

## SCHEDULES

### SCHEDULE 8

Section 103

#### INDEMNITIES

##### *Entitlement*

- 1 (1) A person is entitled to be indemnified by the registrar if he suffers loss by reason of—
- (a) rectification of the register,
  - (b) a mistake whose correction would involve rectification of the register,
  - (c) a mistake in an official search,
  - (d) a mistake in an official copy,
  - (e) a mistake in a document kept by the registrar which is not an original and is referred to in the register,
  - (f) the loss or destruction of a document lodged at the registry for inspection or safe custody,
  - (g) a mistake in the cautions register, or
  - (h) failure by the registrar to perform his duty under section 50.
- (2) For the purposes of sub-paragraph (1)(a)—
- (a) any person who suffers loss by reason of the change of title under section 62 is to be regarded as having suffered loss by reason of rectification of the register, and
  - (b) the proprietor of a registered estate or charge claiming in good faith under a forged disposition is, where the register is rectified, to be regarded as having suffered loss by reason of such rectification as if the disposition had not been forged.
- (3) No indemnity under sub-paragraph (1)(b) is payable until a decision has been made about whether to alter the register for the purpose of correcting the mistake; and the loss suffered by reason of the mistake is to be determined in the light of that decision.

##### *Mines and minerals*

- 2 No indemnity is payable under this Schedule on account of—
- (a) any mines or minerals, or
  - (b) the existence of any right to work or get mines or minerals,
- unless it is noted in the register that the title to the registered estate concerned includes the mines or minerals.

##### *Costs*

- 3 (1) In respect of loss consisting of costs or expenses incurred by the claimant in relation to the matter, an indemnity under this Schedule is payable only on account of costs or expenses reasonably incurred by the claimant with the consent of the registrar.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The requirement of consent does not apply where—
    - (a) the costs or expenses must be incurred by the claimant urgently, and
    - (b) it is not reasonably practicable to apply for the registrar’s consent.
  - (3) If the registrar approves the incurring of costs or expenses after they have been incurred, they shall be treated for the purposes of this paragraph as having been incurred with his consent.
- 4
- (1) If no indemnity is payable to a claimant under this Schedule, the registrar may pay such amount as he thinks fit in respect of any costs or expenses reasonably incurred by the claimant in connection with the claim which have been incurred with the consent of the registrar.
  - (2) The registrar may make a payment under sub-paragraph (1) notwithstanding the absence of consent if—
    - (a) it appears to him—
      - (i) that the costs or expenses had to be incurred urgently, and
      - (ii) that it was not reasonably practicable to apply for his consent, or
    - (b) he has subsequently approved the incurring of the costs or expenses.

#### *Claimant’s fraud or lack of care*

- 5
- (1) No indemnity is payable under this Schedule on account of any loss suffered by a claimant—
    - (a) wholly or partly as a result of his own fraud, or
    - (b) wholly as a result of his own lack of proper care.
  - (2) Where any loss is suffered by a claimant partly as a result of his own lack of proper care, any indemnity payable to him is to be reduced to such extent as is fair having regard to his share in the responsibility for the loss.
  - (3) For the purposes of this paragraph any fraud or lack of care on the part of a person from whom the claimant derives title (otherwise than under a disposition for valuable consideration which is registered or protected by an entry in the register) is to be treated as if it were fraud or lack of care on the part of the claimant.

#### *Valuation of estates etc.*

- 6
- Where an indemnity is payable in respect of the loss of an estate, interest or charge, the value of the estate, interest or charge for the purposes of the indemnity is to be regarded as not exceeding—
- (a) in the case of an indemnity under paragraph 1(1)(a), its value immediately before rectification of the register (but as if there were to be no rectification), and
  - (b) in the case of an indemnity under paragraph 1(1)(b), its value at the time when the mistake which caused the loss was made.

#### *Determination of indemnity by court*

- 7
- (1) A person may apply to the court for the determination of any question as to—
    - (a) whether he is entitled to an indemnity under this Schedule, or
    - (b) the amount of such an indemnity.

- (2) Paragraph 3(1) does not apply to the costs of an application to the court under this paragraph or of any legal proceedings arising out of such an application.

#### *Time limits*

- 8 For the purposes of the Limitation Act 1980 (c. 58)—
- (a) a liability to pay an indemnity under this Schedule is a simple contract debt, and
  - (b) the cause of action arises at the time when the claimant knows, or but for his own default might have known, of the existence of his claim.

#### *Interest*

- 9 Rules may make provision about the payment of interest on an indemnity under this Schedule, including—
- (a) the circumstances in which interest is payable, and
  - (b) the periods for and rates at which it is payable.

#### *Recovery of indemnity by registrar*

- 10 (1) Where an indemnity under this Schedule is paid to a claimant in respect of any loss, the registrar is entitled (without prejudice to any other rights he may have)—
- (a) to recover the amount paid from any person who caused or substantially contributed to the loss by his fraud, or
  - (b) for the purpose of recovering the amount paid, to enforce the rights of action referred to in sub-paragraph (2).
- (2) Those rights of action are—
- (a) any right of action (of whatever nature and however arising) which the claimant would have been entitled to enforce had the indemnity not been paid, and
  - (b) where the register has been rectified, any right of action (of whatever nature and however arising) which the person in whose favour the register has been rectified would have been entitled to enforce had it not been rectified.
- (3) References in this paragraph to an indemnity include interest paid on an indemnity under rules under paragraph 9.

#### *Interpretation*

- 11 (1) For the purposes of this Schedule, references to a mistake in something include anything mistakenly omitted from it as well as anything mistakenly included in it.
- (2) In this Schedule, references to rectification of the register are to alteration of the register which—
- (a) involves the correction of a mistake, and
  - (b) prejudicially affects the title of a registered proprietor.