

# FORESTRY ACT 1946

## LONG TITLE

An Act to make further and better provision in relation to forestry. [12th June, 1946.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

## PART I - PRELIMINARY AND GENERAL

### 1 Short title and commencement.

SECT 1.—(1) This Act may be cited as the Forestry Act 1946. (2) This Act shall come into operation on such day as the Minister shall by order appoint in that behalf.

### 2 Definitions generally.

SECT 2.—In this Act— the expression "the Act of 1891" means the Registration of Title Act, 1891, as amended by the Registration of Title Act, 1942 (No. 26 of 1942); the expression "the Act of 1928" means the Forestry Act, 1928 (No. 34 of 1928); the expression "the Minister" means the Minister for Lands; the expression "the operative date" means the date on which this Act comes into operation; the word "prescribed" means prescribed by regulations made by the Minister under this Act; the word "timber" means wood which is the product of any tree; the word "tree" does not include any hazel, apple, plum, damson, pear or cherry tree grown for the value of its fruit or any ozier, but with those exceptions includes every tree of any age or any stage of growth; the word "wood" (save in the definition of the word "timber") includes a plantation.

### 3 Service of certain documents.

SECT 3.—(1) Where any document (other than a prohibition order made under subsection (1) of section 39 of this Act) is permitted or required by this Act to be served by the Minister or the Irish Land Commission on any person, the following provisions shall apply in relation to the service of that document, that is to say:— ( a ) the document may be served— (i) by delivering it to that person, or (ii) by sending it by registered post in an envelope addressed to that person at an address in the State at which he ordinarily resides or carries on business, or (iii) by sending it by registered post in an envelope addressed to an agent of that person at an address in the State at which such agent ordinarily resides or carries on business, ( b ) in case the Minister or the Irish Land Commission certifies that it is not reasonably practicable to serve the document in accordance with paragraph (a) of this subsection, the document shall be deemed to have been duly served on that person if a copy thereof is published in Iris Oifigiúil and the date of service shall be taken to be the date of such publication. (2) Where the Minister or the Irish Land Commission publishes under subsection (1) of this section, in the Iris Oifigiúil a copy of a document, the Minister or the Irish Land Commission shall also publish a copy of that document in one or more newspapers circulating in the locality in which the land to which that document relates is situate. (3) For the purposes of this section, a company registered under the Companies Acts, 1908 to 1924, shall be deemed to carry on business at its registered office, and every other body corporate and every unincorporate body shall be deemed to carry on business at its principal office or place of business in the State.

#### 4 Prosecution of offences.

SECT 4.—(1) Proceedings for an offence under any section or subsection of this Act shall not be instituted except by the Minister or with the consent of the Minister or an officer of the Department of Lands, not below the rank of an Assistant Secretary, nominated by the Minister for the purpose. (2) Every offence under any section or subsection of this Act may be prosecuted by or at the suit of the Minister as prosecutor. (3) Notwithstanding anything contained in section 10 of the Petty Sessions (Ireland) Act, 1851, proceedings for an offence under any section or subsection of this Act may be instituted at any time within one year after the time at which the cause of complaint has arisen.

#### 5 Regulations.

SECT 5.—(1) The Minister may make regulations prescribing any matter or thing referred to in this Act as prescribed. (2) Subsection (1) of section 3 of the Land Act, 1933 (No. 38 of 1933), shall apply to any regulations made by the Minister under this section prescribing any matter or thing referred to in Part III of this Act as prescribed, other than matters relating to the practice and procedure of the Appeal Tribunal, in like manner as if such matter or thing were being prescribed for the purposes of the Land Purchase Acts by rules made under the said subsection (1). (3) Subsection (7) of section 7 of the Land Act, 1933, shall apply to any regulations made by the Minister under this section prescribing any matter or thing referred to in Part III of this Act as prescribed, where such matter or thing is connected with the practice or procedure of the Appeal Tribunal, in like manner as if such matter or thing were being prescribed for the purposes of the Land Purchase Acts by rules made under the said subsection (7).

#### 6 Repeals.

SECT 6.—Each enactment mentioned in the Schedule to this Act is hereby repealed to the extent specified in the third column of the said Schedule opposite the mention of that enactment.

#### 7 Expenses.

SECT 7.—All expenses incurred in carrying this Act into execution shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

#### 8 Application of moneys received by the Minister.

SECT 8.—All moneys received by the Minister under this Act shall be paid into, or disposed of for the benefit of, the Exchequer in such a manner as the Minister for Finance may direct.

### **PART II - PROMOTION OF INTERESTS OF FORESTRY AND DEVELOPMENT OF AFFORESTATION, AND PRODUCTION AND SUPPLY OF TIMBER**

#### 9 General powers of the Minister.

SECT 9.—(1) Subject to the consent (either general or particular) of the Minister for Finance, the Minister may do all or any (if the following things— ( a ) purchase or take on lease or otherwise acquire any land suitable for forestry or required for purposes in connection with afforestation or with the management of any woods or forests or any right (so required) over any land; ( b ) manage, plant and otherwise utilise any land vested in the Minister by virtue of the Forestry (Re-distribution of Public Services) Order, 1933 (S. R. & O., No. 158 of 1933), or acquired under the Forestry Acts, 1919 and 1928, or under this Act, and erect such buildings or execute such other works thereon as he thinks necessary; ( c ) sell or let any land vested in the Minister by virtue of the Forestry (Re-distribution of Public Services) Order, 1933 (S. R. & O., No. 158 of 1933), or acquired under the Forestry Acts, 1919 and 1928, or under this Act, or exchange any such land for any other land and (where requisite on any such exchange) pay or receive money for equality of exchange or grant rights on or over any such land; ( d ) purchase or take on lease any buildings or works required in connection with his powers under this section and sell or let any

buildings or works belonging to him; ( e ) purchase or otherwise acquire standing timber, and sell or otherwise dispose of any timber belonging to him, or, subject to such terms as may be mutually agreed, to a private owner, and generally promote the supply, sale, utilisation, and conversion of timber; ( f ) make advances by way of grant or by way of loan, or partly in one way and partly in the other, and upon such terms and subject to such conditions as he thinks fit, to persons (including local authorities) in respect of the afforestation (including the replanting) of land belonging to those persons; ( g ) undertake the planting, development, utilisation, management or supervision, upon such terms and subject to such conditions as may be agreed upon, or give assistance or advice in relation to, the planting or management of any woods or forests belonging to any persons, including woods and forests belonging to any Minister of State or belonging to a local authority; ( h ) establish and carry on or aid in the establishment and carrying on of woodland industries; ( i ) undertake the collection, preparation, publication and distribution of statistics relating to forestry and promote and develop instruction and training in forestry by establishing or aiding schools or other educational establishments or in such other manner as he thinks fit; ( j ) make or aid in making such inquiries, experiments and research, and collect or aid in collecting such information, as he thinks important for the purpose of promoting forestry and the teaching of forestry, and publish or otherwise take steps to make known the results of such inquiries, experiments or research and to disseminate such information; ( k ) disseminate, or aid in the dissemination of, information likely, in his opinion, to arouse, stimulate, or increase, public interest in forestry or woodland industries; ( l ) make or aid in making such inquiries as he thinks necessary for the purpose of securing an adequate supply of timber in the State or promoting the sale, utilisation or conversion of timber or fostering the establishment or extension of woodland industries. (2) Nothing in subsection (1) of this section shall be construed authorising the Minister to sell, or let, or exchange for other land, any foreshore, within the meaning of the Foreshore Act, 1933 (No. 12 of 1933), or any State Minerals, within the meaning of the Minerals Development Act, 1940 (No. 31 of 1940). (3) The State Lands Act, 1924 (No. 45 of 1924), shall, in so far as it applies to any such land as is mentioned in paragraph (c) of subsection (1) of this section, cease to apply. (4) The Minister may accept any gift made to him for all or any of the purposes of this Act, and, subject to the terms thereof, may apply it for those purposes in accordance with regulations which he is hereby authorised to make (5) Any person under a disability referred to in section 7 of the Lands Clauses Consolidation Act, 1845, may enter into agreements with the Minister for the purposes of this section in like manner in all respects as he is entitled to enter into agreements for the purpose of the said section 7. (6) The Minister shall, as soon as may be after the expiration of every financial year (other than the financial year 1945-46) cause to be laid before each House of the Oireachtas a report of his proceedings under this Act during that year.

#### 10 Consultative Committee.

SECT 10.—(1) The Minister may by order establish a consultative committee (in this section referred to as the Consultative Committee) for giving to the Minister in accordance with the provisions of the order advice and assistance with respect to the exercise by the Minister of his powers under this Act. (2) The constitution of the Consultative Committee shall be such as may be determined by the order establishing it, so, however, that the members of the said Committee shall include— ( a ) a representative of the Minister for Agriculture; ( b ) a person having practical experience of matters relating to forestry; ( c ) a person with knowledge and experience of the home grown timber trade; ( d ) a person with knowledge or experience of labour matters; ( e ) a person with knowledge or experience of the work of county councils; ( f ) a member of any society existing for the promotion of afforestation; ( g ) an owner of woodland.

#### 11 Inspection of land.

SECT 11.—(1) Any authorised officer may enter on and survey any land for the purpose of ascertaining whether it is suitable for afforestation or for the purpose of inspecting any timber thereon or for any other purpose in connection with the exercise of the powers of the Minister under this Act. (2) An authorised officer, who enters on any land in pursuance of his power under this section, shall, if so required by the occupier of that land, produce his authority to such occupier and permit him to read it. (3) If any person obstructs or interferes with an authorised officer in the exercise of any power conferred on him by this section, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding ten pounds. (4) In this section the expression "authorised

officer" means a person appointed in writing by the Minister to be an authorised officer for the purposes of this section.

### **PART III - EXTINGUISHMENT OF EASEMENTS, CREATION OF RIGHTS OF WAY AND COMPULSORY ACQUISITION, OF LAND**

#### **CHAPTER I PRELIMINARY AND GENERAL**

##### **12 Definitions for purposes of Part III.**

SECT 12.—In this Part— the expression "acquisition order" means an order made under section 23 of this Act; the expression "annual sum" means any annual or periodical payment charged on land, but does not include— ( a ) any State annuity, or ( b ) a rent payable to the Land Commission or the Commissioners under a contract of tenancy expressed to be made for temporary convenience, or ( c ) interest on a mortgage or ( d ) a charge subsisting under a settlement; the expression "the Appeal Tribunal" means the tribunal constituted by section 7 of the Land Act, 1933 (No. 38 of 1933); the expression "assessment order" means an order made under subsection (2) of section 24 or subsection (1) of section 25 of this Act; the expression "charge subsisting under a settlement" means a charge subsisting or to arise under a settlement, within the meaning of the Settled Land Acts, 1882 to 1890, not being a charge having priority to the settlement or a charge created for securing money actually raised; the expression "the Commissioners" means the Commissioners of Public Works in Ireland; the word "easement" includes any profit-à-prendre or other right in or over land; the word "interest", in relation to land, includes— ( a ) an easement, ( b ) an annual sum, but does not include— ( c ) a tenancy from year to year held under the Land Commission or the Commissioners and expressed in the contract of tenancy to be for temporary convenience, or ( d ) a State annuity, or ( e ) a mortgage on land, or ( f ) a charge subsisting under a settlement affecting the land the expression "the Judicial Commissioner" means the Judge of the High Court for the time being assigned to discharge the office of Judicial Commissioner under the Land Law (Commission) Act, 1923 (No. 27 of 1923); the expression "the Land Commission" means the Irish Land Commission; the expression the "Lay Commissioners" means the Land Commissioners other than members of the Appeal Tribunal; the word "lease" includes a fee farm grant and any contract of tenancy; the word "mortgage" includes an equitable mortgage, a charge for securing any capital sum, and a judgement mortgage, but does not include a State annuity or a charge subsisting under a settlement, and the words "mortgagee" and "mortgagor" shall be construed accordingly and shall respectively include a person from time to time deriving title under the original mortgagee and a person from time to time deriving title under the original mortgagor; the word "owner", in relation to land, means— ( a ) where the land is vested under the Land Purchase Acts in the Land Commission, but not in the tenant purchaser or purchaser thereof the person who is for the time being the tenant-purchaser or purchaser, as the case may be, of such land, and ( b ) in any other case, the owner of the lowest estate in the land constituting an estate saleable under the Land Purchase Acts; the expression "State annuity" means any sum being— ( a ) any land purchase annuity or any annual sum equivalent to a purchase annuity, within the meaning of the Land Purchase Acts, payable to the Land Commission, or ( b ) any land purchase annuity payable to the Commissioners, or ( c ) any rent charge, annuity or yearly or half-yearly payment payable to the Commissioners in respect of any local loan, within the meaning of the Local Loans Fund Act, 1935 (No. 6 of 1935); the expression "vesting date" means, in relation to any land which is the subject of a vesting order, the date specified in that order as the date on which the land is to vest in the Minister; the expression "vested land" means land which is the subject of a vesting order; the expression "vesting order" means an order made under section 26 of this Act.

##### **13 Provisions in relation to applications and appeals under Part III.**

SECT 13.—Every application and every appeal under any section contained in this Part shall be made and conducted in the prescribed manner.

##### **14 Finality of decision of Appeal Tribunal on appeals under Part III.**

SECT 14.—(1) The decision of the Appeal Tribunal on any appeal under any section contained in this Part shall be final. (2) Where, in the course of the hearing of an appeal to the Appeal Tribunal under any section contained in this Part, any party to the appeal requests the Appeal Tribunal to refer a question of law arising on the appeal to the Supreme Court by way of case stated for the determination of the Supreme Court, the Appeal Tribunal shall refer the question to the Supreme Court accordingly, and adjourn its decision on the appeal pending the determination of such case stated.

#### 15 Application of Acquisition of Land (Assessment of Compensation) Act, 1919.

SECT 15.—Section 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, shall apply in relation to— ( a ) the fixing of compensation under sections 19, 20 or 21 of this Act, ( b ) the assessing, under sections 24 or 25 of this Act, of any value, ( c ) the fixing of compensation under section 31 of this Act, with the modification that the references in the said section 2 to the official arbitrator shall be construed as references to the Lay commissioners.

#### 16 Powers of Lay Commissioners and Appeal Tribunal to award costs in proceedings under Part III.

SECT 16.—(1) ( a ) In any proceedings under this Part heard and determined by the Lay Commissioners or the Appeal Tribunal, the Lay Commissioners or the Appeal Tribunal, as the case may be, may direct that the costs and expenses of any party to such proceedings shall be paid by any other party thereto, and they may also, on the application of such first-mentioned party, issue an order for the levying of the amount (as taxed or measured in accordance with paragraph (b) of this subsection) of such costs and expenses together with the costs of obtaining such order. ( b ) Where the Lay Commissioners or the Appeal Tribunal direct, under paragraph (a) of this subsection, that the costs and expenses of any party to proceedings heard and determined by them shall be paid by any other party thereto, the said costs and expenses shall be taxed by a Taxing Master of the High Court, unless both the said parties agree that the said costs and expenses should be measured by the Lay Commissioners or the Appeal Tribunal, as the case may be, in which case the said costs and expenses shall be so measured. (2) Every order made by the Lay Commissioners or the Appeal Tribunal under this section shall be executed by a county registrar in like manner as if it were an execution order within the meaning of the Enforcement of Court Orders Act, 1926 (No. 18 of 1926). (3) In the application of subsection (2) of this section in relation to a county or county borough for which there is for the time being an under-sheriff, the said subsection shall have effect as if the word "under-sheriff" were substituted for the expression "county registrar". (4) In the application of subsection (2) of this section in relation to a county or county borough in which there is for the time being a sheriff, appointed under section 12 of the Court Officers Act, 1945 (No. 25 of 1945), in whom the functions of the county registrar for such county or county borough in relation to the execution of execution orders are for the time being vested, the said subsection shall have effect as if the word "sheriff" were substituted for the expression "county registrar".

#### 17 Payment of compensation under sections 19, 20, 21 and 30 of this Act.

SECT 17.—(1) In this section the expression "mortgaged interest" means any interest, which was immediately before the vesting date subject to any mortgages, in vested land. (2) The following provisions shall apply in respect of compensation for an interest in vested land which is not a mortgaged interest:— ( a ) in case, within three months after the final determination of the compensation, any person applies to the Minister for payment thereof, and satisfies the Minister that he is incompetent to give an effective discharge therefor, the compensation being regarded for this purpose as the proceeds of a sale of such interest effected immediately before the vesting date the Minister shall pay the compensation to that person; ( b ) in any other case,— (i) if the compensation does not exceed one thousand pounds, the Minister shall pay it into the Circuit Court and the Circuit Court shall thereupon have with respect thereto all the jurisdiction exercisable by the High Court under the Lands Clauses Acts, (ii) if the compensation exceeds one thousand pounds, it shall be paid, applied and dealt with in accordance with the provisions of the Lands Clauses Consolidation Act, 1845, with respect to purchase money or compensation coming to parties having limited interests or prevented from treating or not making title, and those provisions shall have effect accordingly. (3) The following provisions shall apply in respect of any sum (representing the whole or part of compensation for an interest in vested land which is a mortgaged interest) allocated to a

mortgagee under section 32 of this Act:— ( a ) in case, within three month after such allocation, any person applies to the Minister for payment thereof and satisfies the Minister that he is competent to give an effective discharge therefor, the Minister shall pay the said sum to that Person; ( b ) In any other case, subparagraphs (i) and (ii) of paragraph (b) of subsection (2) of this section shall apply in relation to the said sum as the said subparagraphs apply to the compensation referred to therein, (4) The following provisions shall apply in respect of any sum (representing part of compensation for an interest in vested land which is a mortgaged interest) allocated to the mortgagor under section 32 of this Act:— ( a ) in case, within three months after such allocation, any person applies to the Minister for payment thereof and satisfies the Minister that he is competent to give an effective discharge therefor, the said sum being regarded for this purpose as the net proceeds of a sale of such interest effected immediately before the vesting date, the Minister shall pay the said sum to that Person; ( b ) in any other case, subparagraphs (i) and (ii) of paragraph (b) of subsection (2) of this section shall apply in relation to the said sum as the said subparagraphs apply to the compensation referred to therein. (5) The following provisions shall apply in respect of compensation payable under sections 19 or 21 of this Act or payable by the Minister under section 20 of this Act:— ( a ) in case, within three months after the final determination of the compensation, any person applies to the Minister for payment thereof and satisfies the Minister that he is competent to give an effective discharge therefor, the Minister shall pay the compensation to that person, ( b ) in any other case, subparagraphs (i) and (ii) of paragraph (b) of subsection (2) of this section shall apply in relation to the said compensation as the said subparagraphs apply to the compensation referred to therein. (6) The Minister, if he thinks proper, may, in any particular case, extend the period of three months mentioned in subsections (2), (3), (4) and (5) of this section. (7) ( a ) The compensation referred to or part of compensation referred to in subsection (2), (3) or (4) of this section shall bear interest at the rate of three pounds per cent. per annum in respect of the period from the vesting date until the date on which it is paid. ( b ) The compensation referred to in subsection (5) of this section shall bear interest at the rate of three pounds per cent. per annum from the date on which the relevant extinguishment order or order under section 20 or 21 of this Act, as the case may be, comes into force to the date on which it is paid. (8) Where— ( a ) the Minister is required by subsections (2), (3), (4) or (5) of this section to pay to any person any sum, and ( b ) any money (in this subsection referred to as the State debt) is owing by that person to a Minister of State, the Revenue Commissioners, the Commissioners or the Land Commission, the Minister may, in lieu of paying the said sum (including interest thereon) to that person, apply the said sum and interest in or towards the payment of the State debt and pay to that person the balance (if any) thereof remaining. (9) ( a ) The following provisions shall apply in respect of compensation payable by any person (other than the Minister) under section 20 of this Act:— (i) in case, within three months after the final determination of the compensation, any person (in this paragraph referred to as the applicant) applies to the person liable to pay the compensation (in this paragraph referred to as the liable person) for payment thereof and satisfies the liable person that the applicant is competent to give an effective discharge therefor, the liable person shall pay the compensation to the applicant, (ii) in any other case, subparagraphs (i) and (ii) of paragraph (b) of subsection (2) of this section shall apply to the said compensation as the said subparagraphs apply to the compensation referred to therein, and as if the reference therein to the Minister were a reference to the liable person, ( b ) The compensation referred to in paragraph (a) of this subsection shall bear interest at the rate of three pounds per cent. per annum from the date on which the relevant order under section 20 of this Act comes into force to the date on which it is paid. ( c ) If any person (other than the Minister), who is liable to pay compensation under section 20 of this Act, fails to comply with the provisions of the foregoing paragraphs of this subsection, any person, who is competent to give an effective discharge for such compensation, may recover from such first-mentioned person such compensation and the interest payable thereon under paragraph (b) of this subsection as a simple contract debt in a court of competent jurisdiction. (10) The payment of compensation or part of compensation and interest in accordance with the foregoing provisions of this section shall be a good discharge therefor.

18 Costs of deducing title to compensation under sections 19, 20, 21 or 30 of this Act.

SECT 18.—Where any sum (being compensation under section 19, 20 or 21 of this Act or compensation or part of compensation under section 30 of this Act) is payable to any person, then, unless such sum is deposited in Court under section 17 of this Act by reason of the wilful default of that person to make a good title thereto, the person liable to pay such sum shall pay to such first-mentioned person the costs

incurred by him in deducing evidencing and verifying the title to such sum, and section 83 of the Lands Clauses Consolidation Act, 1845, shall apply in relation to such costs, and for the purposes of such application the person liable to pay such sum shall be deemed to be promoter of the undertaking.

## CHAPTER II EXTINGUISHMENT OF EASEMENTS AND CREATION OF RIGHTS OF WAY

### 19 Extinguishment of easements.

SECT 19.—(1) Where any land held by the Minister for the purposes of this Act is subject to any easements, the Minister may apply to the Lay Commissioners for an order (in this section referred to is an extinguishment order) under this section extinguishing, such easements or any one or more of such easements. (2) The Minister shall, immediately upon making an application for an extinguishment order, do the following things:— ( a ) publish the prescribed notice of the application in the *Iris Oifigiúil* and in one or more newspapers circulating in the locality in which the land to which the application relates is situate, and ( b ) serve a copy of such notice on the occupier (if any) of the land to which any easement to which the application relates is believed to be appurtenant and on every person who appears to the Minister to be the owner of any such land, if it is practicable to ascertain that person. (3) Every application for an extinguishment order shall be heard by the Lay Commissioners, after they have published the prescribed notice of the hearing in the *Iris Oifigiúil* and in one or more newspapers circulating in the locality in which the land to which the application relates is situate. (4) Where an application for an extinguishment order in relation to any land has been heard, the Lay Commissioners may— ( a ) make the order in terms of the application, or ( b ) make the order, with the exclusion from the operation thereof of any specified easements affecting the land, or ( c ) refuse the application. (5) Where an extinguishment order in relation to any land has been made by the Lay Commissioners, any person entitled to any easement, affecting such land, which will be extinguished by the operation of the order, may, within two months after the making of the order, appeal to the Appeal Tribunal against the order in so far as it will operate to extinguish such easement and the Appeal Tribunal may, on such appeal,— ( a ) confirm the order, or ( b ) revoke the order, or ( c ) vary the order so as to exclude such easement from the operation of the order. (6) Where an application for an extinguishment order in relation to any land is refused, the Minister may, within two months after such refusal, appeal to the Appeal Tribunal against such refusal, and the Appeal Tribunal may, on such appeal,— ( a ) affirm such refusal, or ( b ) make the order in terms of the application, or ( c ) make the order, with the exclusion from the operation thereof of any specified easement or easements affecting the land. (7) Where an extinguishment order in respect of any land is made by the Lay Commissioners with the exclusion of any easement affecting the land from the operation of the order, the Minister may, within two months after the making of the order, appeal to the Appeal Tribunal against the exclusion of such easement from the operation of the order, and the Appeal Tribunal may, on such appeal,— ( a ) confirm the order, or ( b ) vary the order by including the said easement therein. (8) The Minister and any person interested, as being entitled to an easement affecting any land, which is the subject of an application or an appeal under any of the previous subsections of this section, shall be entitled to be heard on the hearing of the application or the appeal. (9) ( a ) An extinguishment order made by the Lay Commissioners shall not come into force save as is provided by paragraphs (b) or (c) of this subsection. ( b ) Where an extinguishment order is made by the Lay Commissioners and no appeal in respect of it is taken under subsections (5) or (7) of this section, it shall come into force immediately upon the expiration of two months after it is made. ( c ) Where an extinguishment order made by the Lay Commissioners is confirmed or varied by the Appeal Tribunal under subsections (5) or (7) of this section, it shall come into force on the date on which it is so confirmed or varied. ( d ) Where an extinguishment order is made by the Appeal Tribunal under subsection (6) of this section, it shall come into force on the date on which it is made. (10) ( a ) Where an extinguishment order in respect of any land has come into force, the Minister shall be liable to pay compensation to any person entitled to an easement, affecting the land, which is extinguished by the operation of the order. ( b ) Any compensation payable by the Minister under this subsection shall, in default of agreement, be fixed by the Lay Commissioners on application of the Minister or the person claiming to be entitled to such compensation. ( c ) The Minister or any person claiming to be entitled to compensation under this subsection may, within one month after the date on which an application to fix such compensation has been decided by the Lay Commissioners, appeal to the Appeal Tribunal against the decision. (11) Where an extinguishment order in respect of any land, which is registered under the Act of 1891, has come into

force, the Minister shall send a copy of the order to the registering authority under the Act of 1891, and the said registering authority shall enter in the appropriate folio particulars of the order. (12) No stamp duty shall be payable on any extinguishment order, nor shall any Sees be payable in respect of any proceedings in the Land Registry under subsection (11) of this section.

## 20 Temporary rights of way for the transport of timber.

SECT 20.—(1) Where, for the purpose of transporting any timber (including timber to be derived from trees proposed to be felled) from a wood or forest to a public road or to a railway or waterway, the owner of such timber requires a right of way (in this subsection referred to as the required right of way) by a particular route over any land (in this subsection referred to as the proposed servient tenement), he may make an application (which shall indicate, by reference to a plan to be attached to the application, the required right of way and shall specify the period (which shall not exceed twelve months and is in this subsection referred to as the required period) during which he wishes to exercise the required right of way) to the Lay Commissioners for all order granting to him the required right of way, and thereupon the following provisions shall have effect:— ( a ) the applicant shall, upon making the application, serve the prescribed notice of the application on the occupier (if any) of the proposed servient tenement and on the person who appears to him to be the owner of the proposed servient tenement, if it is reasonably practicable to ascertain that person; ( b ) the Lay Commissioners shall publish the prescribed notice of the hearing of the application in the *Iris Oifigiúil* and in one or more newspapers circulating in the locality in which the proposed servient tenement is situate; ( c ) the Lay Commissioners, after hearing the application, may— (i) make an order granting to the applicant a right of way (being, as they think fit, either the required right of way or another right of way), exercisable during the required period or such other period (not exceeding twelve months) as they think fit, over the proposed servient tenement, or (ii) refuse the application; ( d ) if the Lay Commissioners make the order, the occupier or the owner of the proposed servient tenement may, within two months after the making of the order, appeal to the Appeal Tribunal against the order, and the Appeal Tribunal may, on such appeal,— (i) confirm the order, or (ii) confirm the order, but do either or both of the following things, namely, alter the route of the right of way thereby created and alter the period (so however that it shall not exceed twelve months) specified in the order as the period during which the right of way is to be exercisable, or (iii) revoke the order; ( e ) if the Lay Commissioners refuse to make the order, the applicant may, within two months after such refusal, appeal to the Appeal Tribunal against such refusal, and the Appeal Tribunal may, on such appeal,— (i) affirm such refusal, or (ii) make an order granting to the applicant a right of way (being, as they think fit, either the required right of way or another right of way), exercisable during the required period or such other period (not exceeding twelve months) as they think fit, over the proposed servient tenement; ( f ) if the Lay Commissioners make the order, but grant, thereby a right of way other than the required right of way, the applicant may, within two months after the making of the order, appeal to the Appeal Tribunal against the order, in so far as it grants a right of way other than the required right of way, and the Appeal Tribunal may, on such appeal,— (i) confirm the order as made by the Lay Commissioners, or (ii) vary the order by substituting a right of way different from that specified in the order; ( g ) if the Lay Commissioners make the order, but thereby grant a right of way exercisable for a period less than the required period, the applicant may, within two months after the making of the order, appeal to the Appeal Tribunal against the order, in so far as it grants a right of way exercisable for a period less than the required period, and the Appeal Tribunal may, on such appeal,— (i) confirm the order as made by the Lay Commissioners, or (ii) vary the order by altering the period (so however that it shall not exceed twelve months) specified in the order as the period during which the right of way is to be exercisable; ( h ) the applicant and the occupier and the owner of the proposed servient tenement shall each be entitled to be heard on the hearing of the application or of an appeal under this subsection; ( i ) if the Lay Commissioners or the Appeal Tribunal (as the case may be) are satisfied that after diligent inquiry the owner of the proposed servient tenement cannot be found or ascertained, the application or an appeal under this subsection may be heard and determined, notwithstanding the fact that such owner has not been found or ascertained. (2) Every order under subsection (1) of this section shall— ( a ) have attached thereto a map showing the location of the right of way thereby granted and its extent, ( b ) be expressed and operate to confer on the grantee under the order and his licensees a right, during the period (which shall be taken as commencing on the date on which the order comes into force) specified in the order, to pass and repass, with or without vehicles and animals, over the portion of land over which the right of



way as shown on the said map is exercisable, ( c ) operate to authorise the said grantee to construct and maintain a road on such portion. (3) ( a ) An order made under subsection (1) of this section by the Lay Commissioners shall not come into force save as is provided by paragraphs (b) or (c) of this subsection. ( b ) Where an order is made under subsection (1) of this section by the Lay Commissioners and no appeal in respect of it is duly taken under the said subsection (1), the order shall come into force immediately upon the expiration of two months after the date on which the order is made. ( c ) Where an order is made under subsection (1) of this section by the Lay Commissioners and is confirmed or varied by the Appeal Tribunal under the said subsection (1), the order shall come into force on the date on which it is so confirmed or varied. ( d ) Where an order is made under subsection (1) of this section by the Appeal Tribunal, the order shall come into force on the date on which it is so made. (4) ( a ) Where an order under subsection (1) of this section has come into force, the grantee under the order shall be liable to pay compensation to the occupier (if any) and the owner of the land over which the right of way is granted by the order. ( b ) Any compensation payable under this subsection shall, in default of agreement, be fixed by the Lay Commissioners on the application of the person liable to pay the compensation or the person claiming to be entitled to it. ( c ) The person liable to pay any compensation under this subsection or any person claiming to be entitled to such compensation may, within one month after the date on which an application to fix such compensation has been decided by the Lay Commissioners, appeal to the Appeal Tribunal against the decision. (5) Where the grantee under an order made under subsection (1) of this section constructs a road over the portion of land over which the right of way granted by the order is exercisable, the occupier or owner of such land may, within one month after the expiration of the period during which the right is exercisable, serve on the said grantee a notice requiring him to remove from such portion the materials used for the construction of such road, and thereupon the following provisions shall have effect— ( a ) the said grantee shall, not later than one month after the service of the notice, remove the said materials, ( b ) if the said grantee fails to comply with paragraph ( a ) of this subsection, the occupier or owner may remove the said materials and, in that case, may recover from the said grantee as a simple contract debt in any court of competent jurisdiction the expenses incurred by him in such removal. (6) Where the land, over which a right of way is granted by an order under subsection (1) of this section, is registered under the Act of 1891, the Land Commission shall send a copy of the order to the registering authority under the Act of 1891, together with a certificate as to the date on which the order came into force, and the said registering authority shall register the said right of way as a burden affecting the said land during the period for which the said right of way is exercisable. (7) No stamp duty shall be payable on any order under subsection (1) of this section, nor shall any fees be payable in respect of any proceedings in the Land Registry under subsection (6) of this section.

## 21 Creation of rights of way.

SECT 21.—(1) Where the Minister requires, in connection with any land (in this subsection referred to as the proposed dominant tenement) held by him for the purposes of this Act a right of way (in this subsection referred to as the required right of way) by a particular route over any other land (in this subsection referred to as the proposed servient tenement), he may make an application (which shall indicate, by reference to a plan to be attached to the application, the required right of way) to the Lay Commissioners for an order creating the required right of way, and thereupon the following provisions shall have effect:— ( a ) the Minister shall, upon making the application, serve the prescribed notice of the application on the occupier (if any) of the proposed servient tenement and on the person who appears to the Minister to be the owner of the proposed servient tenement, if it is reasonably practicable to ascertain that person; ( b ) the Lay Commissioners shall publish the prescribed notice of the hearing of the application in the *Iris Oifigiúil* and in one or more newspapers circulating in the locality in which the proposed servient tenement is situate; ( c ) the Lay Commissioners, after hearing the application, may— (i) make an order creating a right of way (being, as they think fit, either the required right of way or another right of way) over the proposed servient tenement as appurtenant to the proposed dominant tenement, or (ii) refuse the application; ( d ) if the Lay Commissioners make the order, the occupier or the owner of the proposed servient tenement may, within two months after the making of the order, appeal to the Appeal Tribunal against the order, and the Appeal Tribunal may, on such appeal,— (i) confirm the order, or (ii) confirm the order but alter the route of the rights of way thereby created, or (iii) revoke the order; ( e ) if the Lay Commissioners refuse to make an order, the Minister may, within two months after such refusal, appeal to the Appeal Tribunal against such refusal, and the Appeal Tribunal may, on such

appeal,— (i) affirm the refusal, or (ii) make an order creating a right of way (being, as they think fit, either the required right of way or another right of way) over the proposed servient tenement as appurtenant to the proposed dominant tenement; ( f ) if the Lay Commissioners make the order but create thereby a right of way other than the required right of way, the Minister may, within two months after the making of the order, appeal to the Appeal Tribunal against the order, in so far as it creates a right of way other than the required right of way, and the Appeal Tribunal may, on such appeal,— (i) confirm the order as made by the Lay Commissioners, or (ii) vary the order by substituting a right of way different from that specified in the order; ( g ) the Minister and the occupier and the owner of the proposed servient tenement "Shall each be entitled to be heard on the hearing of the application or of an appeal under this subsection; ( h ) if the Lay Commissioners or the Appeal Tribunal (as the case may be) are satisfied that after diligent inquiry the owner of the proposed servient tenement cannot be found or ascertained, the application or an appeal under this subsection may be heard and determined, notwithstanding the fact that such owner has not been found or ascertained. (2) Every order under subsection (1) of this section shall— ( a ) have attached thereto a map showing the location of the right of way created thereby and its extent, ( b ) be expressed and operate to confer on the Minister, his successors in title and his licensees a right to pass and repass, at all times with or without vehicles and animals, over the land over which the right of way (as shown on the said map) is exercisable. (3) ( a ) An order made under subsection (1) of this section by the Lay Commissioners shall not come into force save as is provided by paragraphs ( b ) or ( c ) of this subsection. ( b ) Where an order is made under subsection (1) of this section by the Lay Commissioners and no appeal in respect of it is duly taken under the said subsection (1), the order shall come into force immediately upon the expiration of two months after the date on which the order is made. ( c ) Where an order is made under subsection (1) of this section by the Lay Commissioners and is confirmed or varied by the Appeal Tribunal under the said subsection (1) the order shall come into force on the date on which it is so confirmed or varied. ( d ) Where an order is made under subsection (1) of this section by the Appeal Tribunal, the order shall come into force on the date on which it is so made. (4) ( a ) Where an order under subsection (1) of this section has come into force, the Minister shall be liable to pay compensation to the owner of the land over which the right of way is created by the order. ( b ) Any compensation payable under this subsection shall, in default of agreement, be fixed by the Lay Commissioners on the application of the Minister or the person claiming to be entitled to the compensation. ( c ) The Minister or any person claiming to be entitled to compensation under this subsection may, within one month after the date on which an application to fix such compensation has been decided by the Lay Commissioners, appeal to the Appeal Tribunal against the decision. (5) Where an order under subsection (1) of this section has come into force, the Minister may construct and maintain in repair a road on the portion of the land over which the right of way created by the order is exercisable. (6) Where the land, over which a right of way is created by an order under subsection (1) of this section, is registered under the Act of 1891, the Minister shall send a copy of the order to the registering authority under the Act of 1891 and the said registering authority shall register the said right of way as a burden affecting the said land. (7) No stamp duty shall be payable on any order under subsection (1) of this section, nor shall any fees be payable in respect of any proceedings in the Land Registry under subsection (6) of this section.

## CHAPTER III COMPULSORY ACQUISITION OF LAND

### 22 Particulars of interests in land.

SECT 22.—(1) Where the Minister considers it desirable to acquire any land for the purposes of this Act, he may serve on any person, who appears to him to have any interest in that land, a notice requiring that person to furnish to the Minister within a specified time (not being less than twenty days from such service)— ( a ) a return in writing stating whether he has or has not any interest in that land, and ( b ) if he has any such interest, an abstract (with copies of all abstracted documents) of his title to that interest. (2) Where a person, upon whom a notice has been served under this section, complies with the notice, the Minister shall pay him all costs necessarily and properly incurred by him in relation to such compliance. (3) If any person upon whom a notice has been served under this section fails or neglects to comply with such notice, such person shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding twenty pounds. (4) Where— ( a ) a person is convicted of an offence under subsection (3) of this section by reason of his failure or neglect to do the

things specified in a notice served on him under this section within the time specified in the notice, and ( b ) the said things remain, after the date of such conviction, undone by him, such person shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding five pounds for each day, after the date of such first-mentioned conviction, on which the said things remain undone by him and such offence shall be a continuing offence and accordingly fresh proceedings in respect thereof may be taken from time to time.

### 23 Authorisation to the Minister to acquire land compulsorily.

SECT 23.—(1) ( a ) If the Minister desires to acquire any land for the purposes of this Act but is unable to acquire the land by agreement expeditiously, he may apply to the Lay Commissioners for an order under this section authorising him to acquire the land compulsorily in accordance with this Chapter. ( b ) A certificate under the official seal of the Minister certifying that he has been unable to acquire any specified land by agreement expeditiously shall, for the purposes of this subsection, be conclusive evidence of the fact so certified. (2) The Minister shall, immediately upon making an application for an acquisition order in respect of any land, do the following things:— ( a ) publish the prescribed notice of the application in the *Iris Oifigiúil* and in one or more newspapers circulating in the locality in which the land is situate, and ( b ) serve a copy of such notice on the occupier (if any) of the land and on the person who appears to the Minister to be the owner of the land, if it is reasonably practicable to ascertain that person. (3) Where an application for an acquisition order in respect of any land has been made, the Lay Commissioners shall hear the application, after publishing the prescribed notice of the hearing in the *Iris Oifigiúil* and in one or more newspapers circulating in the locality in which the land is situate, and may, subject to the subsequent provisions of this section,— ( a ) make the order, or ( b ) make the order with the exclusion therefrom of any specified part of the said land, or ( c ) refuse the application. (4) No acquisition order shall be made in respect of any land— ( a ) which, in the opinion of the Lay Commissioners, is required for the amenity or convenience of a dwellinghouse, or ( b ) which is the property of a local authority, or ( c ) which has been acquired by any corporation or company for the purposes of a railway, dock, canal, water or other public undertaking, or ( d ) which is the site of a national monument, within the meaning of the National Monuments Act, 1930 (No. 2 of 1930), and is owned by the Commissioners. (5) An acquisition order in respect of any land may provide for the continuance of an existing easement in or over the land or for the creation, in lieu of an existing easement, of any new easement in or over the land. (6) Where an acquisition order in respect of any land has been made by the Lay Commissioners, the occupier or the owner of the land may, within two months after the making of the order, appeal to the Appeal Tribunal against the order, and the Appeal Tribunal may, on such appeal,— ( a ) revoke the order, or ( b ) confirm the order as so made, or ( c ) vary the order by excluding part of the land. (7) Where— ( a ) an acquisition order has been made by the Lay Commissioners in respect of any land which is subject to an easement, and ( b ) the order does not provide for the continuance of that easement or for the creation, in lieu thereof, of a new easement, the person entitled to that easement may, within two months after the making of the order, appeal to the Appeal Tribunal against the order in so far as it does not contain the said provision, and the Appeal Tribunal may, on such appeal,— (i) confirm the order as so made, or (ii) vary the order by including the said provision therein. (8) Where an application for an acquisition order in respect of any land is refused, the Minister may, within two months after such refusal, appeal to the Appeal Tribunal against such refusal, and the Appeal Tribunal may, on such appeal,— ( a ) affirm the refusal, or ( b ) make the order either as respects the whole of the land or any specified part thereof and, in case such land is subject to an easement, provide, if they think fit, for the continuance of such easement or for the creation, in lieu thereof, of a new easement. (9) Where— ( a ) an application for an acquisition order in relation to any land (in this subsection referred to as the required land) has been made, and ( b ) the order has been made by the Lay Commissioners with the exclusion therefrom, of any particular part of the required land, the Minister may, within two months after the making of the order, appeal to the Appeal Tribunal against such exclusion, and the Appeal Tribunal may, on such appeal,— (i) confirm the order as so made, or (ii) confirm the order and delete therefrom the said exclusion and, if they so think fit, provide instead for the exclusion therefrom of any particular part of the required land. (10) Where— ( a ) an acquisition order in respect of any land has been made by the Lay Commissioners, and ( b ) the order provides for the continuance of an existing easement in or over the land or for the creation, in lieu of an existing easement, of a new easement in or over the land, the Minister may, within two months after the making of the

acquisition order, appeal to the Appeal Tribunal against such provision, and the Appeal Tribunal may, on such appeal,— (i) confirm the order, or (ii) vary the order by deleting therefrom the said provision. (11) The Minister and any person interested (whether as occupier or owner or as being entitled to an easement) in any land which is the subject of an application or an appeal under this section shall be entitled to be heard on the hearing of the application or appeal. (12) If the Lay Commissioners or the Appeal Tribunal (as the case may be) are satisfied that after diligent inquiry the owner of the land to which an application or appeal under this section relates cannot be found or ascertained, the application or appeal may be heard and determined, notwithstanding the fact that such owner has not been found or ascertained. (13) ( a ) An acquisition order made by the Lay Commissioners shall not come into force save as is provided by paragraphs ( b ) or ( c ) of this subsection. ( b ) Where an acquisition order is made by the Lay Commissioners and no appeal in respect of it is taken under subsection (6), (7), (9) or (10) of this section, it shall come into force immediately upon the expiration of two months after it is made. ( c ) Where an acquisition order made by the Lay Commissioners is confirmed or varied by the Appeal Tribunal under subsection (6), (7), (9) or (10) of this section, it shall come into force on the date on which it is so confirmed or varied. ( d ) Where an acquisition order is made by the Appeal Tribunal under subsection (8) of this section, it shall come into force on the date on which it is made. (14) Every acquisition order shall remain in force for the period of two years commencing on the date on which it came into force and no longer. (15) Every acquisition order shall have attached thereto a map or plan showing the land in respect of which the acquisition order is made. (16) Where an acquisition order in respect of any land comes into force, the Land Commission shall as soon as may be thereafter— ( a ) publish, in the *Iris Oifigiúil* and in one or more newspapers circulating in the locality in which the land is situate, a notice (which shall specify the place at which the acquisition order may be inspected and the times for inspection) of the making of the order, and ( b ) serve a copy of such notice on every person who appears to the Land Commission to have any interest in the land.

#### 24 Assessment of value of interests in land the subject of an acquisition order.

SECT 24.—(1) Where an acquisition order in respect of any land is in force, the Minister may apply to the Lay Commissioners to assess the value of any particular interest in the land. (2) Where an application under this section has been duly made to the Lay Commissioners to assess the value of any particular interest in any land, the Lay Commissioners, after affording any person claiming to be entitled to such interest an opportunity of being heard, shall by order assess the value of such interest. (3) The Minister or any person claiming to be entitled to an interest in land the subject of an order under subsection (2) of this section may, within two months after the date of the order, appeal to the Appeal Tribunal against the order.

#### 25 Provisional apportionment of certain annual sums and assessment of value of part thereof.

SECT 25.—(1) Where any land (in this subsection referred to as the acquirable land), in respect of which an acquisition order is in force, is subject in conjunction with other land to an annual sum, the Lay Commissioners shall, on the application of the Minister and after affording the persons by and to whom the said annual sum is payable an opportunity of being heard, by order— ( a ) apportion the said annual sum in such manner as they consider proper between the acquirable land and such other land, and ( b ) assess the value of so much of the said annual sum as is apportioned to the acquirable land. (2) The Minister or the person by or to whom an annual sum the subject of an order under subsection (1) of this section is payable may, within two months after the date of the order, appeal to the Appeal Tribunal against the order and the Appeal Tribunal may, on such appeal,— ( a ) confirm the order, or ( b ) vary it in such manner as the Appeal Tribunal thinks fit. (3) An order under subsection (1) of this section apportioning part of an annual sum to land which is the subject of an acquisition order shall come into force if, but only if, a vesting order is made in respect of that land, but if that vesting order is made the order under this section shall come into force on the day immediately preceding the vesting date. (4) Where an order under subsection (1) of this section in relation to an annual sum payable out of land (in this subsection referred to as the acquirable land) in respect of which an acquisition order is made, and other land (in this subsection referred to as the non-acquirable land) has come into force, then, as on and from the date on which the order comes into force,— ( a ) the non-acquirable land shall be, by virtue of this subsection, released from so much of the said annual sum as is apportioned to the acquirable land, ( b

) the person entitled to the said annual sum immediately before the vesting date and his successors in title shall, in respect of the non-acquirable land, have the same rights and remedies for the recovery of the part of the said annual sum apportioned to the non-acquirable land as previously to the vesting date he had for the recovery of the whole of the said annual sum, ( c ) in case such annual sum was a rent payable under a lease,— (i) the lessee shall, as to all rent accruing under the lease, in respect of any period commencing on or after the vesting date, be liable only to the portion thereof apportioned to the non-acquirable land, (ii) all the covenants, conditions and agreements of the lease, except as to the amount of the rent to be paid, shall remain in force with regard to the non-acquirable land in the same way as if the non-acquirable land only had been comprised in the lease.

## 26 Vesting orders.

SECT 26.—(1) Where an acquisition order in respect of any land is in force, the Minister may, if in his absolute discretion he so thinks fit, make, subject to subsection (2) of this section, an order under this section vesting the land in him on a specified date not earlier than one month after the making thereof. (2) The Minister shall not make a vesting order in respect of any land which is subject in conjunction with any other land to any annual sum unless an order has been made under section 25 of this Act in relation to such lands. (3) A vesting order shall— ( a ) have attached thereto a map or plan showing the land to which the order relates; ( b ) if the relevant acquisition order provides for the continuance of an existing easement or for the creation, in lieu of an existing easement, of a new easement, contain a similar provision. (4) Where a vesting order is made in respect of any land, the following provisions shall have effect:— ( a ) the vesting order shall operate to vest the said land in the Minister, as on and from the vesting date, for an estate in fee simple in possession subject— (i) in case the said land is subject to a State annuity, to that State annuity. (ii) to any easement, for the continuance or creation whereof provision is made in the vesting order in pursuance of subsection (3) of this section, but save as aforesaid free from all public rights (if any) and from the claims of all persons who are interested in the said land, whether in respect of incumbrances or interests therein or otherwise howsoever; ( b ) in respect of each interest subsisting in the said land immediately before the vesting date— (i) the order shall operate, as on and from the vesting date, to transfer and attach to the compensation, payable in respect of that interest, all estates, trusts and incumbrances subsisting in respect of that interest immediately before the vesting date, (ii) the said compensation shall, as respects any rights or claims, existing immediately before the vesting date, to or against that interest, represent that interest for all purposes, (iii) if that interest was, immediately before the vesting date, settled land, within the meaning of the Settled Land Acts, 1882 to 1890, the said compensation shall be capital money for the purposes of those Acts. (5) Where the Minister makes a vesting order in respect of any land, he shall as soon as may be thereafter— ( a ) publish, in the *Iris Oifigiúil* and in one or more newspapers circulating in the locality in which the land is situate, a notice (which shall specify the place at which the vesting order may be inspected and the times for inspection) of the making of the order, ( b ) serve a copy of such notice on all persons who appear to him to have had, immediately before the vesting date, any interest in the land. (6) Where any public right is terminated by a vesting order the Minister may, if he thinks it necessary, arrange for a right to be exercisable by the public in lieu of the terminated public right. (7) Where any land has become vested in the Minister by means of a vesting order, the Minister shall send to the registering authority under the Act of 1891 the vesting order and, on receipt thereof, the said registering authority shall cause the Minister to be registered under the Act of 1891 as owner in fee-simple of the land in accordance with the terms of the vesting order. (8) No stamp duty shall be payable on any vesting order nor shall any fees be payable in respect of any proceedings in the land Registry under subsection (7) of this section.

## 27 Retrospective apportionment of State annuities in certain cases.

SECT 27.—Where a vesting order is made in respect of any land (in this section referred to as the acquired land) which, immediately before the vesting date, was subject, in conjunction with other land, to a State annuity,— ( a ) the Minister shall give notice of the vesting order to the authority to whom the State annuity was payable, ( b ) the said authority shall, as soon as may be after the receipt of the notice, do one of the following things:— (i) apportion, with effect as on and from the day immediately preceding the vesting date, the State annuity in such manner as the said authority consider proper between the acquired land and such other land, (ii) declare the whole of the State annuity to be exclusively charged,

with effect as on and from the day immediately preceding the vesting date, on either the acquired land or such other land.

#### 28 Taking possession of land acquired by the Minister.

SECT 28.—(1) Where the Minister makes a vesting order in respect of any land, the Minister may enter on and take possession of the land on, or at any time after, the vesting date. (2) If any person obstructs or interferes with the entry on or taking of possession of any land under this section, that person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding ten pounds.

#### 29 Order for possession of land vested in the Minister.

SECT 29.—(1) Where the Minister is under section 28 of this Act entitled to enter on and take possession of any land and any person neglects or refuses to give up possession thereof or obstructs or interferes with such entry on or taking possession of the land, the Judicial Commissioner may, on the application of the Minister, issue an order to the county registrar, within whose county or county borough the land is situate, to deliver possession of the land to any person named in the order, and upon receipt of the order the county registrar shall deliver possession of the land accordingly and the Minister shall be entitled to recover from the person in default all costs and expenses incurred by him in connection with the issuing and execution of the order. (2) An order issued under this section shall be deemed to be an execution order within the meaning of the Enforcement of Court Orders Act, 1926 (No. 18 of 1926). (3) Where possession of any land has been delivered by a county registrar under this section, any person who, without the consent of the Minister, enters on and takes possession of the land or any part thereof shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding ten pounds and to a further fine not exceeding ten pounds for every day during which he remains in possession. (4) In the application of subsections (1) and (3) of this section in relation to a county or county borough for which there is for the time being an under-sheriff, the said subsections shall have effect as if the word "under-sheriff" were substituted for the expression "county registrar" where the latter expression occurs in the said subsections. (5) In the application of subsections (1) and (3) of this section to a county or county borough in which there is for the time being a sheriff, appointed under section 12 of the Court Officers Act, 1945 (No. 25 of 1945), in whom the functions of the county registrar for such county or county borough in relation to the execution of execution orders are for the time being vested, the said subsections shall have effect as if the word "sheriff" were substituted for the expression "county registrar" where the latter expression occurs in the said subsections.

#### 30 Compensation.

SECT 30.—(1) Where a vesting order is made in respect of any land, the Minister shall be liable to pay compensation in respect of every interest (other than an easement continued by the vesting order or an easement in lieu whereof a new easement has been created by the vesting order) subsisting therein immediately before the vesting date. (2) In the subsequent sections contained in this Chapter, the word "compensation" means compensation under this section in respect of an interest in land.

#### 31 Assessment of compensation in respect of interests.

SECT 31.—(1) Subject to the provisions of this section, the amount of compensation payable in respect of any interest in vested land shall,— ( a ) in case such interest was, immediately before the vesting date, subject to any mortgage or mortgages, be fixed, in default of agreement between the Minister, the mortgagor and all the mortgagees, by the Lay Commissioners on the application of the Minister, the mortgagor or any mortgagee, or ( b ) in any other case, be fixed, in default of agreement, by the Lay Commissioners on the application of the Minister or the person claiming the compensation. (2) Where compensation has been fixed by the Lay Commissioners, the Minister or any person (including a mortgagee) interested therein may, within one month after the compensation has been so fixed, appeal to the Appeal Tribunal against the award of the Lay Commissioners. (3) Where— ( a ) the value of any interest in vested land has been assessed by an assessment order, and ( b ) that interest is subsisting

immediately before the vesting date, then, subject to subsection (5) of this section, the compensation payable in respect of the interest shall be an amount equal to the sum assessed by the assessment order.

(4) Where— ( a ) the value of any interest (in this subsection referred to as the original interest) in vested land has been assessed by an assessment order, and ( b ) the original interest is subsisting immediately before the vesting date, and ( c ) any interest (in this subsection referred to as the new interest) has since the date of the assessment order been created out of the original interest, the compensation payable in respect of the original interest and the new interest shall not when added together exceed the amount assessed by the assessment order. (5) Compensation shall be assessed separately in respect of each interest in vested land. (6) Where either— ( a ) (i) any interest in vested land was settled land within the meaning of the Settled Land Acts, 1882 to 1890, and (ii) such interest was immediately before the vesting date subject to any charges which are charges subsisting under a settlement, or ( b ) any interest in vested land was immediately before the vesting date subject to any mortgage or mortgages, the compensation in respect of such interest shall be fixed on the assumption that it was not so subject.

### 32 Allocation of compensation in respect of mortgaged interests.

SECT 32.—(1) In this section the expression "the mortgage debt" means, in relation to a mortgage on vested land, the total of the sums due immediately before the vesting date on foot of the mortgage for principal moneys and interest. (2) Where an interest in vested land was, immediately before the vesting date, subject to one mortgage and no more, the following provisions shall have effect in relation to the compensation for such interest:— ( a ) in case the compensation is sufficient to discharge the mortgage debt in full, the Minister shall by order allocate to the mortgagee so much of the compensation as is sufficient to discharge the mortgage debt and allocate the surplus (if any) to the mortgagor; ( b ) in case the compensation is not sufficient to discharge the mortgage debt in full, the Minister shall by order allocate the compensation to the mortgagee. (3) Where an interest in vested land was, immediately before the vesting date, subject to two or more mortgages, the following provisions shall have effect in relation to the compensation for such interest:— ( a ) in case the compensation is sufficient to discharge all the mortgage debts in full, the Minister shall by order allocate to each mortgagee so much of the compensation as is sufficient to discharge his mortgage debt in full and allocate the surplus (if any) to the mortgagor; ( b ) in case the compensation is not sufficient to discharge all the mortgage debts in full,— (i) if all the mortgagees agree as to how the compensation is to be allocated, the Minister shall by order allocate it in accordance with such agreement, (ii) if all the mortgagees do not agree as to how the compensation is to be allocated,— (I) the Minister may apply, in a summary manner, in case the compensation does not exceed one thousand pounds, to the Circuit Court or, in case the compensation exceeds one thousand pounds, to the High Court to allocate the compensation, (II) if the Minister so applies, the Court shall, after giving all parties interested an opportunity of being heard, allocate in accordance with the respective priorities of the mortgages, the compensation, and the costs of and incidental to the application shall be in the discretion of the Court. (4) Where any sum (representing compensation or part of compensation for an interest in vested land which was immediately before the vesting date subject to any mortgage) is allocated to a mortgagee under subsection (2) or subsection (3) of this section, the following provisions shall have effect— ( a ) as between the mortgagor and the mortgagee the said sum shall be deemed to be applicable— (i) first, in satisfaction or reduction of so much of the mortgage debt as represents interest, and (ii) secondly, in satisfaction or reduction of so much of the mortgage debt as represents principal moneys, ( b ) as between the mortgagor and the mortgagee— (i) the said sum shall be deemed to have been paid on the vesting date by the mortgagor to the mortgagee, (ii) the part of the said sum so deemed to be applicable to the said interest shall be deemed to have been received by the mortgagee on the vesting date on foot of the said interest, (iii) the part (if any) of the said sum so deemed to be applicable to principal moneys shall be deemed, notwithstanding anything contained in the instrument creating the mortgage, to have been received by the mortgagee on the vesting date on foot of the said principal moneys. ( c ) all rights and remedies possessed by the mortgagee for securing payment of the mortgage debt, except the right against the vested land, shall remain in force in respect of so much (if any) of the mortgage debt as would remain unpaid if the payments, deemed, by virtue of paragraph ( b ) of this subsection, to have been made to the mortgagee on the vesting date, had in fact been so made.

### 33 Fixing and payment of compensation in small cases.

SECT 33.—(1) In this section— the expression "small parcel of land" means land— ( a ) the area whereof does not exceed two acres, and ( b ) the rateable valuation whereof does not exceed five pounds; the word "charge" does not include a State annuity. (2) Where the land in respect of which a vesting order is made— ( a ) is a small parcel of land, and ( b ) is vested under the Land Purchase Acts in the proprietor thereof, and ( c ) is registered under the Act of 1891, the following provisions shall have effect in relation to the compensation payable in respect of all interests subsisting in such land immediately before the vesting date, that is to say:— (i) the person who was, immediately before the vesting date, registered as full owner of such land or, if that person is dead, his personal representative, or the person who was, immediately before the vesting date, the owner of the first or only charge (if any) on such land or, if that person is dead, his personal representative, may, for the purpose of the fixing (including the fixing by agreement) and the payment of such compensation, be treated as being absolutely entitled to such compensation. (ii) if such compensation is paid to the person who was, immediately before the vesting date, registered as full owner of such land or to his personal representative, the person to whom it is so paid shall hold it as a trustee for the persons (including himself), who, immediately before the vesting date, had any interests in such land, in respect of which compensation is payable, or were mortgagees of any such interests, (iii) if such compensation is paid to the person who was, immediately before the vesting date, the owner of the first or only charge (if any) on such land or to his personal representative, the person to whom it is so paid shall hold or dispose of it in like manner as if he had, on the vesting date, sold such land in exercise of the powers of sale conferred by law on mortgagees of land. (3) Where the land in respect of which a vesting order is made— ( a ) is a small parcel of land, and ( b ) is vested under the Land Purchase Acts in the proprietor thereof, and ( c ) is not registered under the Act of 1891, the following provisions shall have effect in relation to the compensation payable in respect of all interests subsisting in such land immediately before the vesting date, that is to say:— (i) the person who was, immediately before the vesting date, the occupier of such land may, for the purpose of the fixing (including the fixing by agreement) and the payment of such compensation, be treated as being absolutely entitled to such compensation, (ii) if such compensation is paid to that person, he shall hold it as a trustee for the persons (including himself) who, immediately before the vesting date, had any interests in such land, in respect of which compensation is payable or were mortgagees of any such interests. (4) Where the land in respect of which a vesting order is made— ( a ) is a small parcel of land, and ( b ) is vested under the Land Purchase Acts in the Land Commission, but not in the tenant-purchaser or purchaser thereof, and ( c ) is subject to a State annuity (other than a tithe rent charge), the following provisions shall have effect in relation to the compensation payable in respect of all interests (other than that of the Land Commission) in such land, that is to say:— (i) the person who was, immediately before the vesting date, the occupier of such land may, for the purpose of the fixing (including the fixing by agreement) and the payment of such compensation be treated as being absolutely entitled to such compensation, (ii) if such compensation is paid to that person, he shall hold it as a trustee for the persons (including himself but excluding the Land Commission) who, immediately before the vesting date, had any interests in such land in respect of which compensation is payable or were mortgagees of any such interests. (5) Where a vesting order has been made in relation to part (in this subsection referred to as the acquired land) of a rateable hereditament, the Commissioner of Valuation and Boundary Surveyor may, on the application of the Minister, apportion to the acquired land such part of the rateable valuation of the said rateable hereditament as he thinks proper, and the part of the said rateable valuation so apportioned to the acquired land shall, for the purposes of this section but not further or otherwise, be taken to be the rateable valuation of the acquired land.

### 34 Limited application of the Lands Clauses Acts.

SECT 34.—The Lands Clauses Acts shall not, save as expressly provided by this Part, apply to the acquisition of land under this Chapter.



## **PART IV - RESTRICTIONS ON CUTTING DOWN AND INJURING TREES**

35 Definitions for purposes of Part IV.

SECT 35.—(1) In this Part— the expression "afforestation conditions" means conditions attached to a general felling licence under subsection (3) or subsections (3) and (4) of section 49 of this Act; the word "contribution" means the sum specified in a contributing condition; the expression "contributing condition" means a condition attached to a limited felling licence under subsection (1) of section 42 of this Act; the expression "cut down" means, in relation to a tree, cut through the trunk of the tree at a height of less than six feet from the ground surface to such an extent that the tree falls or is rendered liable to fall under the influence of natural agencies; the expression "exempted tree" means any tree, being— ( a ) a tree which, in the opinion of the Minister, is not necessary for the ornament or protection of the holding on which it stands and which is stated in the felling notice relating to it to be intended to be cut down for the purpose of using the timber thereof for the construction or repair of buildings, fences, or other structures on the said holding or another holding belonging to the owner of such first-mentioned holding, or on a holding belonging to another person in the immediate neighbourhood of such first-mentioned holding, or for the construction or repair of farming implements for use on any of the said holdings, or ( b ) a tree which, in the opinion of the Minister, is not necessary for the ornament or protection of the holding on which it stands and which is stated in the felling notice relating to it to be intended to be cut down for the purpose of using it as domestic fuel on the holding on which it stands, or ( c ) a tree which, in the opinion of the Minister, is dead or decayed or irremediably damaged and is useless for commercial purposes, or ( d ) a tree in respect of which it is proved to the satisfaction of the Minister that such tree is standing on land purchased before the 1st day of April, 1928, and that the whole or some part of the purchase money of such land was lent to the purchaser thereof on the terms that such tree should be cut down and sold and the proceeds thereof applied in or towards repayment of such loan and that such loan or some part thereof is still owing at the date of the felling notice relating to such tree, and in respect of which it is stated in such felling notice that such tree is being cut down for the purpose of complying with the said terms of the said loan, or ( e ) a tree in respect of which it is proved to the satisfaction of the Minister that the land on which such tree is standing is subject to a mortgage or charge subsisting at the passing of the Act of 1928, and that such tree together with other trees (whether included or not included in the same felling notice) standing on such land is a substantial portion of the security for the payment of the moneys secured by such mortgage or charge, and in respect of which it is stated in the felling notice relating to it that such tree is being cut down for sale with the intention of applying the proceeds of such sale in or towards payment of such moneys; the expression "felling licence under the Act of 1928" means a licence granted under section 8 of the Act of 1928; the expression "felling notice", when used without qualification, means a notice, being either a felling notice under the Act of 1928 or a felling notice under this Act; the expression "felling notice under the Act of 1928" means a notice given under section 5 of the Act of 1928; the expression "felling notice under this Act" means a notice given under subsection (1) of section 37 of this Act; the expression "general felling licence" means a licence granted under section 49 of this Act; the expression "limited felling licence" means a licence granted under section 40 of this Act; the expression "preservation condition" means— ( a ) in relation to a limited felling licence, a condition attached to the licence under subsection (2) of section 41 of this Act, and ( b ) in relation to a utilisation (exempted trees) order, a condition attached to the order under subsection (3) of section 46 of this Act; the expression "prohibition order under the Act of 1928" means an order made under section 7 of the Act of 1928; the expression "prohibition order under this Act" means an order made under subsection (1) of section 39 of this Act; the expression "replanting conditions" means— ( a ) in relation to a limited felling licence, conditions attached to the licence under subsection (1) of section 41 of this Act, and ( b ) in relation to a utilisation (exempted trees) order, conditions attached to the order under subsection (2) of section 46 of this Act; the expression "replanting order" means an order made under section 52 of this Act; the expression "utilisation (exempted trees) order" means an order made under section 46 of this Act. (2) Where— ( a ) land is vested under the Land Purchase Acts in the proprietor thereof or is vested under the said Acts in the Irish Land Commission but not in the tenant-purchaser or purchaser thereof, and ( b ) trees growing on such land are reserved to the Irish Land Commission, the

Irish Land Commission shall be deemed, for the purposes of this Part (except section 44), to be the owner of such land. (3) Where— ( a ) land (not being land to which subsection (2) of this section applies) is vested under the Land Purchase Acts in the Irish Land Commission, and ( b ) such land is occupied by a person (being a tenant-purchaser or purchaser) under an agreement for purchase entered into or deemed to have been entered into under the said Acts, such person shall be deemed, for the purposes of this Part (except section 44), to be the owner of such land.

### 36 Exclusion of particular species of trees from operation of Part IV.

SECT 36.—(1) The Minister may, whenever and so often as he thinks fit, by order under this subsection declare that this Part or any particular provision thereof shall not apply to any tree of the species named in the order, and whenever any order is made under this subsection this Part or the particular provision thereof mentioned in the order (as the case may be) shall not, so long as the order remains in force, apply to any tree of the species named in the order. (2) The Minister may at any time by order under this subsection revoke an order made under subsection (1) of this section.

### 37 Notice of intention to uproot or cut down trees.

SECT 37.—(1) Subject to subsection (4) of this section, it shall not be lawful for any person to uproot any tree over ten years old or to cut down any tree, unless the owner of the land on which the tree stands or a predecessor in title of such owner or some person on behalf of such owner or predecessor has, not less than twenty-one days and not more than two years before the commencement of the uprooting or cutting down (as the case may be) of the tree, given to the sergeant in charge of the *Gárda Síochána* station nearest to the tree a notice in writing (which shall be in the prescribed form and shall specify the name and address of the owner by or on whose behalf such notice is given, a place in the State at which a prohibition order under this Act (if made) in relation to the tree may be served, and such other particulars as may be prescribed) of intention to uproot or cut down (as the case may be) the tree. (2) Where land has been sold before the 1st day of February, 1946, with a reservation to the vendor of trees standing on the land, subsection (1) of this section shall, in relation to any such tree, have effect as if, for a reference to the owner of the land on which the tree stands, there were substituted a reference to the person who is (by virtue of the said reservation) the owner for the time being of the tree. (3) If any person uproots or cuts down or causes or permits to be uprooted or cut down any tree in contravention of this section, that person shall be guilty of an offence under this section and shall, subject to section 53 of this Act, be liable on summary conviction thereof to a fine not exceeding five pounds for every tree so uprooted or cut down or caused or permitted to be so uprooted or cut down. (4) Subsection (1) of this section shall not apply to the uprooting or cutting down of any tree if— ( a ) the tree is uprooted or cut down under the authority conferred by a limited felling licence or a general felling licence and during the period during which such authority is exercisable, or ( b ) the tree is standing on land held by the Minister for the purposes of this Act, or ( c ) the tree is standing in a county or other borough or an urban district, or ( d ) the tree is standing within one hundred feet of any building other than a wall or temporary structure, or ( e ) the tree is cut down under section 34 of the Local Government Act, 1925 (No. 5 of 1925), or section 98 of the Electricity Supply Act, 1927 (No. 27 of 1927), or ( f ) the tree is uprooted or cut down by a local authority in connection with road construction or widening or improvement schemes or, building or constructional work, or ( g ) the tree is certified by a local authority as dangerous to road traffic on account of age or condition, or ( h ) the tree is uprooted or cut down by direction of the Minister for Posts and Telegraphs on the ground that it is a danger or obstruction to telegraph or telephone wires. (5) Nothing in this section shall be construed as limiting the right of a district planning authority, under the Town and Regional Planning Acts, 1934 and 1939, to prohibit under the said Acts the felling of trees in its planning district.

### 38 Provisions in relation to trees intended to be uprooted for transplantation.

SECT 38.—(1) Where a felling notice contains a statement that a tree is intended to be uprooted for the purpose of transplantation, it shall not be lawful for any person— ( a ) to use or deal with the tree or cause or permit the tree to be used or dealt with, if uprooted in pursuance of such notice, for any other purpose, or ( b ) to cut down the tree or cause or permit the tree to be cut down during the period of two years commencing on the date on which the felling notice was given. (2) Every person who, in respect of any

tree, acts in contravention of subsection (1) of this section shall be guilty of an offence under this section and shall, subject to section 53 of this Act, be liable on summary conviction thereof to a fine not exceeding five pounds for every such tree.

#### 39 Prohibition orders.

SECT 39.—(1) Whenever a felling notice under this Act has been given in relation to any tree, the Minister may, unless it is stated in such notice that the tree is intended to be uprooted for the purpose of transplantation, within but not after twenty-one days from the date on which such notice was given, make and serve on the owner by or on whose behalf the notice was given or his successor in title an order prohibiting the uprooting or cutting down of the tree. (2) Every prohibition order under this Act consequential upon a felling notice under this Act shall be served either— ( a ) by delivering it to the person on whom it is to be served, or ( b ) by leaving it for him with a person of the age of sixteen years or upwards at the place named in the felling notice under this Act for the service of a prohibition order under this Act. (3) Where— ( a ) a prohibition order under the Act of 1928 in respect of any tree has been duly served in accordance with section 7 of the Act of 1928, or ( b ) a prohibition order under this Act in respect of any tree has been duly served in accordance with subsection (2) of this section, it shall not be lawful for any person to uproot or cut down or cause or permit to be uprooted or cut down such tree. (4) If any person uproots or cuts down or causes or permits to be uprooted or cut down any tree in contravention of this section, that person shall be guilty of an offence under this section and shall, subject to section 53 of this Act, be liable on summary conviction thereof to a fine not exceeding five pounds for every tree so uprooted or cut down or caused or permitted to be uprooted or cut down. (5) Subsection (3) of this section shall not apply to the uprooting or cutting down of any tree if the tree is uprooted or cut down under the authority conferred by a limited felling licence or a general felling licence and during the period during which such authority is exercisable.

#### 40 Limited felling licences.

SECT 40.—(1) Where— ( a ) a prohibition order under the Act of 1928 has been duly served under section 7 of the Act of 1928, or ( b ) a prohibition order under this Act has been duly served, the Minister may, if he thinks fit, either on his own motion or on in application made to him, in the prescribed form and manner, by or on behalf of the owner of the land on which stands the tree to which the order relates, grant to the owner a licence authorising the uprooting or cutting down of the tree, and the authority so conferred shall, unless it is sooner terminated under section 43 of this Act, be exercisable during a period of two years commencing on the date on which the licence is granted. (2) Where the authority conferred by a limited felling licence is suspended under section 43 of this Act,— ( a ) the authority shall not be exercisable during the period of suspension, ( b ) if the suspension is removed, the period of suspension shall not be reckoned in computing, for the purposes of subsection (1) of this section, the period during which the authority is exercisable. (3) Where land has been sold before the 1st day of February, 1946, with a reservation to the vendor of trees standing on the land, subsection (1) of this section shall, in relation to any such tree, the subject of a prohibition order under this Act or a prohibition order under the Act of 1928, have effect as if, for the reference to the owner of the land on which the tree stands, there were substituted a reference to the person who is (by virtue of the said reservation) the owner for the time being of the tree. (4) Before granting a limited felling licence in relation to a tree standing on land which is for the time being subject to an annuity payable to the Land Commission, the Minister shall have regard to the security for the payment of such annuity. (5) Where an application duly made for a limited felling licence relates exclusively to one or more exempted trees, the Minister shall not refuse such application. (6) Where an application duly made for a limited felling licence relates to one or more exempted trees and also to one or more other trees, the Minister shall not refuse so much of such application as relates to an exempted tree or trees. (7) Whenever the Minister refuses, wholly or in part, an application for a limited felling licence, he shall, if so requested by the applicant, state in writing the ground on which he so refuses the application.

#### 41 Attachment of replanting conditions and preservation conditions to limited felling licences.

SECT 41.—(1) Whenever the Minister grants a limited felling licence (other than a limited felling licence relating exclusively to an exempted tree or trees),— ( a ) he may, if he thinks fit, attach to the licence the following conditions, that is to say:— (i) a condition (in this section referred to as the planting condition) that, if any tree or trees to which the licence relates is or are uprooted or cut down under the authority conferred by the licence, the licensee shall, before the expiration of a specified period of not less than twelve months after the date on which the authority conferred by the licence ceases to be exercisable or the expiration of such (if any) extension of that period as the Minister may in his discretion allow, plant, in accordance with the general practice of good forestry, on a specified part of the land on which stands the tree to which the licence relates or of other land owned by the licensee at the date of the grant of the licence, either (as the Minister thinks fit and specifies in the licence) a specified number of trees of a specified kind or such numbers of trees of various specified kinds as the Minister specifies, (ii) a condition (in this section referred to as the protection condition) that, until the expiration of eleven years from the date on which the authority conferred by the licence ceases to be exercisable or a period of ten years from the date of planting, whichever period expires last, the licensee shall preserve, in accordance with the general practice of good forestry, the trees planted in pursuance of the planting condition and shall for that purpose maintain in good repair and effective condition all fences and other protection necessary to protect such trees from being injured or destroyed by the trespass of any animals, ( b ) where the Minister attaches to the licence the planting condition and the protection condition, he may also attach to the licence a condition that the licensee shall, before planting any tree in pursuance of the planting condition, fence the place in which such tree is to be planted in such manner as will effectively protect such tree when planted from being injured or destroyed by the trespass of any animals. (2) Whenever the Minister grants a limited felling licence (other than a limited felling licence relating exclusively to an exempted tree or trees),— ( a ) he may, if he thinks fit, attach to the licence a condition (in this section referred to as the maintenance condition) that, until the expiration of a period of eleven years from the date on which the authority conferred by the licence ceases to be exercisable, the licensee shall preserve, in accordance with the general practice of good forestry, trees which are growing, at the date of the grant of the licence, on a specified part of the land on which stands the tree to which the licence relates or of other land owned by the licensee at the date of the licence and also trees which, in consequence of natural regeneration, commence to grow on the specified land, or which are planted thereon, subsequent to the date of the licence, and shall for that purpose maintain in good repair and effective condition all fences and other protection necessary protect such trees from being injured or destroyed by the trespass of any animals; ( b ) where the Minister attaches to the licence the planting condition, he may also attach to the licence a condition that the licensee shall, before the expiration of a period of twelve months from the date on which the authority conferred by the licence ceases to be exercisable, fence the land specified in the maintenance condition in such manner as will effectively protect all trees growing thereon, or which may grow thereon, from being injured or destroyed by the trespass of any animals. (3) The attachment of the maintenance condition to a limited felling licence shall not operate so as to render unlawful the uprooting or cutting down, subject to the other provisions of this Act, by the licensee of any tree if such uprooting or cutting down is done in the course of, and in accordance with the general practice of, good forestry. (4) Whenever the Minister is empowered, under subsection (1) of this section, to attach to a limited felling licence replanting conditions and is empowered, under subsection (2) of this section, to attach to the licence a preservation condition or preservation conditions, he may, if he thinks fit, attach to the licence both— ( a ) replanting conditions, and ( b ) a preservation condition or preservation conditions. (5) Where— ( a ) any replanting conditions, whether with or without a preservation condition or preservation conditions, are attached to a limited felling licence, and ( b ) the licence relates to two or more trees, and ( c ) some but not all of those trees are uprooted or cut down under the authority conferred by the licence, the Minister may, if he thinks fit, either— (i) release the licensee from the obligation to comply with all or any of the said replanting conditions, or (ii) reduce the number of trees to be planted by the licensee. (6) Where— ( a ) any preservation condition or conditions, whether with or without replanting conditions, is or are attached to a limited felling licence, and ( b ) the licence relates to two or more trees, and ( c ) some but not all of those trees are uprooted or cut down under the authority conferred by the licence, the Minister may, if he thinks fit, either— (i) release the licensee from the obligation to comply with the said preservation condition or with both or either of the said preservation conditions, as the case may be, or (ii) release the licensee from the obligation to comply with the said preservation condition or conditions in so far as it relates or they relate to a particular portion of the land specified in the maintenance condition. (7) Where any replanting conditions, whether with or without a preservation

condition or preservation conditions, are attached to a limited felling licence, the said replanting conditions shall (save if and in so far as he is or they are released therefrom) be binding on the licensee and on each of his successors in title to the land specified in such replanting conditions. (8) Where— ( a ) any replanting conditions, whether with or without a preservation condition or preservation conditions, are attached to a limited felling licence, and ( b ) the licensee is not the occupier of the land specified in such replanting conditions, the protection condition, save if and in so far as the licensee is released therefrom, shall be binding on the person who is for the time being the occupier of the said land. (9) Where any preservation condition or conditions, whether with or without replanting conditions, is or are attached to a limited felling licence, the said preservation condition or conditions shall (save if and in so far as he is or they are released therefrom) be binding on the licensee and on each of his successors in title to the land specified in such preservation condition or conditions. (10) Where— ( a ) any preservation condition or conditions, whether with or without replanting conditions, is or are attached to a limited felling licence, and ( b ) the licensee is not the occupier of the land specified in such preservation condition or conditions, the maintenance condition (save if and in so far as the licensee is released therefrom) shall be binding on the person who is for the time being the occupier of the said land. (11) If, where any one or more of the following, conditions, namely, replanting conditions and preservation conditions is or are attached to a limited felling licence, any person on whom that condition or any of those conditions, as the case may be, is or are binding fails to comply therewith, that person shall, in respect of every month during which such failure continues, be guilty of an offence under this section and shall be liable on summary conviction thereof, in the case of a first such conviction in relation to such limited felling licence, to a fine not exceeding five pounds and, in the case of every subsequent conviction in relation to such limited felling licence, to a fine not exceeding ten pounds.

#### 42 Attachment of contributing condition to limited felling licences.

SECT 42.—(1) The Minister may, if he so thinks fit, attach to a limited felling licence (other than a limited felling licence relating exclusively to an exempted tree or trees) a condition that, before any tree is uprooted or cut down under the authority conferred by the licence, the licensee shall pay to the Minister, by way of contribution to the expenses of the administration of the public services relating to forestry, such sum (to be specified in such condition) as the Minister thinks reasonable having regard to the expense which, in the opinion of the Minister, the licensee would, if replanting conditions were attached to the licence and compliance therewith were practicable, have had to incur to comply therewith. (2) A contributing condition shall not be attached to a limited felling licence to which there is or are attached any one or more of the following conditions, namely, replanting conditions and preservation conditions. (3) The following provisions shall apply and have effect in relation to every contributing condition attached to a limited felling licence, that is to say:— ( a ) such contributing condition shall be expressed and shall operate to impose on the licensee an obligation to pay to the Minister, before any tree is cut down or uprooted under the authority conferred by the licence, the contribution specified in the licence; ( b ) if any tree or trees to which the licence relates is or are cut down or uprooted under the authority conferred by the licence and the contribution has not been paid to the Minister before such cutting down or uprooting— (i) the licensee shall be guilty of an offence under this section and shall, subject to section 53 of this Act, be liable on summary conviction thereof to a fine not exceeding five pounds for every tree so cut down or uprooted, (ii) the Minister may, upon such conviction, recover the contribution from the licensee or from his executors or administrators in any Court of competent jurisdiction as a simple contract debt, ( c ) if none or one or more but not all of the trees to which the licence relates is or are cut down or uprooted under the authority conferred by the licence, the Minister may, if he so thinks fit, refund the contribution in whole or in part. (4) The licensee under a limited felling licence to which a contributing condition is attached may, at any time before payment of the contribution, surrender the licence with the consent of the Minister.

#### 43 Suspension or termination of authority conferred by a limited felling licence.

SECT 43.—(1) The Minister, if he is of opinion that the terms of a limited felling licence are being abused, may, at any time, by notice in writing (which shall state the reason for the suspension or termination) served on the licensee suspend or terminate the authority conferred by the licence. (2) Where the authority conferred by a limited felling licence is suspended under this section,— ( a ) the Minister

may, as he thinks fit, either remove the suspension or terminate the authority, ( b ) if the Minister does not, before the expiration of six months from the date on which the authority was suspended, remove the suspension or terminate the authority, the Minister shall be deemed to have removed the suspension on such expiration. (3) Where the authority conferred by a limited felling licence is terminated under this section,— ( a ) if any one or more of the following conditions, namely, replanting conditions and preservation conditions, is or are attached to the licence, such termination shall not apply to or relieve the licensee from such condition or conditions, ( b ) if a contributing condition is attached to the licence, such termination shall not entitle the licensee to any refund, in whole or in part, of any sum paid to the Minister in accordance with such condition.

#### 44 Refusal of limited felling licence in order to preserve amenities.

SECT 44.—(1) In this section the expressions "planning district" and "district planning authority" and the word "owner" have the meanings respectively assigned to them by the Town and Regional Planning Acts, 1934 and 1939, for the purposes, of those Acts. (2) The Minister shall not refuse an application for a limited felling licence in respect of a tree solely for the purpose of preserving amenities unless the district planning authority for the planning district in which such tree is situate has consented to such refusal. (3) Whenever the Minister refuses an application for a limited felling licence in respect of a tree (in this subsection referred to as the protected tree) solely for the purpose of preserving amenities, the owner of the piece of land (in this subsection referred to as the site of the protected tree) on which the tree is growing may, not later than eighty-four days after such refusal, require by notice in writing, the district planning authority for the planning district in which the site of the protected tree is situate to acquire the site of the protected tree, and, in that case, the following provisions shall, unless the requisition is withdrawn under subsection (5) of this section, have effect:— ( a ) the said authority shall acquire the site of the protected tree; ( b ) the said authority may also, if it so thinks fit, do any one or more of the following things— (i) acquire any other piece of land (in this subsection referred to as an additional site) which is owned by the person (in this subsection referred to as the requisitor) who made the requisition and which is in the immediate vicinity of the site of the protected tree and on which there is growing any tree the preservation of which appears to the said authority necessary for the preserving of amenities, (ii) acquire any other land (being land owned by the requisitor and adjoining the site of the protected tree or any additional site so acquired) which is necessary for the protection of the protected tree or the tree on any additional site so acquired, (iii) acquire any land, in the ownership of the requisitor, or right over land, in the ownership of the requisitor, the acquisition of which is necessary for the purpose of affording convenient access to the site of the protected tree or the tree on any additional site so acquired; ( c ) any dispute between the requisitor and the said authority as to whether the said authority is required by or entitled under this subsection to acquire any land or right over land proposed to be so acquired by the said authority or, as to the extent of the land or nature of the right over the land proposed to be so acquired by the said authority shall be decided by the Minister for Local Government and Public Health whose decision thereon shall be final. (4) The provisions, relating to the acquisition of land by a sanitary authority, of the Public Health Acts, 1878 to 1931, as amended by section 68 of the Local Government Act, 1925 (No. 5 of 1925), and by section 8 of the Local Authorities (Miscellaneous Provisions) Act, 1936 (No. 55 of 1936), shall apply to the acquisition under subsection (3) of this section of any land or right over land by a district planning authority as if those provisions were herein re-enacted and made applicable to such acquisition, and, for the purposes of such application:— ( a ) the Minister for Local Government and Public Health shall be deemed to have duly made, under section 203 of the Public Health (Ireland) Act, 1878, a provisional order empowering the said district planning authority to put in force, with reference to such last-mentioned land or right over land, the powers of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement, ( b ) the said provisional order shall be deemed to have been duly confirmed by the said Minister under section 68 of the said Local Government Act, 1925, ( c ) subsection (3) of the said section 68 shall have effect as if the words " subject in the case of a confirmation by the Minister to proof that the notice required by this section was duly published " were not contained in the said subsection (3). (5) Where a district planning authority propose to acquire under paragraph ( b ) of subsection (3) of this section any land or right over land:— ( a ) the said authority shall give to the owner of such land or right, not less than twenty-eight days before such acquisition, a written statement showing the extent and situation of such land or right, ( b ) such

owner shall be entitled to withdraw his requisition under the said subsection (3) not later than twenty-eight days after the receipt by him of such written statement.

#### 45 Restriction of use of exempted trees.

SECT 45.—(1) Where— ( a ) a felling notice under this Act has been given relating wholly or partly to a tree or trees stated therein to be an exempted tree or exempted trees, and ( b ) either— (i) a period of twenty-one days has elapsed since such notice was given and the Minister has not, during that period, made a prohibition order under this Act in relation to such tree or trees, or (ii) a prohibition order under this Act has been duly served and the Minister has granted a limited felling licence relating wholly or partly to such tree or trees, it shall not be lawful for any person to use or deal with the tree or any of the trees (as the case may be) or any substantial part thereof or cause or permit the said tree or any of the said trees (as the case may be) or any substantial part thereof to be used or dealt with when cut down or uprooted in pursuance of such felling notice or in accordance with the authority conferred by such limited felling licence for any purpose other than the purpose for which it was stated in such Telling notice that it was intended to use such tree except as provided by section 46 of this Act. (2) Every person who uses or deals with a tree or any part thereof or causes or permits a tree or any part thereof to be used or dealt with in contravention of this section shall be guilty of an offence under this section and shall, subject to section 53 of this Act, be liable on summary conviction thereof to a fine not exceeding five pounds for every such tree. (3) Subsection (1) of this section shall not apply in respect of any tree which is dead or decayed or irretrievably damaged and is useless for commercial purposes.

#### 46 Utilisation (exempted trees) orders.

SECT 46.—(1) Where— ( a ) a felling notice under this Act has been given relating wholly or partly to a tree or trees stated therein to be an exempted tree or exempted trees, and ( b ) either— (i) a period of twenty-one days has elapsed since such notice was given and the Minister has not, during that period, made a prohibition order under this Act in relation to such tree or trees, or (ii) a prohibition order under this Act has been duly served and the Minister has granted a limited felling licence relating wholly or partly to such tree or trees, and ( c ) the owner of the land on which such tree or trees stood applies (in the prescribed form and manner) to the Minister for an order authorising such tree or trees to be used or dealt with for a purpose or purposes other than that or those stated in such felling notice, the Minister may grant to such person an order authorising the said tree or trees to be used or dealt with for the purpose or purposes mentioned in the application. (2) Whenever the Minister grants a utilisation (exempted trees) order (other than a utilisation (exempted trees) order which solely authorises a tree or trees to be used for a purpose or purposes the use of the tree or trees for which, if indicated in the felling notice relating to the tree or trees, would have, rendered the tree or each of the trees, as the case may be, in exempted tree),— ( a ) he may, if he thinks fit, attach to the order the following conditions, that is to say:— (i) a condition (in this section referred to as the planting condition) that the person to whom such order is granted shall, before the expiration of a specified period of not less than twelve months after the date on which the order is granted or the expiration of such (if any) extension of that period as the Minister may in his discretion allow, plant, in accordance with the general practice of good forestry, on specified land in the ownership of such person at the date of the order either (as the Minister thinks fit and specifies in the order) a specified number of trees of a specified kind or such numbers of trees of various specified kinds as the Minister specifies, (ii) a condition (in this section referred to as the protection condition) that, until the expiration of eleven years from the date on which the order is granted or a period of ten years from the date of planting, whichever period expires last, the person to whom the order is granted shall preserve, in accordance with the general practice of good forestry, the trees planted in pursuance of the planting condition and shall for that purpose maintain in good repair and effective condition all fences and other protection necessary to protect such trees from being injured or destroyed by the trespass of any animals, ( b ) where the Minister attaches to the order the planting condition and the protection condition, he may also attach to the order a condition that the person to whom the order is granted shall, before planting any tree in pursuance of the planting condition, fence the place in which such tree is to be planted in such manner as will effectively protect such tree when planted from being injured or destroyed by the trespass of any animals. (3) Whenever the Minister grants a utilisation (exempted trees) order (other than a utilisation (exempted trees) order which solely authorises a tree or trees to be used for a purpose or

purposes the use of the tree or trees for which, if indicated in the felling notice relating to the tree or trees, would have rendered the tree or each of the trees, as the case may be, an exempted tree):— ( a ) he may, if he thinks fit, attach to the order a condition (in this section referred to as the maintenance condition) that, until the expiration of a period of eleven years from the date on which the order is granted, the person to whom the order is granted shall preserve, in accordance with the general practice of good forestry, trees which are growing at the date of the grant of the order on specified land in the ownership of such person at the date of the order and also trees which, in consequence of natural regeneration, commence to grow on such specified land, or which are planted thereon, subsequent to the date of the order, and shall for that purpose maintain in good repair and effective condition all fences and other protection necessary to protect every such tree from being injured or destroyed by the trespass of any animals; ( b ) where the Minister attaches to the order the maintenance condition, he may also attach to the order a condition that the person to whom the order is granted shall, before the expiration of a period of twelve months from the date on which the order is granted, fence the land specified in the maintenance condition in such manner as will effectively protect all trees growing thereon or which may grow thereon from being injured or destroyed by the trespass of any animals. (4) The attachment of the maintenance condition to a utilisation (exempted trees) order shall not operate so as to render unlawful the uprooting or cutting down, subject to the other provisions of this Act, by the person to whom such order is granted of any tree if such uprooting or cutting down is done in the course of, and in accordance with the general practice of, good forestry. (5) Whenever the Minister is empowered, under subsection (2) of this section, to attach to a utilisation (exempted trees) order replanting conditions and is empowered, under subsection (3) of this section, to attach to the order a preservation condition or preservation conditions, he may, if he thinks fit, attach to the order both— ( a ) replanting conditions, ( b ) a preservation condition or preservation conditions. (6) Where any one or more of the following conditions, namely, replanting conditions and preservation conditions, is or are attached to a utilisation (exempted trees) order, the said condition or conditions shall be binding on the person to whom such order is granted and on each of his successors in title to the land specified in such condition or conditions. (7) Where— ( a ) any replanting conditions, whether with or without a preservation condition or preservation conditions, are attached to a utilisation (exempted trees) order, and ( b ) the person to whom such order is granted is not the occupier of the land specified in such replanting conditions, the protection condition shall be binding on the person who is for the time being the occupier of the said land. (8) Where— ( a ) any preservation condition or conditions, whether with or without replanting conditions, is or are attached to a utilisation (exempted trees) order, and ( b ) the person to whom such order is granted is not the occupier of the land specified in such preservation condition or conditions, the maintenance condition shall be binding on the person who is for the time being the occupier of the said land. (9) If, where any one or more of the following conditions, namely, replanting conditions and preservation conditions, is or are attached to a utilisation (exempted trees) order, any person on whom that condition or any of those conditions (as the case may be) is or are binding fails to comply therewith, that person shall, in respect of every month during which such failure continues, be guilty of an offence under this section and shall be liable on summary conviction thereof, in the case of a first such conviction in relation to such utilisation (exempted trees) order, to a fine not exceeding five pounds and, in the case of every subsequent conviction in relation to such utilisation (exempted trees) order, to a fine not exceeding ten pounds.

#### 47 Restriction of use of certain trees the subject of a utilisation (exempted trees) order.

SECT 47.—(1) Where the Minister grants a utilisation (exempted trees) order authorising a tree to be used or dealt with for a specified purpose, claimed in the application made to him for such order to be a purpose rendering such tree an exempted tree, it shall not be lawful for any person to use or deal with the tree or any substantial part thereof or cause or permit the said tree or any substantial part thereof to be used or dealt with, when cut down in pursuance of the relevant felling notice or in accordance with the authority conferred by the relevant limited felling licence, for any purpose other than the purpose so authorised. (2) Every person who uses or deals with a tree or any part thereof or causes or permits a tree or any part thereof to be used or dealt with in contravention of this section shall be guilty of an offence under this section and shall, subject to section 53 of this Act, be liable on summary conviction thereof to a fine not exceeding five pounds for every such tree.

#### 48 Felling licences granted under section 8 of the Act of 1928.



SECT 48.—(1) In this section, the expression "existing planting condition" means a condition, relating to the planting of trees, attached to a felling licence under the Act of 1928. (2) Every felling licence under the Act of 1928 shall, on and after the operative date, continue in force and have effect as if it were a licence authorising the licensee to uproot or cut down the tree to which the licence relates during the period which commenced on the date on which the licence was granted and ends on the second anniversary of the operative date. (3) Where a felling licence under the Act of 1928 contains an existing planting condition, the following provisions shall have effect:— ( a ) the existing planting condition shall, as on and from the operative date, cease to attach to the licence, ( b ) there shall, by virtue of this subsection, be deemed, as on and from the operative date, to be attached to such licence the following conditions— (i) a condition (in this subsection referred to as the new planting condition) that, if any tree or trees to which the licence relates are, during the period which commenced on the date on which the licence was granted and ends on the second anniversary of the operative date, uprooted or cut down, the licensee shall, within the period of three years from the operative date or within such (if any) extension of that period as the Minister in his discretion may allow plant, in accordance with the general practice of good forestry, the number and kind of trees specified in the existing planting condition on the land specified in the licence, (ii) a condition that the licensee shall, in case he has, in pursuance of the existing planting condition planted any tree within ten years before the operative date, fence (if he has not already done so), before the expiration of a period of six months after the operative date or the expiration of such (if any) extension of that period as the Minister may in his discretion allow, the place on which that tree has been planted in such manner as will effectively protect the tree from being injured or destroyed by the trespass of any animals or, in case he plants, in pursuance of the new planting condition, on or after the operative date, any tree, fence, before planting the tree, the place in which the tree is to be planted in such manner as will effectively protect the tree, when planted, from being so injured or destroyed, (iii) a condition (in this subsection referred to as the protection condition) that the licensee shall, until the expiration of thirteen years from the operative date or the expiration of a period of at least ten years from the date of planting, whichever is the later, preserve, in accordance with the general practice of good forestry, the trees planted in pursuance of the new planting condition and for that purpose maintain in good repair and effective condition all fences and other protection necessary to protect such trees from being injured or destroyed by the trespass of any animals, ( c ) where, in pursuance of the existing planting condition, any tree has been planted by the licensee before the operative date, such tree shall be deemed to have been planted in pursuance of the new planting condition, but, notwithstanding paragraph (b) of this subsection, the protection condition attached, by virtue of the said paragraph (b), to the licence shall not require the licensee to preserve such tree after the expiration of a period of ten years from the date of planting, ( d ) where two or more, but not all, of the trees to which the licence relates are uprooted or cut down under the authority conferred by the licence, the Minister, if he so thinks fit, may either— (i) release, either in whole or in part, the licensee from the performance of the conditions attached to the licence by this subsection, or (ii) reduce the number of trees to be planted by the licensee. (4) Where conditions are, by virtue of subsection (3) of this section, attached to a felling licence under the Act of 1928:— ( a ) the said conditions shall (save if and in so far as he is or they are released therefrom) be binding on the licensee and on each of his successors in title to the land specified in the licence, ( b ) if the licensee is not the occupier of such land, the protection condition shall (save if and so far as the licensee is released therefrom) be binding on the person who is for the time being the occupier of such land. (5) If, where any conditions are, by virtue of subsection (3) of this section, attached to a felling licence under the Act of 1928, any person upon whom any such conditions or any one of such conditions are or is binding fails to comply therewith, that person shall be guilty of an offence under this section in respect of every month during, which the failure continues and shall be liable on summary conviction thereof, in the case of a first conviction in relation to such felling licence under the Act of 1928, to a fine not exceeding five pounds and, in the case of every subsequent conviction in relation to such felling licence under the, Act of 1928, to a fine not exceeding ten pounds.

#### 49 General felling licences.

SECT 49.—(1) The Minister may, whenever and so often as he thinks fit on the application (which shall be in the prescribed form and contain the prescribed particulars) made by or on behalf of any owner of land, grant to the owner a licence authorising the doing of anything mentioned in any one (to be specified

iii the licence) of the following paragraphs— ( a ) the uprooting or cutting down of trees in any specified wood on the land in the ordinary course of thinning, in accordance with the general practice of good forestry, that wood, ( b ) the uprooting or cutting down of trees on a specified part of the land for the purpose of clearing that part with a view to replanting, ( c ) the uprooting or cutting down of trees in any specified wood on the land in the ordinary course of thinning, in accordance with the general practice of good forestry, that wood, and the uprooting or cutting down of trees on a specified part of the land (other than the part on which that wood stands) for the purpose of clearing that specified part with a view to replanting, and the authorisation so conferred shall, unless sooner terminated under this section, be exercisable during such period as may be specified in the licence. (2) The authority conferred by a general felling licence may be terminated by the Minister at any time by notice in writing of such termination served on the person for the time being entitled to the land to which the licence relates. (3) There shall be attached to every general felling licence which authorises the uprooting or cutting down of trees for the purpose of clearing land with a view to replanting conditions that the licensee— ( a ) shall, within a specified period of not less than twelve months from the end of the period during which the authority conferred by the licence is exercisable or within such longer period (if any) as the Minister may in his discretion allow, plant, in accordance with the general practice of good forestry and to the satisfaction of the Minister, trees on the land so cleared, and ( b ) shall, until the expiration of eleven years from the end of the period during which the authority conferred by the licence is exercisable, or ten years from the planting of such trees, whichever is the later, preserve, in accordance with the general practice of good forestry, the tree so planted and for the purpose of such preservation maintain in good repair and effective condition all fences and other protection necessary to protect such trees from being injured or destroyed by the trespass of any animals. (4) Where conditions are attached to a general felling licence in pursuance of subsection (3) of this section, the Minister may, if he thinks fit, attach also to the licence a condition that the licensee shall, before any trees are planted in compliance with the first-mentioned condition, fence the land on which those trees are to be planted in such a manner as will effectively protect them, when planted, from being injured or destroyed by the trespass of any animals. (5) The authority conferred by a general felling licence shall, until the expiration of the period during which the authority conferred by the licence is exercisable, be exercisable by the licensee and his successors in title to the land to which the licence relates. (6) Where afforestation conditions are attached to a general felling licence— ( a ) the said conditions shall be binding on the licensee and on each of his successors in title to the land to which the licence relates, ( b ) if the licensee is not the occupier of such land, the said conditions, in so far as they relate to the preservation of trees and the maintenance of fences and other protection, shall be binding on the person who is for the time being the occupier of such land. (7) If, where any afforestation conditions are attached to a general felling licence, any person on whom those conditions or any one of those conditions are or is for the time being binding fails to comply therewith, that person shall be guilty of an offence under this section in respect of every month during which such failure continues, and shall be liable on summary conviction thereof, in the case of a first such conviction in relation to such general felling licence, to a fine not exceeding five pounds and, in the case of every subsequent conviction in relation to such general felling licence, to a fine not exceeding ten pounds.

50 Conditions attached to licences, etc, to be specified therein.

SECT 50.—Where the Minister attaches any condition or conditions to a limited felling licence or a general felling licence or a utilisation (exempted trees) order, the condition or conditions shall be set out in the licence or order.

51 Penalty for injuring trees.

SECT 51.—(1) No person shall do either of the following things, that is to say:— ( a ) do or cause or permit to be done in relation to any tree (other than a tree the uprooting or cutting down of which would not be a contravention of this Act) any act or thing, whether by ringbarking or otherwise however, which causes or is calculated or likely to cause such tree to die or to decay or which causes or is calculated or likely to cause irremediable damage to such tree, or ( b ) remove, or cause or permit to be removed timber from any tree (other than as aforesaid) otherwise than in accordance with the practice of good forestry or for the purpose of preventing grave damage to crops. (2) Every person who contravenes subsection (1) of this section shall be guilty of an offence under this section and shall, subject to section 53 of this Act, be

liable on summary conviction thereof to a fine not exceeding five pounds for every tree in respect of which such contravention is committed.

#### 52 Replanting order.

SECT 52.—(1) Whenever a person is convicted of an offence, in relation to any tree which is or was situate on land owned by him, under section 37 or section 39 or section 45 or section 47 or section 51 of this Act, the Minister may, if he thinks fit, make and serve on that person an order requiring that person to do the following things, that is to say:— ( a ) before the expiration of a specified period of not less than twelve months from the date of the order or within such (if any) extension of that period as the Minister in his discretion may allow, to plant, in accordance with the general practice of good forestry, on a specified part of such land or of other land owned at the date of the order by that person, either (as the Minister thinks fit and inserts in the order) a specified number of trees of a specified kind or such numbers of trees of various specified kinds as the Minister specifies, and ( b ) until the expiration of a period of eleven years from the date of the order or a period of ten years from the date of planting, whichever period expires last, to preserve, in accordance with the general practice of good forestry, the trees planted in pursuance of the order and for that purpose to maintain in good repair and effective condition all fences and other protection necessary to protect such trees from being injured or destroyed by the trespass of any animals. (2) A replanting order may, if the Minister thinks fit and so specifies therein, require the person in respect of whom the order is made, before planting any tree in pursuance of the order, to fence the place on which the tree is to be planted in such a manner as will effectively protect the tree, when planted, from being injured or destroyed by the trespass of any animals. (3) Where a replanting order is served on any person the provisions of the order shall be binding on that person and on each of his successors in title to the land to which the order relates. (4) Where— ( a ) a replanting order is served on any person, and ( b ) that person is not the occupier for the time being of the land to which the order relates, the order shall, in so far as it relates to the preservation of trees and the maintenance of fences and other protection, be binding on the person who is for the time being the occupier of such land. (5) If any person on whom any provision or provisions of a replanting order is or are for the time being binding fails to comply therewith, that person shall be guilty of an offence under this section in respect of every month during which such failure continues and shall be liable on summary conviction thereof, in the case of a first such conviction in relation to such replanting order, to a fine not exceeding five pounds and, in the case of every subsequent such conviction in relation to such replanting order, to a fine not exceeding ten pounds.

#### 53 Limitation on certain penalties.

SECT 53.—Where— ( a ) a person is convicted of an offence under section 37 or section 38 or section 39 or section 42 or section 45 or section 47 or section 51 of this Act, and ( b ) the offence relates to more than twenty trees, and ( c ) that person satisfies the Court that the commission Of the offence was due to a bona fide mistake of fact, whether on his part or on the part of a person acting under his orders or with his permission, then, the total amount of the fine imposed on him in respect of the offence shall not exceed one hundred pounds.

#### 54 Registration under the Registration of Title Act, 1891, of certain conditions and orders.

SECT 54.—(1) In this section— the expression "the registering authority" means the registering authority under the Act of 1891; the expression "registered land" means land registered under the Act of 1891. (2) Where— ( a ) any one or more of the following conditions, namely, replanting conditions and preservation conditions, is or are attached to a limited felling licence or to a utilisation (exempted trees) order, and ( b ) any land on which trees are to be planted or preserved in pursuance of the said condition or conditions is registered land, the Minister shall, as soon as may be after granting the licence or making the order, send a copy thereof to the registering authority who shall thereupon register the said condition or conditions attached thereto as a burden affecting such land. (3) Where— ( a ) conditions are, by virtue of subsection (3) of section 48 of this Act, attached to a felling licence under the Act of 1928, and ( b ) the land on which trees are to be planted in pursuance of such conditions is registered land, the Minister shall, as soon as may be after the operative date, send a copy of the licence to the registering authority who shall thereupon register the said conditions as a burden affecting such land. (4) Where— ( a ) afforestation

conditions are attached to a general felling licence, and ( b ) the land on which trees are to be planted in pursuance of the conditions is registered land, the Minister shall, as soon as may be after granting the licence, send a copy thereof to the registering authority who shall thereupon register the afforestation conditions as a burden affecting such land. (5) Where— ( a ) a replanting order is served on any person, and ( b ) the land on which trees are to be planted in pursuance of such order is registered land, the Minister shall, as soon as may be after the service of the order, send a copy thereof to the registering authority who shall register the order as a burden affecting such land. (6) Where a burden affecting any land has been registered under this section, and the burden has been discharged in whole or in part, or has been modified,— ( a ) the Minister, on an application therefor being made to him, in the prescribed form, by the owner for the time being of the land, shall issue to the registering authority a certificate stating the extent to which the burden has, in his opinion, been discharged or modified and also issue a copy thereof to the owner, and ( b ) the registering authority shall, on receipt of the certificate, register it as proof of the discharge or partial discharge or modification (according to the terms of the certificate) of the, burden. (7) No fees shall be payable in respect of any proceedings in the Land Registry under this section.

#### 55 Panel of referees.

SECT 55.—(1) There shall be established and maintained for the purposes of this Act a panel of referees consisting of such number of fit and proper persons as shall from time to time be found necessary for the purposes aforesaid. (2) The members of the panel of referees shall be, appointed by the Government and every such member shall hold office for five years from the date of his appointment but shall be eligible for reappointment at the expiration of his term of office. (3) Every member of the panel of referees shall be paid such fees and expenses for every examination and report made by him in pursuance of the Act as the Minister shall, with the approval of the Minister for Finance, direct.

#### 56 Reference of certain Matters to referee.

SECT 56.—(1) Where— ( a ) an application for a limited felling licence is refused in whole or in part, and the applicant or any of his successors in title to the land on which stands the tree to which the application related objects to such refusal, or ( b ) the Minister grants a limited felling licence to which there is or are attached any one or more of the following conditions, namely, replanting conditions and preservation conditions, and the licensee or any of his successors in title to the land specified in such condition or conditions objects to the attachment of such condition or conditions or to the terms of such condition or conditions, or ( c ) the Minister grants a limited felling licence to which there is attached a contributing condition and the licensee objects to the attachment of the contributing condition or to the amount of the contribution, or ( d ) the Minister terminates the authority conferred by a limited felling licence and the licensee or any of his successors in title to the land on which stands or stood the tree to which the licence relates objects to such termination, or ( e ) the Minister, having terminated the authority conferred by a limited felling licence to which there is or are attached any one or more of the following conditions, namely, replanting conditions and preservation conditions, refuses to modify such condition or conditions,, and the licensee or any of his successors in title to the land specified in such condition or conditions objects to such refusal, or ( f ) the Minister, having terminated the authority conferred by a limited felling licence to which there is or are attached any one or more of the following conditions, namely, replanting conditions and preservation conditions, modifies such condition or conditions and the licensee or any of his successors in title to the land specified in such condition or conditions objects to the extent of the modification, or ( g ) the Minister, having terminated the authority conferred by a limited felling licence to which there is attached a contributing condition, refuses to make a refund of the contribution and the licensee or his personal representatives objects or object to such refusal, or ( h ) the Minister, having terminated the authority conferred by a limited felling licence to which there is attached a contributing condition . makes a refund of part of the contribution and the licensee or his personal representatives objects or object to the amount of the refund, or ( i ) the Minister makes a utilisation (exempted trees) order to which there is or are attached any one or more of the following conditions, namely, replanting conditions and preservation conditions, and the person to whom the order is granted or any of his successors in title to the land specified in such condition or conditions objects to such attachment or to the terms of the condition or conditions so attached, or ( j ) the Minister makes a replanting order in respect of any person and that person or any of his successors in title to the land to

which the order relates objects to the order or to the terms thereof, the objector or objectors may, in accordance with subsection (2) of this section, require his or their objection to be referred to a referee. (2) Every requisition under subsection (1) of this section shall— ( a ) be in the prescribed form and state the grounds on which the requisition is based, ( b ) be sent to the Minister in the prescribed manner and within the prescribed time, and ( c ) be accompanied by the prescribed fee. (3) Whenever a requisition duly made under the foregoing provisions of this section is received by the Minister he shall cause the subject matter of such requisition (that is to say, the matter which is required by such requisition to be referred to a referee) to be referred for examination to a referee nominated by the Minister from the panel of referees established and maintained in pursuance of this Act. (4) Every referee to whom a requisition is referred under this section shall examine the subject-matter of such requisition and report in writing to the Minister the result of such examination, (5) The Minister shall consider every report sent to him under subsection (4) of this section and shall send a copy of such report to the person who made the requisition to which it relates and the Minister shall then either, as he shall think proper,— ( a ) confirm his action in the matter which was the subject of such requisition, or ( b ) take such action as may in his opinion be appropriate to meet (wholly or to such extent as appears to him to be proper) the objection which was the subject matter of such requisition. (6) In the exercise of his powers under subsection (5) of this section, the Minister may, without prejudice to the generality of the powers conferred by that subsection,— ( a ) modify any replanting conditions attached to a limited felling licence, to which the relevant requisition under this section related in like manner as he is empowered, under subsection (5) of section 41 of this Act, in the circumstances set out in that subsection, to modify replanting conditions, and such modification shall have effect as if it were in fact a modification by virtue of the said subsection (5); ( b ) modify any preservation condition or conditions attached to a limited felling licence to which the relevant requisition under this section related, in like manner as he is empowered under subsection (6) of section 41 of this Act, in the circumstances set out in that subsection, to modify preservation conditions, and such modification shall have effect as if it were in fact a modification by virtue of the said subsection (6); ( c ) modify any contributing condition attached to a limited felling licence, to which the relevant requisition under this section related, either by withdrawing the condition or reducing the amount of the contribution specified in such condition; ( d ) withdraw any limited felling licence, to which the relevant requisition under this section related, and grant in lieu thereof a fresh limited felling licence in the manner specified in section 40 of this Act and, if he thinks fit, attach to such fresh licence either— (i) any one or more of the following conditions, namely, replanting conditions and preservation conditions, or (ii) a contributing condition; ( e ) in any case in which the relevant requisition under this section related to a utilisation (exempted trees) order, make a fresh utilisation (exempted trees) order in like manner as if the original order, to which the said requisition related, had not been made, and the making of such fresh utilisation (exempted trees) order shall be deemed to render the said original order void; ( f ) any case in which the relevant requisition under this section related to a replanting order, make a fresh replanting order in like manner as if the original order, to which the said requisition related, had not been made, and the making of such fresh replanting order shall be deemed to render the said original order void. (7) Whenever the Minister takes any action to meet, wholly or partially, the objection which was the subject-matter of a requisition under this section, the fee paid on the making of such requisition shall be returned to the person who made such requisition.

#### 57 Transitory provisions.

SECT 57.—(1) During the period of two years commencing on the operative date, the provisions of subsection (1) of section 37 of this Act shall not apply to the uprooting or cutting down of any tree if— ( a ) a felling notice under the Act of 1928 in relation to the tree has, within two years before the operative date, been given in accordance with section 5 of the Act of 1928, and ( b ) the tree is uprooted or cut down (as the case may be) not later than two years from the date on which such notice was so given, and ( c ) in case the said notice was so given within twenty days before the operative date, more than twenty days have expired since the date on which the said notice was so given. (2) Where a felling notice under the Act of 1928 has been given not earlier than the twentieth day before the operative date:— ( a ) the reference, in subsection (1) of section 39 of this Act, to a felling notice under this Act shall, during the period of twenty days commencing on the operative date, be construed as including a reference to the said felling notice under the Act of 1928; ( b ) the first reference, in subsection (2) of the said section 39, to a felling notice under this Act shall be construed as including a reference to the said felling notice under the

Act of 1928, and ( c ) the reference, in paragraph ( b ) of the said subsection (5), to the place named in the said felling notice under this Act for the service of a prohibition order under this Act shall be construed as including a reference to the place named in the said felling notice under the Act of 1928 for the service of documents under the Act of 1928. (3) During the period of two years commencing on the operative date, the provisions of subsection (1) of section 37 of this Act and the provisions of subsection (3) of section 39 of this Act shall not apply to the uprooting or cutting down of any tree if the tree is uprooted or cut down under the authority conferred by a felling licence under the Act of 1928.

## **PART V - MISCELLANEOUS**

### **58 Prevention of damage by rabbits and vermin.**

SECT 58.—(1) Where the Minister is satisfied that trees or tree plants, growing on any land (in this subsection referred to as the planted land), are being, or are likely to be, damaged by rabbits or vermin present on any land (in this subsection referred to as the infested land) in the vicinity of the planted land,— ( a ) the Minister may serve on the occupier (if any) of the infested land a notice in writing stating— (i) that trees or tree plants growing on the planted land are being, or are likely to be, damaged by rabbits or vermin present on the infested land, and (ii) that, within three months after such service, either— (A) such rabbits or vermin should be effectively destroyed, or (B) effective steps should otherwise be taken for the prevention of such damage; ( b ) if— (i) the infested land is unoccupied, or (ii) the infested land being occupied and a notice under paragraph ( a ) of this subsection having been served on the occupier thereof, the occupier does not, within three months after such service, either effectively destroy the rabbits or vermin present thereon or otherwise take steps, which are in the opinion of the Minister feasible and effective, for the prevention of damage by the rabbits or vermin to trees or tree plants growing on the planted land, the Minister may authorise in writing any person to enter on the infested land and kill and take the rabbits or vermin thereon during any specified period, not exceeding twelve months. (2) Any person entering on land under an authority given by the Minister under this section shall, if so required by the occupier (if any), produce his authority, and, if any person obstructs any person so authorised in the due exercise of his powers or duties under this section, he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding twenty pounds. (3) Each of the following shall be vermin for the purposes of this section— ( a ) deer, ( b ) wild animals (other than hares) likely to damage trees or plants.

### **59 Destruction of hares on lands held by the Minister for purposes of Act.**

SECT 59.—(1) Notwithstanding anything contained in the Game Preservation Act, 1930 (No. 11 of 1930), it shall be lawful for the Minister and the servants and agents of the Minister to take and destroy hares by any reasonable means at any time on any day on any land held by the Minister for the purposes of this Act. (2) In this section the word "hares" includes leverets.

### **60 Other provisions in relation to destruction of hares.**

SECT 60.—(1) Where the Minister is satisfied that any trees or tree plants, growing on any land (in this subsection referred to as the planted land), are being, or are likely to be, damaged by hares present on any land (in this subsection referred to as the infested land), which is either the planted land or land adjoining the planted land, the following provisions shall have effect:— ( a ) the Minister may make an order (in this section referred to as a hares (suspension of restrictions on destruction) order) permitting a specified person, who is either the owner or occupier of the infested land, and also, if the Minister thinks proper, any one or more servants or agents (to be specified by name in the order) of that person to take and destroy hares on the infested land during any specified period, not exceeding six months, ( b ) the order shall operate to render it lawful, notwithstanding anything contained in the Game Preservation Act, 1930 (No. 11 of 1930), for the said person and such (if any) of his servants or agents as are so specified by name to take and destroy hares on the infested land by any reasonable means at any time on any day falling within the said specified period. (2) Where— ( a ) the Minister is satisfied that trees or tree plants, growing on any land (in this subsection referred to as the planted land), are being, or are likely to be, damaged by hares present on any other land (in this subsection referred to as the infested land) adjoining

the planted land, and ( b ) either— (i) the infested land is unoccupied and either the owner thereof is not resident in the State or his address is unknown and not readily ascertainable, or (ii) a hares (suspension of restrictions on destruction) order having been made, the period specified therein has expired and the persons authorised thereby in that behalf have failed, during the said period, to take steps to take and destroy hares on the infested land which are in the opinion of the Minister satisfactory, the following provisions shall have effect:— (I) the Minister may by order authorise any person or persons (each of whom is in this subsection referred to as an authorised person) named in the order to take and destroy hares on the infested land during any specified period, not exceeding twelve months, (II) the order shall operate to render it lawful for each authorised person, at any time on any day within the said specified period,— (A) to enter on the infested land, and (B) notwithstanding anything contained in the Game Preservation Act, 1930, to take and destroy by any reasonable means hares thereon, (III) if an authorised person enters on the infested land in exercise of the powers conferred by the order, he shall, if so required by the occupier (if any), produce the order, (IV) any person who obstructs or interferes with an authorised person exercising the powers conferred by the order, shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding twenty pounds. (3) In this section the word "hares" includes leverets,

#### 61 Burning of vegetation.

SECT 61.—(1) It shall not be lawful for any person to burn any vegetation growing within one mile of a wood which is not the Property of such person unless such person has, not less than seven days before commencing to burn such vegetation, given notice in writing of his intention to burn such vegetation to the owner of such wood and to the sergeant in charge of the Gárda Síochána station nearest to such wood. (2) If any person burns any vegetation in contravention of this section, that person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding five pounds. (3) Whenever a notice has been served on the owner of a wood under subsection (1) of this section, such owner may within three days after receiving such notice serve a counter-notice on the person by whom such notice was given objecting to the proposed burning on the ground that it is liable to cause damage to such wood. (4) If any person burns any vegetation either in contravention of this section or after serving the notice required by this section and receiving a counter-notice under this section, all injury occasioned by such burning to any wood in respect of which a notice ought to have been or was served under this section shall be deemed to have been caused by the negligent act of that person and damages to the extent of such injury shall be recoverable accordingly from that person by the owner of such wood.

#### 62 Removal or destruction of vegetation on land adjoining woods.

SECT 62.—(1) Where the Minister is satisfied that a wood is liable to be damaged by fire originating on uncultivated land adjoining such wood, by reason of the presence thereon of vegetation,— ( a ) the Minister may serve on the occupier (if any) of the said land a notice in writing stating that such vegetation constitutes a potential danger to the said wood and should be removed or sufficiently destroyed within thirty days after such service; ( b ) if— (i) the said land is unoccupied, or (ii) the said land being occupied and a notice under paragraph ( a ) of this subsection having been served on the occupier thereof, the occupier does not comply therewith, the Minister may authorise in writing any person to enter on the said land and remove or destroy any vegetation growing on the part of the said land lying within a distance of one hundred and fifty feet from the boundary of the said wood during any specified period, not exceeding three months. (2) Any person may, notwithstanding the provisions of section 28 of the Game Preservation Act, 1930 (No. 11 of 1930), remove or destroy vegetation growing on any land which lies within a distance of one hundred and fifty feet of any wood without obtaining the permission in writing of the Superintendent of the Gárda Síochána for the district, if such removal or destruction is done pursuant to a notice relating to such land served under subsection (1) of this section or in accordance with an authority in that behalf given under the said subsection. (3) Any person entering on land under an authority given by the Minister under this section shall, if so required by the occupier (if any), produce his authority, and, if any person obstructs any person so authorised in the due exercise of his powers or duties under this section, he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding twenty pounds.

### 63 Information from saw-millers.

SECT 63.—(1) The Minister may, whenever and so often as he thinks fit, serve on any person (being the proprietor of any small or factory in which timber is sawn or converted from the round or rough state) a notice requiring that person to furnish to the Minister, within twenty-eight days after the service of such notice, a return containing such particulars, in relation to the source of supply, volume and variety of timber so sawn or converted during a specified period at such sawmill or factory, as may be specified in the notice. (2) The Minister may, whenever and so often as he thinks fit, serve on any person (who is an exporter of timber in the round or rough state) a notice requiring that person to furnish to the Minister, within twenty-eight days after the service of such notice, a return containing such particulars in relation to the source of supply, volume and variety of such timber exported by him during a specified period, as may be specified in the notice. (3) A notice under this section may require any return to be made thereunder to be in a form specified in the notice. (4) If any person upon whom a notice is served under this section fails or refuses to comply with the notice, that person shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding ten pounds. (5) Where— ( a ) a person is convicted of an offence under subsection (4) of this section by reason of his failure or neglect to do the things specified in a notice served on him under this section within the time specified in the notice, and ( b ) the said things remain, after the date of such conviction, undone by him, such person shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding five pounds for each day, after the date of such first-mentioned conviction, on which the said things remain undone by him, and such offence shall be a continuing offence and accordingly fresh proceedings in respect thereof may be taken from time to time.

### 64 Penalty for false statements, etc.

SECT 64.—If any person— ( a ) makes, in any felling notice under this Act or in any application for a limited felling licence or a utilisation (exempted trees) order or a general felling licence, within the meaning of Part IV of this Act, any statement which is false or misleading in a material respect, or ( b ) in making any return to the Minister under this Act, furnishes any information which is false or misleading in a material respect, that person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding twenty-five pounds or, at the discretion of the Court, to imprisonment for any term not exceeding three months.

### 65 Transfer to the Minister for Agriculture of powers of Minister under Destructive Insects and Pests Acts, 1877 to 1929.

SECT 65.—All powers, which immediately before the operative date were exercised or capable of being exercised by the Minister under the Destructive Insects and Pests Acts, 1877 to 1929, are hereby transferred to the Minister for Agriculture. Section 6.

### SCHEDULE ENACTMENTS REPEALED

|                    |                                     |
|--------------------|-------------------------------------|
| Forestry Act, 1919 | The whole Act so far as unrepealed. |
| Forestry Act, 1928 | The whole Act.                      |
| p<br>thework       |                                     |