



## BERMUDA

### BERMUDA IMMIGRATION AND PROTECTION ACT 1956

#### PART VI

##### RESTRICTIONS ON ACQUISITION, ETC., OF PROPERTY

*[This is the repealed Part VI which still applies in certain cases under the **transitional provisions** in Part II of the Bermuda Immigration and Protection Amendment Act 2007 (2007:16)]*

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**PART VI**

RESTRICTIONS ON ACQUISITION, ETC., OF PROPERTY

**Interpretation of Part VI**

72 In this Part unless the context otherwise requires—

"conveyance" means any form of assurance whereby land is transferred inter vivos: and "convey" shall be construed accordingly;

"land" includes land covered by water and any building erected on land and is restricted to any estate or interest in possession other than any easement over or any charge upon or issuing out of any land or building;

"licence" means a licence granted by the Governor under this Part authorizing the acquisition, or as the case may be, the holding of land by a restricted person;

"restricted person" means a person—

- (i) who, although he is a Commonwealth citizen, does not possess and enjoy Bermudian status; or
- (ii) who is an alien; or
- (iii) which is a corporation incorporated outside Bermuda;

"specially restricted child of an alien" means a person under the age of eighteen years who is the child of an alien, and who does not possess Bermudian status; and

"the Washington Convention" means the Convention between the United Kingdom and the United States of America relative to the disposal of real and personal property signed at Washington on the 2nd March, 1899.

*[Section 72 "specially restricted child" amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]*

**Saving for provisions of other Parts of Act**

73 Nothing in any licence granted under this Part or under the Acquisition of Land by British Subjects (Restriction) Act 1948, or under, or in force by virtue of, the Alien Act 1926, with respect to the holding or use of any land, shall be construed as derogating from or abridging any provision of any other Part whereby the use of such land is subject, or may be made subject, to restrictions or requirements.

**Saving for other Acts, etc, as respects acquisition or holding of property and restrictions on use of land**

74 (1) Nothing in this Part shall derogate from or abridge—

- (a) any provision of law relating to inheritance or to intestacy; or
- (b) any provision of the Corporate Bodies Lands Act (No. 2) 1936 [title 17 item 15]; or
- (c) any provision of the Corporate Bodies (Joint Tenancy) Act 1951 [title 17 item 16]; or
- (d) any provision of the Companies Act 1981 [title 17 item 5]; or
- (e) any provision of any Private Act whereby any person or body corporate is authorized to acquire, hold, use or dispose of any real or personal property.

(2) Nothing in this Part shall derogate from or abridge any provision of the Advertisements Regulation Act 1911 [title 20 item 9], or the Municipalities Act 1923 [title 4 item 1], or of the Public Health Act 1949 [title 11 item 1], or of the United States of America Consular Establishment (Acquisition of Land) Act 1953 [title 6 item 3], or any provision of any statutory instrument in force under any of such Acts, by or under which any restriction is or may be imposed in connection with the development or use of land, or with respect to the construction or use of any building or other structure on any land.

**Saving for rights of United States citizens under Washington Convention**

75 Nothing in this Part shall affect in any respect the provisions of the Washington Convention, but all rights and privileges conferred upon citizens of the United States of America shall, subject to the terms of the said Convention, remain and be of full effect.

**Capacity of alien to acquire, etc., real and personal property**

76 Subject to the express provisions of this or any other Act, real and personal property of every description may be taken, acquired, held, and disposed of, by an alien in the same manner in all respects as by a Commonwealth citizen; and a title to real and personal property of every description may be derived through, from or in succession to an alien, in the same manner in all respects as through, from, or in succession to, a Commonwealth citizen; but this section shall not entitle an alien to any right or privilege as a Commonwealth citizen, except such rights and privileges in respect of property as are expressly conferred upon him by the succeeding provisions of this Part.

**Exclusion of qualification for franchise, etc**

77 Nothing in this Part shall qualify an alien, by virtue of his or his wife's ownership of any land in Bermuda—

- (a) for election to serve on a Municipal Corporation or a Church Vestry; or
- (b) generally, for any municipal franchise.

**Corporations**

78 Except as expressly provided in this Part or in any other Act, a corporation shall not have power to acquire or hold any land in Bermuda:

Provided that a corporation, which is not otherwise empowered by law so to do, shall have power, under the authority of a licence granted by the Governor, to take land in Bermuda by way of lease or letting agreement for a term not exceeding twenty-one years, being land bona fide required for the purposes of the business of the corporation.

*[Governor's functions delegated to the Minister by BR 42/1981 effective 24 July 1981]*

**Saving for existing rights**

79 Subject to the express provisions of this Act, nothing in this Part shall take away or diminish any right, privilege or capacity heretofore lawfully possessed by or belonging to aliens so far as relates to the possession or enjoyment of any real or personal property in Bermuda, but all such rights shall continue to be enjoyed by such aliens in as full and ample manner as such rights were enjoyed before 30 June 1956.

**Restrictions on acquisition of land by restricted persons**

80 (1) Subject to this section, but without prejudice to anything in section 81—

- (a) it shall be unlawful for a restricted person to acquire any land in Bermuda except under the authority of a licence granted to such restricted person by the Governor; and any conveyance purporting to convey any land to an unauthorized restricted person shall be void; and
- (b) it shall be unlawful to convey any land to any person as a trustee for, or a grantee to the uses of a restricted person or otherwise to assure any land for the benefit of a restricted person except under the authority of a licence granted to such trustee or grantee by the Governor and any conveyance or assurance purporting to convey or assure any land to such trustee or grantee, except in accordance with the terms of such licence, shall be void.

(2) Notwithstanding anything in subsection (1), where a conveyance or assurance which, under subsection (1) is unlawful, has been executed and the restricted person or the trustee or grantee, as the case may be, to whom the land is purported to be conveyed—

- (a) applies to the Governor for the grant of a licence authorizing the acquisition by him of the land; and
- (b) satisfies the Governor that he acted under the mistaken belief that he had lawfully acquired the land under the conveyance or assurance,

the Governor may grant a licence authorizing the acquisition of the land by the restricted person, or the trustee or grantee, as the case may be, and declaring that he is satisfied that such person, trustee or grantee acted under a mistaken belief that he had lawfully acquired the land under the conveyance or assurance; and where such licence is granted the conveyance or assurance shall be deemed to have been valid from the time of its execution.

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- (3) Nothing in this section shall require the grant of a licence—
- (a) in respect of the acquisition of any land by devise or inheritance, so, however, that, as respects a restricted person who is an alien or is the specially restricted child of an alien section 81 relating to the holding of land acquired by devise or inheritance shall have full power and effect; or
  - (b) in respect of the acquisition of any land by way of a lease or letting agreement, for a term not extending beyond five years from the date of initial acquisition of such land, where such lease or agreement does not provide an option of renewal which would enable the tenant to prolong the term beyond five years from that date; or
  - (c) in respect of the acquisition of any land by way of mortgage or by way of judgment for foreclosure, so, however, that, as respects a restricted person who is an alien or is the specially restricted child of an alien section 81 relating to the holding of land acquired by devise or inheritance shall have full power and effect; or
  - (d) in respect of a reconveyance or release of land upon satisfaction of a mortgage or other charge thereon.
- (4) Any person who, except in accordance with the terms of a licence granted by the Governor, is a party to a conveyance or assurance of whatsoever nature which purports to convey or assure land to or for the benefit of a restricted person or who aids and abets such party commits an offence against this Act.
- (5) In this section—
- (a) "benefit", in relation to a restricted person, means any circumstances whereby, under the terms of a conveyance or assurance of land, such person would be enabled to enjoy the immediate occupancy of such land or the pecuniary proceeds or profits thereof whether or not at the discretion of a trustee, or grantee, and whether or not subject to termination on the happening of any event or the fulfilment, or otherwise, of any condition; and
  - (b) where, subsequent to the grant of any licence to which this section relates, any benefit arises in favour of any other restricted person, then, in any such case and for the purposes of this section, a new conveyance, or assurance, of land shall be deemed to have taken place and all the provisions of this section shall apply thereto.
- (6) Notwithstanding section 78, but subject to this section, a company incorporated outside Bermuda may acquire and hold land in Bermuda in the capacity of a trustee pursuant to any instrument, wheresoever made or executed having effect as a conveyance in Bermuda.
- (7) Notwithstanding section 3, the expression "alien" in this section and sections 81, 82, 83, 86, 89, 90, 94 and 95 means a person who does not possess Bermudian status, whether or not he is a Commonwealth citizen.

*[Governor's functions delegated to the Minister by BR 42/1981 effective 24 July 1981]*

### **Holding of land acquired by certain restricted persons by devise or inheritance**

- 81 (1) Where an estate or interest in remainder or in expectancy or in reversion vested in a restricted person falls into possession in respect of any land or where a restricted person who is an alien, or who is the specially restricted child of an alien, acquires any land in Bermuda by devise or inheritance then it shall be unlawful for such restricted person as aforesaid to hold the land, otherwise than subject to the requirements imposed by subsection (2), except under the authority of a licence granted to him by the Governor.
- (2) Where a licence is not granted by the Governor under subsection (1), the person having power to sell the land shall sell the land or cause the land to be sold within the period of three years, or such longer period as the Governor may allow, next succeeding the date when the licence was first required.
- (3) Any person who fails to comply with the requirements of subsection (2) commits an offence against this Act.
- (4) Notwithstanding section 78 a corporation, whether incorporated in Bermuda or otherwise, may acquire and hold land in the capacity of a trustee for any person where such acquisition occurs by

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reason of the operation of any will or trust instrument resulting from the death of any person and wheresoever such will or trust instrument was made, executed or has effect:

Provided that the acquisition and holding of any such land by a corporation shall be subject to this section as if such corporation were a restricted person within the meaning of this Act.

*[Governor's functions delegated to the Minister by BR 42/1981 effective 24 July 1981]*

### **Holding of land acquired by certain restricted persons by mortgage or foreclosure**

82 (1) Where a restricted person who is an alien, or who is the specially restricted child of an alien, acquires any land in Bermuda by reason of such land becoming vested in him by virtue of a judgment for foreclosure or as mortgagee in possession, then it shall be unlawful for such restricted person as aforesaid to hold the land, otherwise than subject to the requirements imposed by subsection (2), except under the authority of a licence granted to him by the Governor.

(2) Where a licence is not granted by the Governor under subsection (1), then the restricted person by whom the land in question was acquired shall sell the land, or cause the land to be sold, or where the restricted person acquiring the land is under a disability, then the person having power to sell the land shall sell the land or cause the land to be sold, within the period of three years, or such longer period as the Governor may allow, next succeeding the date when such person acquired the land as mentioned in subsection (1).

(3) Any person who fails to comply with the requirements of subsection (2) commits an offence against this Act.

*[Governor's functions delegated to the Minister by BR 42/1981 effective 24 July 1981]*

### **Applications for grant of licences**

83 (1) An application to the Governor for the grant of a licence shall be in writing signed by the applicant or, where it is made to appear to the Governor that another person is duly acting on behalf of the applicant, then by such other person.

(2) The fees set out in the Regulations made under the Government Fees Act 1965 [title 15 item 18] shall be payable to the Secretary to the Cabinet in respect of an application for the grant of a licence made by or on behalf of an alien.

*[Governor's functions delegated to the Minister by BR 42/1981 effective 24 July 1981]*

### **Regulations relating to applications for grant of licences**

84 (1) The Governor may make regulations—

- (a) for prescribing the form and manner in which applications for licences are to be made;
- (b) for prescribing the particulars which are to be furnished with such applications;
- (c) for requiring any such applications to be accompanied by plans and by sections from an ordnance map;
- (d) for requiring the attestation of applications; and
- (e) for matters incidental thereto.

(2) The negative resolution procedure shall apply to regulations made under this section.

### **Grant of licences**

85 Subject as hereinafter provided, the Governor may, with respect to an application made under section 80, in his absolute discretion grant or refuse to grant a licence:

Provided that—

- (a) as respects any application made in respect of a restricted person the Governor shall take into consideration any representations made by the Minister with respect thereto; and
- (b) as respects any application made in respect of a restricted person who is an alien for permission to acquire land as mentioned in section 80, the Governor shall not grant a licence in any circumstances in which—

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- (i) the aggregate amount of land held by aliens (other than alien corporations holding land by virtue of any enactment other than this Act) in Bermuda exceeds, or would by reason of such acquisition exceed, in the whole two thousand acres; or
- (ii) the aggregate amount of land held by aliens (other than alien corporations holding land by virtue of any enactment other than this Act) in the parish in which is situated the land proposed to be acquired, exceeds, or would by reason of such acquisition exceed, in the whole four hundred acres, so, however, that as respects Pembroke Parish and St. George's Parish no account shall be taken of land held by aliens respectively in the City of Hamilton or the Town of St. George's; or
- (iii) the aggregate amount of land held by the alien or by the alien and by his wife (if an alien) would exceed one third of an acre within the City of Hamilton or in the Town of St. George's, or, where such land is held, both in Hamilton and St. George's, then one third of an acre in the aggregate; or
- (iv) the aggregate amount of land held by the alien or by the alien and by his wife (if an alien) would exceed five acres outside the City of Hamilton and the Town of St. George's, or, if land is held or proposed to be held both within and outside Hamilton and St. George's, the aggregate area of land held by the alien or by the alien and by his wife (if an alien) would exceed five acres,

so, however, that the restrictions imposed by sub-paragraphs (iii) and (iv) may be disregarded by the Governor where the land proposed to be conveyed has been held and enjoyed by the person proposing to convey the land as a single undivided property.

*[Governor's functions delegated to the Minister by BR 42/1981 effective 24 July 1981]*

### **Power of Governor to impose conditions and limitations in licence**

86 (1) Subject to this section, a licence may be granted subject to such conditions or limitations as the Governor thinks fit to impose and as are specified in the licence.

(2) This subsection shall have effect with respect to the imposition of conditions or limitations in respect of a licence permitting the holding of land acquired from another alien by devise or inheritance or by way of a judgment for foreclosure or as mortgagee in possession by a restricted person who is an alien or the specially restricted child of an alien, that is to say, any such condition or limitation—

- (a) shall in all material respects be equivalent to the conditions or limitations (if any) which were last in effect in respect of the holding of the land by the alien by whom the land was devised or from whom the land was inherited, or, as the case may be, who owned the land immediately before such acquisition by way of the judgment for foreclosure or as mortgagee in possession; or
- (b) where no conditions or limitations were in effect as aforesaid, shall not be such as to restrict the use of the land to any greater extent than the use of the land was restricted by reason of any statement of objects or purposes contained in the application for the grant of the licence made by the alien by whom the land was devised or from whom it was inherited, or, as the case may be, who owned the land immediately before such acquisition by way of judgment for foreclosure or as mortgagee in possession.

For the purposes of this paragraph any reference to an application for the grant of a licence shall, as respects any equivalent case to which the Alien Act 1926 applied, be construed as including a reference to the memorial by which application for sanction was made.

(3) Where a licence has been granted subject to conditions or limitations the Governor, on the application of the person to whom the licence was granted, may, if he thinks fit, vary or modify any condition or limitation; and where any condition or limitation is varied or modified the licence shall be altered accordingly.

For the purposes of this subsection, any reference to the grant of a licence shall, as respects any equivalent case to which the Alien Act 1926 applied, be construed as including a reference to a sanction granted by the Governor and to the certificate of the Secretary to the Cabinet granted accordingly; and in

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any such case any reference to the alteration of the licence shall be construed as requiring an appropriate alteration or replacement of such certificate.

(4) The Governor may make regulations under this subsection providing for the payment of charges in respect of the renting out, or other application for profit, of any land acquired pursuant to a licence.

(5) The affirmative resolution procedure shall apply to regulations made under subsection (4).

### **Validity of licence.**

87 If the acquisition of any land is authorized by a licence but is not completed before the expiration of a period of six months after the date of the grant of the licence, then the licence shall cease to have effect, but without prejudice to the grant of a fresh licence.

Provided that the Governor may, if he thinks fit in any particular case, extend such period.

*[Governor's functions delegated to the Minister by BR 42/1981 effective 24 July 1981]*

### **Registration of acquisition of land by restricted persons**

88 (1) Where a restricted person acquires any land in Bermuda by conveyance, or by way of devise or inheritance, or by way of judgment of foreclosure or as a mortgagee in possession, it shall be the duty of the restricted person or, where the restricted person is under a disability, then the person having charge of the restricted person's affairs, within the period of six months next succeeding the date of acquisition, or within such longer period as the Governor may allow, to register such acquisition in the office of the Registrar-General and such registration shall show whether the restricted person is a Commonwealth citizen or an alien or a specially restricted child of an alien.

(2) There shall be payable in respect of any registration effected by or on behalf of a restricted person such fees as may be prescribed by regulations made under the Government Fees Act 1965 [title 15 item 18].

(3) Any person who fails to comply with subsection (1) commits an offence against this Act.

*[Governor's functions delegated to the Minister by BR 42/1981 effective 24 July 1981]*

### **Registration of divestment of ownership of land by restricted person**

89 (1) Where land held by a restricted person is acquired by a person who possesses and enjoys Bermudian status, or in the case of land held by a restricted person who is an alien, is acquired by a Commonwealth citizen (otherwise than by a Commonwealth citizen who is the specially restricted child of an alien) the person who possesses and enjoys Bermudian status or the Commonwealth citizen, as the case may be, acquiring the land shall, within the period of six months next succeeding the date of the acquisition, or within such longer period as the Governor may allow, register such acquisition in the office of the Registrar General.

(2) Any person who fails to comply with subsection (1) commits an offence against this Act.

*[Governor's functions delegated to the Minister by BR 42/1981 effective 24 July 1981]*

### **Registration on change of status of alien**

90 Sections 88 and 89 shall apply, *pari passu*, in relation to—

- (a) a Commonwealth citizen who becomes an alien;
- (b) a Commonwealth citizen who acquires Bermudian status;
- (c) a person who possesses and enjoys Bermudian status who loses that status;
- (d) an alien who is naturalized as a Commonwealth citizen,

so, however, that the period within which registration is required to be effected shall be deemed to commence upon the day on which such change in status occurs.

### **Register of lands held by restricted persons**

91 It shall be the duty of the Registrar-General to maintain a register, in such form and containing such particulars as the Governor may direct, for lands for the time being held by restricted persons.

*[Governor's functions delegated to the Minister by BR 42/1981 effective 24 July 1981]*

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### **Regulations relating to registration of land**

92 The Governor may make regulations—

- (a) for prescribing the form and manner in which registration is to be effected under section 88 or section 89;
- (b) for prescribing the particulars which are to be furnished in connection with any such registration; and
- (c) for matters incidental thereto.

*[Governor's functions delegated to the Minister by BR 42/1981 effective 24 July 1981]*

### **Cessation of conditions and limitations where owner acquires Bermudian status**

93 Where a person who has been a restricted person, and as such has been granted a licence subject to conditions or limitations, acquires Bermudian status and thereby ceases to be a restricted person, then the conditions or limitations shall cease to have effect.

### **Provisions where alien holding land becomes Commonwealth citizen**

94 Where a person who, having been a restricted person who is an alien or who is a specially restricted child of an alien, and as such has been granted a licence to hold land under section 81 or section 82 becomes, respectively, a Commonwealth citizen or ceases to be a national of a foreign country, then the Governor may, having due regard to the purposes of this Part and to the subsequent status of such person, vary or modify the terms of the licence accordingly or may declare that the licence shall cease to have effect.

### **Provision where Commonwealth citizen acquires land under mistaken belief that he is alien**

95 Where a person, acting under the mistaken belief that he was an alien, has obtained the grant of a licence to acquire or hold land, and subsequently makes it appear to the satisfaction of the Governor that he was at the time of the grant of the licence a Commonwealth citizen, then the Governor may, having due regard to the purposes of this Part, and to the subsequent status of such person, vary or modify the terms of the licence accordingly or may declare that the licence shall cease to have effect.

### **Contravention of condition or limitation specified in licence**

96 (1) Any restricted person who, having been granted a licence, contravenes any condition or limitation specified in the licence, commits an offence against this Act.

(2) For the purposes of this section, any reference to any condition or limitation specified in a licence—

- (a) shall be construed, as respects a condition or limitation imposed in a licence granted under the Acquisition of Land by British Subjects (Restriction) Act 1948, as including a reference to any such condition or limitation; and
- (b) shall be construed, as respects a condition or limitation imposed in respect of any sanction granted under the Alien Act 1926, and specified accordingly in a certificate of the Secretary to the Cabinet, as including a reference to any such condition or limitation.

(3) Without prejudice to anything in subsection (1) or (2), where an alien who has acquired and is holding land in Bermuda by virtue of the grant to him, before 1 July 1956, of the sanction of the Governor, uses, or permits to be used, the land or any part thereof for any object or purpose other than the object or purpose stated in the memorial by which the alien applied for the sanction, then the alien shall be deemed to have failed to comply with a condition or limitation specified in the certificate of sanction issued by the Secretary to the Cabinet.

### **Prohibition of speculation, etc., in land by restricted persons**

97 Nothing in this Part shall entitle or authorize any restricted person to engage in the business of dealing or speculating in land; and, without prejudice to any other provisions of this Part, if any person, without the express permission in writing of the Governor, deals or speculates, or attempts to deal or speculate in any land acquired and held for the time being by him, then he shall be deemed, for the purposes of this Part, to contravene a condition or limitation under which he is authorized to hold land.

### **Escheat of land in respect of which certain offences have been committed**

98 Where, as respects any land held by a restricted person—



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- (a) any person is convicted of an offence under section 96, which relates to contraventions of conditions or limitations imposed in a licence; or
- (b) any person is convicted of an offence under section 81 or section 82, which relate, inter alia, to requirements as to the disposal of land within certain periods; or
- (c) any person is convicted of an offence under section 88, which relates to the registration of the acquisition of land, the Governor, if he considers that it is just to do so having regard to all the circumstances of the case, may within three months of the date of the conviction order that any land in connection with which the offence was committed, or any part of such land, is to be escheated to the Crown; and upon the making of such an order the land, or any part thereof affected by the order, shall be escheated to the Crown and shall become subject to the Appropriation of Escheats Act 1870 [title 8 item 102]; and the Governor may make it a condition of the withholding of the making of an order as aforesaid that the owner of the land shall pay, within such time as the Governor may determine, a penalty not exceeding \$2,400 into the Consolidated Fund.

### **Construction of Part VI with respect to rights of United States citizens under Washington Convention**

99 Nothing in this Part shall affect in any way the provisions of the Washington Convention, and all rights and privileges conferred on citizens of the United States of America shall, subject to the terms of the Washington Convention, remain and be of full effect.

### **Special provisions relating to sale of real property by United States citizens**

100 Where any person desires to obtain a prolongation of the term of three years in which under the provisions of Article I of the Washington Convention he would be allowed to sell any real property in Bermuda, he may apply in writing to the Governor, stating the circumstances which render it necessary that such term should be reasonably prolonged, and in any such case the Governor, by warrant under his hand and the Great Seal of Bermuda, may prolong the said term for such reasonable period as the Governor deems expedient.

### **Special provisions relating to registration of acquisition of real property**

101 (1) A citizen of the United States of America to whom real property has passed under the conditions mentioned in the Washington Convention shall not, during the time, or any prolongation thereof allowed to him under section 100, to sell such property, be bound to register the acquisition of the land as required in section 88 but such liability shall be deemed to commence only as from the expiration of such time or any prolongation thereof:

Provided that nothing herein contained shall be construed to prevent such registration at any time prior to the expiration of the time allowed for the sale of such property, or any prolongation thereof as aforesaid.

### **Special provisions relating to licences, sanctions, etc., granted under previous legislation**

102 (1) Without prejudice to any express provisions of this Part—

- (a) any licence granted under the Acquisition of Land by British Subjects (Restriction) Act 1948; or
- (b) any sanction granted under the Alien Act 1926, or under any Act replaced by that Act, or any certificate of the Secretary to the Cabinet granted under any such Act,

and in force immediately before 1 July 1956 shall have effect as if it were a licence granted under this Part; and the provisions of this Part shall accordingly have effect with necessary modifications.

(2) Any rights acquired under section 8 or section 9 of the Acquisition of Land by British Subjects (Restriction) Act 1948, and subsisting immediately before 1 July 1956 shall, notwithstanding the repeal of that Act, be deemed to subsist and have effect accordingly.

*[Part VI (sections 72 to 102) repealed and replaced by 2007:16 s.5, subject to transitional provisions in Part II of that Act.]*