to the provisions of this Act, two or more persons not forming an association of persons under this Act or any other law which specifies the nature and content of the rights of the persons forming that association occupy land together under a right specified by this section, they may be either joint occupiers or occupiers in common.

(3) An instrument made in favour of two or more persons and the registration giving effect to it shall show—

- (a) whether those persons are joint occupiers or occupiers in common; and
- (b) where they are occupiers in common, the share of each occupier.

(4) Where the land is occupied jointly under a right of occupancy or lease no occupier is entitled to any separate share in the land and, consequently—

- (a) dispositions may be made only by all the joint occupiers;
- (b) on the death of a joint occupier, his interest shall vest in the surviving occupier or occupiers jointly;
- (c) a joint occupier may transfer his interest *inter vivos* to all the other occupiers but to no other person, and any attempt to so transfer his interest to any other person shall be void.

(5) Where any land, lease or mortgage is occupied in common, each occupier shall be entitled to an undivided share in the whole and on the death of an occupier, his share shall be treated as part of his estate.

(6) No occupier in common shall deal with his undivided share in favour of any person other than another occupier in common, except with the consent in writing or in any other manner which signifies clearly that the consent is given freely and without undue pressure, of the remaining occupiers, but such consent shall not be unreasonably withheld.

(7) Joint occupiers, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint occupancy and the severance shall be complete by registration in the prescribed register of the joint occupiers and occupiers in common.

(8) On and after the commencement of this Act, and except with leave of a court, the only joint occupancy that shall be capable of being created shall be between spouses, and any joint occupancy other than that between spouses which is purported to be created without the leave of a court shall take effect as an occupancy in common.

#### **160. Certificate of occupancy of co-occupiers**

(1) Each co-occupier of a right of occupancy shall be entitled to receive a copy of the certificate of title of that right of occupancy.

(2) The Registrar shall, on application by a co-occupier in the prescribed form, issue a copy of the certificate of occupancy to that co-occupier, with an endorsement signed by the Registrar that the copy has been issued to the co-occupier named in the endorsement.

(3) The Registrar shall make a note in the register of the issue of the copy of the certificate of occupancy, showing the date of the issue of the copy and the co-occupier in whose name the copy has been issued.

(4) An occupier in common who has obtained a copy of the certificate of occupancy may, subject to the provisions of subsection (5) of section 159, use that copy only for the executing a transfer or creating a mortgage or a lien in respect of the undivided share of that occupier in common and that copy shall, for such purposes, be deemed to be a certificate of occupancy in respect of that undivided share.

(5) Where a copy of a certificate of occupancy is submitted to the Registrar in connection with any transfer of the undivided share in respect of which it has been issued, the Registrar shall retain that copy and after completion of the transfer of the undivided share, shall destroy that copy and note the fact of that destruction in the register.

#### **161. Co-occupancy and other relationships between spouses**

(1) Where a spouse obtains land under a right of occupancy for the co-occupation and use of both spouses, or where there is more than one wife, all spouses, there shall be a presumption that, unless a provision in the certificate of occupancy or certificate of customary occupancy clearly states that one spouse is taking the right of occupancy in his or her name only or that the spouses are taking the land as occupiers

in common, the spouses will hold the land as occupiers in common and, unless the presumption is rebutted in the manner stated in this subsection, the Registrar shall register the spouses as occupiers in common.

(2) Where land held for a right of occupancy is held in the name of one spouse only but the other spouse or spouses contribute by their labour to the productivity, upkeep and improvement of the land, that spouse or those spouses shall be deemed by virtue of that labour to have acquired an interest in that land in the nature of an occupancy in common of that land with the spouse in whose name the certificate of occupancy or customary certificate of occupancy has been registered.

(3) Where a spouse who holds land or a dwelling house for a right of occupancy in his or her name alone undertakes a disposition of that land or dwelling house, then—

- (a) where that disposition is a mortgage, the lender shall be under a duty to make inquiries if the borrower has or, as the case may be, have consented to that mortgage in accordance with the provisions of section 59 of the Law of Marriage Act <sup>lx\*</sup>;
- (b) where that disposition is an assignment or a transfer of land, the assignee or transferee shall be under a duty to make inquiries of the assignor or transferor as to whether the spouse or spouses have consented to that assignment or transfer in accordance with section 59 of the Law of Marriage Act <sup>lxi\*</sup>,

and where the aforesaid spouse undertaking the disposition deliberately misleads the lender or, as the case may be, the assignee or transferee as to the answers to the inquiries made in accordance with paragraphs (a) and (b), the disposition shall be voidable at the option of the spouse or spouses who have not consented to the disposition.

## **162. Partition**

(1) An application in the prescribed form to the Registrar for the partition of land occupied in common may be made by any one or more of the occupiers in common with the consent of all the occupiers in common and subject to the provisions of this Act and of any other written law applying to or requiring consent to a subdivision of land and of any covenants or conditions in a certificate of a right of occupancy, the Registrar shall effect the partition of the land in accordance with the agreement of the occupiers in common.

(2) An application in the prescribed form to the Registrar for an order for a partition of land occupied in common may be made by—

- (a) any one or more of the occupiers in common without the consent of all the occupiers in common; or
- (b) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree.

(3) The Registrar may, after hearing the applicant and any of the other occupiers in common who wish to appear and be heard, make an order for a partition of land having regard to—

- (a) whether the provisions of this Act, any other written law regulating the subdivision of land and any covenants and conditions in a right of occupancy have been or will be complied with if the partition is effected;
- (b) the nature and location of the land;
- (c) the number of occupiers in common and the extent of their shares in particular, the extent of the share of any occupier in common by whom or on whose behalf the application has been made;
- (d) the value of any contribution made by any occupier in common to the cost of improvements to or the maintenance of the land or buildings occupied in



- common;
- (e) where the occupiers in common are spouses or those occupiers in common who do not agree to the partition are dependants of or related to those occupiers in common, whether the interests of those occupiers in common who have not agreed to the partition will be or have been adequately provided for as a consequence of or after the partition is effected, and in particular, a spouse or dependants of the occupier in common applying for partition will not be rendered homeless by such partition;
  - (f) in respect of an application made by a person referred to in paragraph (b) of subsection (2), whether the interests of the spouse or any dependants of the occupier in common whose share is to be sold in execution of a judgment decree, will be adequately catered for and in particular, any spouse or dependants will not be rendered homeless by the sale;
  - (g) where the occupiers in common are pastoralists, whether those occupiers in common who have not agreed to the partition will, after the partition, still retain grazing rights, including grazing rights created by an easement in the partitioned land, to sufficient land of the quality and nature and in the location customarily used by those pastoralists;
  - (h) the proper development and use of the land and whether it may be adversely affected by the partition applied for;
  - (i) the hardship that would be caused to the applicant or applicants by a refusal of an order in comparison with the hardship that would be caused to any other person by the making of the order;
  - (j) any other matters that the Registrar considers relevant,
- and may make that order subject to such limitations and conditions, including conditions as to the payment of compensation to those occupiers in common who have not agreed to the partition by those occupiers in common who have applied for the partition and how the expenses and costs of the partition are to be borne, as the Registrar considers just reasonable.

(4) The provisions of section 102 of the Land Registration Act <sup>lxiii\*</sup> shall apply to any decision given by the Registrar under this section.

### **163. Ancillary powers of Registrar in connection with partition**

(1) Where the land sought to be partitioned is capable of partition generally, and the occupiers in common have reached an agreement on the partition, but the resultant share of any particular occupier would be less in area than the minimum prescribed by any law either generally or for the development or use of the land which that particular proprietor intends to undertake on that land, the occupiers in common shall endeavour to reach a compromise on the matter, with or without the aid of mediation, and any party dissatisfied with that compromise or otherwise may refer that partition to the Registrar who shall—

- (a) add that share to the share of any other occupier in common; or
  - (b) distribute that share amongst two or more other occupiers in common in any proportion which, in default of agreement, he shall think just and reasonable,
- and cause the value of the share added or distributed to be assessed and order that there be paid to the occupier in common of that share by each occupier in common who has received an addition to his share, the value of that addition.

(2) Where any sum is payable under the provisions of paragraph (c) of subsection (1), the Registrar may order that that sum be secured by way of a mortgage on the share of the occupier or occupiers in common liable to pay that sum.

(3) For the avoidance of doubt, it is hereby provided that the provisions of

sections 34 to 38 of this Act apply to any partition agreed to by all the occupiers in common.

(4) The provisions of section 102 of the Land Registration Act <sup>lxiii\*</sup>, apply to any decision given by the Registrar under this section.

#### **164. Sale of co-occupied land**

(1) Where for any reason the land sought to be partitioned is incapable of partition, or the partition would adversely affect the proper use of the land, and the applicant for partition or one or more of the other occupiers in common require that the land be sold, then if the occupiers in common cannot agree on the terms and conditions of the sale or the application of the proceeds of the sale, an application may be made to the court for an order for sale and the court may—

- (a) cause a valuation of the land and of the shares of the occupiers in common to be made; and
- (b) order the sale of the land or the separation and sale of the shares of the occupiers in common by public auction or any other means which appears to the court to be suitable; or
- (c) make any other order to dispose of the application which the court considers fair and reasonable,

and in exercising its powers under paragraphs (b) and (c), the court shall have regard to any of the matters set out in paragraphs (a) to (f) of subsection (3) of section 158 which seem to it to be relevant in the circumstances.

(2) An occupier in common shall be entitled to purchase the land or any share in it so offered for sale, either at an auction or at any time by private sale.

#### **165. Partition subject to mortgage**

(1) Where any undivided share in land held for a right of occupancy or for a lease by occupiers in common is subject to a mortgage, no partition of that right of occupancy or lease shall be entertained by or accepted for registration by the Registrar unless the consent in writing of the lender is produced to the Registrar.

(2) Where a partition referred to in this section takes place with the consent of the lender, the land appropriated to the borrower shall be deemed to be subject to the mortgage for all purposes as if it had originally been comprised in it and the land appropriated to the other occupiers in common shall be released from the mortgage.

#### **166. Reorganisation or winding up of Land Sharing Arrangement**

(1) A group of persons occupying land under a scheme of co-occupancy under section 58 of the Village Land Act <sup>lxiv\*</sup>, may apply to the court for that scheme to be reorganised or wound up.

(2) An application for reorganisation may include—

- (a) a partition of the shares of land occupied under a scheme by groups of persons;
- (b) a re-division of the areas of land occupied by each group of persons occupying land under a scheme;
- (c) a modification or extension of any easement created as a part of a scheme;
- (d) an alteration of the periods of time when any land to which the scheme applies may be occupied or used by any group of persons occupying land under a scheme, either exclusively or in common with any other group of persons so occupying that land;
- (e) an alteration of the purposes for which any part of the land to which the scheme applies may be used either generally or at any particular period of time;
- (f) a re-consideration of any agreement reached by the joint panel established by the scheme to resolve disputes over the operation of the scheme;
- (g) any other matter relating to the occupation and use of the land to which a

scheme applies which in the opinion of the court is relevant to the effective continuation of the scheme.

- (3) An application to wind up a scheme shall–
- (a) state the reasons for that application and why winding up that scheme is preferable to a reorganisation of that scheme; and
  - (b) be deemed to include an application to reorganise that scheme.
- (4) An application under this section shall–
- (a) be made on the prescribed form;
  - (b) be served on or otherwise made known to the members of all other groups of persons with whom the applicant group is occupying land under that Land Sharing Arrangement, or where those groups have formed themselves into an association, to the trustees of that association;
  - (c) be served on–
    - (i) the village council or council or councils having jurisdiction over the land which is occupied under that Land Sharing Arrangement of co-occupancy;
    - (ii) the Commissioner;
    - (iii) any other persons whom the court may direct;
  - (d) specify the nature of the reorganisation that is being applied for.
- (5) A court shall, in considering whether to make an order authorising a reorganisation or the winding up of a scheme–
- (a) have regard to all those matters and exercise all those powers contained in subsections (3) to (5) of section 158 as if for the expression "occupiers in common" in those sections there were substituted the expression "occupiers under a Land of Sharing Arrangement" with any modifications and adjustments which the court shall consider necessary to reach a just and reasonable decision; and
  - (b) in respect of an application which consists of or includes a matter referred to in paragraph (c) of subsection (2) of this section, a court may exercise the power conferred on the Court by section 158;
  - (c) use its best endeavours to ensure that any determination under this section is understood and accepted by all the groups of persons occupying under a Land Sharing Arrangement the land the subject of the application.

### **PART XIII**

#### **DISPUTE SETTLEMENT (s 167)**

#### **167. Courts**

(1) The following courts are hereby vested with exclusive jurisdiction, subject to the provisions of this Part, to hear and determine all manner of disputes, actions and proceedings concerning land, that is to say–

- (a) the Court of Appeal;
- (b) the Land Division of the High Court established in accordance with law for time being in force for establishing courts divisions;
- (c) the District Land and Housing Tribunals;
- (d) Ward Tribunals;
- (e) Village Land Councils.

(2) Notwithstanding subsection (1) of the Ward Tribunals established under the Ward Tribunal Act <sup>lxv\*</sup>, a word tribunal shall have jurisdiction in relation to the area of a district Council for the purposes of this Act and shall be competent courts as are or may be established by a written law for the time being relating to the establishment and

powers of magistrates and other courts of mainland Tanzania.

(3) A person aggrieved by a decision of a ward tribunal may appeal to the court of law having jurisdiction in the area of the relevant district council.

#### **PART XIV** **MISCELLANEOUS PROVISIONS (ss 168-186)**

##### **168. Substituted service**

(1) Where the Commissioner is satisfied that a notice to be effected 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 village land, at the offices of the village council or other public place within the village; or
  - (iii) where the land is general land, at the offices of the local authority 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 he thinks fit, one or more newspapers circulating in Tanzania.

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

##### **169. Publication of notices and other information**

Where, by any provision of this Act, a notice or other information is to be published or given any publicity which will bring it to the attention of all persons likely to be affected by it, that duty shall be construed as requiring—

- (a) where the land is village land, a copy of the notice or other information to be—
  - (i) affixed in a conspicuous position on or as near as may be to the land to which it relates; and
  - (ii) affixed in a conspicuous position at the offices of the village council and in any other public places in the village which the village council shall direct; and
  - (iii) summarised and communicated orally to the residents of the village at a meeting of the village assembly and at any other meetings which may be convened by the village council for that purpose;
- (b) where the land is general land, a copy of the notice or other information to be—
  - (i) affixed in a conspicuous place on or as near as may be to the land to which it relates; and
  - (ii) affixed in a conspicuous place at the offices of the local authority having jurisdiction in the area where the land is located and at any other public places, including offices of the Government and offices of the local government authority situated within the area where the land is located;
- (c) where the land consists of or includes land or a dwelling house and the notice or other information affects or may affect the continued occupation of that land or dwelling house by any person, then, in addition to the actions which must be taken under paragraphs (a) and (b), the notice or other information shall be summarised and communicated—
  - (i) to that person orally at a meeting called for that purpose in the area where the land or dwelling house is; and
  - (ii) to that person or a member of the household of that person living in that

dwelling house personally.

(2) Where the Commissioner considers it desirable, a notice or the information to which this section applies may be published in one or more newspapers in English or Kiswahili or both circulating in the area where the land to which the notice or other information relates is located.

#### **170. Rights of entry**

(1) Any person authorised in that behalf by the Commissioner 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 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 authorisation signed by the Commissioner 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 Commissioner shall forthwith appoint a person to assess the damage and pay promptly compensation based on that assessment to the person whose land or things on the land have been damaged.

#### **171. Call for information**

(1) The Commissioner may, for any purpose connected with the implementation of this Act, by notice in writing sent or delivered by registered post, require the occupier of land under a right of occupancy or a lease to send or deliver to the Commissioner within three months of the date on which the notice was so sent or delivered any document and other information about the occupation and use of that land and the interests and rights which specified in the notice he and any other persons have in or over that land, so far as they are known to him.

(2) The notice sent by the Commissioner shall specify clearly and in a language calculated to be understood by the recipient of the notice the information that is required.

(3) Where the recipient of the notice is unclear as to the information which he is required to provide, he shall, as soon as may be, seek further clarification and elucidation from the Commissioner.

(4) It shall be a defence to any person charged with a failure to comply with the notice or with giving misleading information in his reply to the notice that he could not reasonably have been expected to understand the notice or any further clarification and elucidation provided by the Commissioner in response to any communication sent or made to the Commissioner under subsection (3).

(5) Where the Commissioner requires information from a person whom it is reasonable to assume from his age, circumstances, education, and location will not be able to understand or reply in writing to the written notice, the Commissioner shall authorise an officer in writing to interview that person and obtain the required information by means of that interview.

(6) An officer authorised to conduct an interview under subsection (3) shall give not less than seven days' notice of the time, being a reasonable time between the hours of 6.00 am and 6.00 p.m., at which he proposes to conduct the interview and that interview shall be conducted in a reasonable manner.

(7) The provisions of subsections (3) and (4) of section 177 shall apply to a

person conducting an interview under this section.

### **172. Meaning of "opportunity of being heard"**

(1) Where by this Act, a thing or action is to be or may be done after giving a person an opportunity of being heard, then whether that or a cognate expression or form of words is used, that person shall be deemed to have been given such an opportunity if he has been served with a notice in writing or in circumstances similar to those referred to in subsection (3) of section 178, informed orally and in a language calculated to be understood, of the nature of the thing or action to be done and appointing a time, being not less than fourteen days after the service of the notice or the oral communication, and a place at which, he will, if he attends, be heard and—

- (a) he attends before the relevant official or body personally or by advocate or other agent and is given such an opportunity in a fair and reasonable manner to put his case; or
- (b) he informs the relevant official or body that he does not wish to be heard but that he will submit in writing a statement of his case or other matters that he wishes the official or body to take into account, any written statement to be submitted within fourteen days thereafter; or
- (c) he informs the relevant official or body that he does not wish to be heard or to submit any written statement; or
- (d) he takes none of the actions specified in paragraphs (a), (b) or (c) within one month of the service of the notice or the oral communication despite being sent or given a reminder.

(2) Where a person or an advocate or other agent on his behalf attends before the relevant official or body concerning a matter on which he is entitled to be heard or fails to attend pursuant to such a notice and has not acted under paragraphs (b) or (c) of subsection (1), the relevant official or body may, if it thinks fit, adjourn the hearing from time to time and notwithstanding failure to attend, may hear that person at any time.

(3) Where by this Act, all persons interested or affected are to be given an opportunity of being heard, those persons shall be deemed to include all persons occupying the land or with an interest in the land the subject of the hearing, whether they are occupying land under a right of occupancy or without any apparent lawful right or title.

### **173. Land Compensation Fund**

(1) There shall be established a Land Compensation Fund, to be known as the Fund.

(2) The Funds shall be managed by the Trustees whose composition shall be as is prescribed by regulations made under section 180 of 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 are 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 occupation of land.

(5) The Minister shall by regulations made under section 179 of this Act have regard to the exercise and functions of the Trust.

### **174. Fees**

(1) The Minister, after consultation with the Minister responsible for finance, 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* 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 right of occupancy or any disposition of or arising in connection with a right of occupancy 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 instalments and there are no arrears in those instalments.

(4) Unpaid fees or expenses incurred by the Government in connection with any attempt to recover those unpaid fees shall constitute a civil debt recoverable summarily.

### **175. Unlawful occupation of land**

(1) Any person who, without lawful authority or without any right or licence, express or implied under customary or statutory land law so to do—

- (a) occupies, or erects any building on any land;
- (b) clears, digs, ploughs, cultivates, or grazes animals over, any land or part of it;
- (c) cuts or removes any timber or other produce on or from any land or part of it,

shall be taken to be in unlawful occupation of that land.

(2) Where, with respect to general land or reserved land, the Commissioner, or, with respect to village land, the village council having jurisdiction over that land, is of the opinion that a person is in unlawful occupation of land, the Commissioner or, as the case may be, the village council 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 (1) 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 Commissioner or, as the case may be, the village council 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 any person of 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 including any matters which the person occupying the land brings to the attention of the Commissioner or, as the case may be, the village council.

(5) A person served with a notice or oral communication under this section shall, within not more than sixty days, show cause to the Commissioner or, as the case may be a village council, 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 Commissioner or, as the case may be the village council, after considering any representations made by the person attempting to show cause determines 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 Commissioner or, as the case may be, the village council 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 (1).

(8) A person who responded to the notice to show cause but who failed so to 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 Commissioner or, as the case may be, the village council 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

Commissioner or, as the case may be, the village council 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 licence 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 on 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 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 such payment as the court shall think just be made to the person on his vacating of the land.

(7) Where the court has confirmed, with or without any variations, alterations or additions in the exercise of its powers under subsection (6), 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.

#### **176. Obstruction of public rights of way**

(1) Where the Commissioner 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 Commissioner 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 who does not take action under subsection (2) shall be taken to have accepted the notice and shall be under a duty to comply with it.

(4) Where the Commissioner has reconsidered the notice in response to a request made in accordance with subsection (4) 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. [ss. (5)]

(5) 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. [ss. (6)]

(6) 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. [ss. (7)]

#### **177. Offences**

(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

- section 172 or in connection with any investigation into the commission of any offence under this Act; or
- (c) knowingly gives any false evidence either orally or in writing at any inquiry held under section 18 or otherwise in connection with the implementation of this Act; or
  - (d) fraudulently procures—
    - (i) the registration or issue of any certificate of occupancy, customary certificate of occupancy or any 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, instruments or entries or endorsements referred to in this paragraph; or
  - (e) 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; or
  - (f) suppresses or conceals from the Commissioner, the Registrar, any authorised officer or any officer of a village council 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 without reasonable excuse, fails to produce any document as required by any notice served on him under section 171 or otherwise under this Act commits an offence and on conviction is liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding three months or to both the fine and imprisonment.

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

(4) 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 176 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 ten thousand shillings and in the case of a continuing offence, to an additional fine not exceeding two thousand shillings for every day during which the offence continues.

- (5) Any person who wilfully—
- (a) delays; or
  - (b) obstructs; or
  - (c) hinders; or
  - (d) intimidates; or
  - (e) assaults,

any person authorised under this Act to 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 one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both the fine and imprisonment.

(6) Any person who, being an authorised 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, wilfully 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 fifty thousand shillings or to imprisonment not exceeding three months or to both the fine and imprisonment.

(7) 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 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 Commissioner to commence proceedings to—
  - (i) revoke a right of occupancy;
  - (ii) take action under subsection (3) of section 38;
  - (iii) 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 of 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 shall consider just and reasonable.

### **178. Corrupt transactions**

(1) Nothing in this Act shall be taken or construed to validate, affirm, authenticate or give any legal effect to any grant of a right of occupancy, or any issue of a certificate of occupancy or a customary certificate of occupancy, 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 or public or local government official whether than government or public or local government official was directly involved in that transaction or not, and, notwithstanding any rule of law in Tanzania 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—

- (a) any party 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 and all final appeals arising from that conviction have been concluded; or
- (b) any civil servant 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 investigator body reports that it is satisfied 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 President 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.

### **179. Regulations**

(1) The minister may 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 manner of the exercised of the functions of—
  - (i) the Council;
  - (ii) the Land Allocations Committee;
  - (iii) the Administrator;
  - (iv) the manner and form of the Fund;
- (c) the management of the Fund;
- (d) the manner and form of the registries of village land, the procedures to be followed by the registries and hours they are to be open for business;
- (e) the functions of officers implementing this Act and the manner in which they are to be exercised;
- (f) the procedures to be followed by village adjudication committees, village adjudication advisers and other officers exercising powers under Subpart C of Part IV of the Village Land Act <sup>lxvi\*</sup>;
- (g) the procedures to be followed by trustees in the exercise of their powers under Subpart D of Part IV of the Village Land Act <sup>lxvii\*</sup>;
- (h) the conduct of auctions under section 52;
- (i) the conduct of tenders under section 52;
- (j) the use and management of public rights of way created under section 154;
- (k) procedures to be followed with respect to the making of any claim for compensation and the payment of any compensation under this Act;
- (l) the alteration from time to time of the amount which may be advanced by way of a small mortgage;
- (m) the form and scope of schemes of co-occupancy;
- (n) the form and scope of joint village land use agreements;
- (o) the form and scope of schemes of regularisation and the manner of their implementation;
- (p) the form and scope of schemes of regularisation;
- (q) the procedure for the transfer of land from one category to another;
- (r) the procedure for the lenders of funds on the security of a mortgage, being organisations or corporate bodies which may be exempted from certain of the provisions of this Act relating to approvals for dispositions.

### **180. Law to be applied**

(1) Subject to the provisions of the Constitution and this Act, the law to be applied by the courts in implementing, interpreting and applying this Act and determining disputes about land arising under this Act or any other written law shall be—

- (a) the customary laws of Tanzania; and
- (b) the substance of the common law and the doctrines of equity as applied from

time to time in any other countries of the Commonwealth which appear to the courts to be relevant to the circumstances of Tanzania.

(2) On and after the date of the coming into operation of this Act no statutes of general application in force in England on the twenty-second day of July 1920 which have not, at the date of the coming into operation of this Act, been declared by a court to be a part of the law of Tanzania shall apply in any way to any matter connected with land.

(3) On and after the commencement of this Act, it shall be the duty of all courts in interpreting and applying this Act and all other laws relating to land in Tanzania to use their best endeavours to create a common law of Tanzania applicable in equal measure to all land and to this end the courts shall apply a purposive interpretation to this Act and shall at all times be guided by the fundamental principles of land policy set out in section 3.

### **181. Application of this Act**

On and after the commencement of this Act, notwithstanding any other written law to the contrary, this Act shall apply to all land in Mainland Tanzania and any provisions of any other written law applicable to land which conflict or are inconsistent with any of the provisions of this Act shall to the extent of that conflict or that inconsistency cease to be applicable to land or any matter connected with land in Mainland Tanzania.

### **182. Repeals**

[The written laws set out in the Schedule herein are hereby repealed.]

### **183. Savings and transitional provisions with respect to rights, actions, dispositions, etc.**

(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 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 mortgage 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 lender to stop the continuation of any step and where a court has issued an injunction 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 mortgage to an end.

**184. Savings and transitional provisions with respect to rules, orders, etc.**

(1) Any rule, order, regulation, direction, notice, notification or other administrative act made, given, issued or undertaken before the commencement of this Act under any land law repealed or amended in a material particular by this Act shall, 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.

(2) Subject to the provisions of this Act and until they are repealed or amended, the conditions contained in the Land Regulations, 1948 as amended from time to time shall, unless they are specifically excluded or applied only as amended in a specific particular to a specific granted right of occupancy, or are impliedly or expressly repealed or rendered of no effect by any of the provisions of this Act continue to apply to any granted right of occupancy issued under this Act.

**185. Act to be translated into Kiswahili**

The Minister shall, as soon as may be practicable after the enactment of this Act, cause this Act to be translated into Kiswahili and that translation shall be published in the *Gazette* and in any other manner and form as will enable the citizens of Tanzania to gain access to that translation.

**186. Act to bind Government**

This Act shall bind the Government.

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<sup>i</sup>Cap. 1

<sup>ii</sup>Cap. 38

<sup>iii</sup>Cap. 318

<sup>iv</sup>Cap. 288

<sup>v</sup>Cap. 287

<sup>vi</sup>Cap. 287

<sup>vii</sup>Cap. 114

<sup>viii</sup>Cap. 118

<sup>ix</sup>Cap. 114

<sup>x</sup>Cap. 323

<sup>xi</sup>Cap. 282

<sup>xii</sup>Cap. 284

<sup>xiii</sup>Cap. 283

<sup>xiv</sup>Cap. 146

<sup>xv</sup>Cap. 355

<sup>xvi</sup>Cap. 167

<sup>xvii</sup>Cap. 320

<sup>xviii</sup>Cap. 118

<sup>xix</sup>Cap. 47

<sup>xx</sup>Cap. 16

<sup>xxi</sup>Cap. 212

<sup>xxii</sup>Cap. 38

<sup>xxiii</sup>Cap. 38

<sup>xxiv</sup>Cap. 334

<sup>xxv</sup>Cap. 118

<sup>xxvi</sup>Cap. 38

<sup>xxvii</sup>Cap. 38

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xxviii Cap. 334  
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lxv Cap. 206  
lxvi Cap. 114  
lxvii Cap. 114