

Status: Point in time view as at 12/12/2007.

Changes to legislation: There are currently no known outstanding effects for the Regional Development Agencies Act 1998, SCHEDULE 6. (See end of Document for details)

SCHEDULES

SCHEDULE 6

Section 23.

VESTING AND ACQUISITION OF LAND: SUPPLEMENTARY PROVISIONS

Commencement Information

II Sch. 6 in force for certain purposes at 25.11.1998 by S.I. 1998/2952, art. 2(2)

Extinguishment of rights over land

- 1 (1) On an order under section 19(1) coming into force or the completion by a regional development agency of a compulsory acquisition of land under this Act—
- (a) all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land which is the subject of the order or the compulsory acquisition shall be extinguished, and
 - (b) any such apparatus shall vest in the agency in which the land is vested or by which it is acquired.
- (2) Sub-paragraph (1) does not apply—
- (a) to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of carrying on their undertaking; or
 - (b) to any right conferred by or in accordance with [^{F1}the electronic communications code] on the operator of [^{F2}an electronic communications code network] or to any [^{F3}electronic communications apparatus] kept installed for the purposes of any [^{F4}such network] .
- (3) In respect of any right or apparatus not falling within sub-paragraph (2), sub-paragraph (1) shall have effect subject to—
- (a) any direction given by the Secretary of State before the coming into force of the order, or, as the case may be, by the agency before the completion of the acquisition, that sub-paragraph (1) shall not apply to any right or apparatus specified in the direction, and
 - (b) any agreement which may be made (whether before or after the coming into force of the order or completion of the acquisition) between the Secretary of State, or agency, and the person in or to whom the right or apparatus in question is vested or belongs.
- (4) Any person who suffers loss by the extinguishment of a right or the vesting of any apparatus under this paragraph shall be entitled to compensation from the regional development agency concerned.
- (5) Any compensation payable under this paragraph shall be determined in accordance with the ^{M1}Land Compensation Act 1961.

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Textual Amendments

- F1** Words in Sch. 6 para. 1 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 155\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with [art. 11](#))
- F2** Words in Sch. 6 para. 1 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 155\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with [art. 11](#))
- F3** Words in Sch. 6 para. 1 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 155\(2\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with [art. 11](#))
- F4** Words in Sch. 6 para. 1 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 155\(2\)\(d\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with [art. 11](#))

Marginal Citations

- M1** 1961 c. 33.

Power to override easements

- 2 (1) The erection, construction, carrying out, or maintenance of any building or work on land which has been vested in or acquired by a regional development agency under this Act, whether done by the agency or by any other person, is authorised by virtue of this paragraph if it is done in accordance with planning permission, notwithstanding that it involves—
- (a) interference with an interest or right to which this paragraph applies, or
 - (b) a breach of a restriction as to the user of land arising by virtue of a contract.
- (2) Nothing in sub-paragraph (1) shall authorise interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land, being—
- (a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
 - (b) a right conferred by or in accordance with [^{F5}the electronic communications code] on the operator of [^{F6}an electronic communications code network] .
- (3) This paragraph applies to the following interests and rights, that is to say, any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.
- (4) In respect of any interference or breach in pursuance of sub-paragraph (1), compensation shall be payable under section 7 or 10 of the ^{M2}Compulsory Purchase Act 1965, to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where the compensation is to be estimated in connection with a purchase by a regional development agency or the injury arises from the execution of works on land acquired by such an agency.

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- (5) Where a person other than the regional development agency by or in which the land in question was acquired or vested is liable to pay compensation by virtue of sub-paragraph (4), and fails to discharge that liability, the liability shall (subject to sub-paragraph (6)) be enforceable against the agency.
- (6) Nothing in sub-paragraph (5) shall be construed as affecting any agreement between that agency and any other person for indemnifying the agency against any liability under that sub-paragraph.
- (7) Nothing in this paragraph shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in sub-paragraph (1).
- (8) Nothing in this paragraph shall be construed as authorising any act or omission on the part of a body corporate in contravention of any limitation imposed by law on its capacity by virtue of its constitution.

Textual Amendments

- F5** Words in Sch. 6 para. 2 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 155\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with [art. 11](#))
- F6** Words in Sch. 6 para. 2 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 155\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with [art. 11](#))

Marginal Citations

- M2** 1965 c. 56.

Consecrated land and burial grounds

- 3 (1) Any consecrated land, whether including a building or not, which has been vested in or acquired by a regional development agency under this Act may (subject to the following provisions of this paragraph) be used by the agency, or by any other person, in any manner in accordance with planning permission, notwithstanding any obligation or restriction imposed under ecclesiastical law or otherwise in respect of consecrated land.
- (2) Sub-paragraph (1) does not apply to land which consists or forms part of a burial ground.
- (3) Any use of consecrated land authorised by sub-paragraph (1), and the use of any land, not being consecrated land, vested or acquired as mentioned in that sub-paragraph which at the time of vesting or acquisition included a church or other building used or formerly used for religious worship or the site thereof, shall be subject to compliance with the prescribed requirements with respect to—
- (a) the removal and reinterment of any human remains, and
 - (b) the disposal of monuments,
- and, in the case of consecrated land, shall be subject to such provisions as may be prescribed for prohibiting or restricting the use of the land, either absolutely or until

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the prescribed consent has been obtained, so long as any church or other building used or formerly used for religious worship, or any part thereof, remains on the land.

- (4) Any regulations made for the purposes of sub-paragraph (3)—
- (a) shall contain such provisions as appear to the Secretary of State to be requisite for securing that any use of land which is subject to compliance with the regulations shall, as nearly as may be, be subject to the like control as is imposed by law in the case of a similar use authorised by an enactment not contained in this Act or by a Measure, or as it would be proper to impose on a disposal of the land in question otherwise than in pursuance of an enactment or Measure;
 - (b) shall contain requirements relating to the disposal of any such land as is mentioned in sub-paragraph (3) such as appear to the Secretary of State requisite for securing that the provisions of that sub-paragraph shall be complied with in relation to the use of the land; and
 - (c) may contain such incidental and consequential provisions (including provision as to the closing of registers) as appear to the Secretary of State to be expedient for the purposes of the regulations.
- (5) Any land consisting of a burial ground or part of a burial ground which has been vested in or acquired by a regional development agency under this Act may be used by the agency in any manner in accordance with planning permission, notwithstanding anything in any enactment relating to burial grounds or any obligation or restriction imposed under ecclesiastical law or otherwise in respect of burial grounds.
- (6) Sub-paragraph (5) shall not have effect in respect of any land which has been used for the burial of the dead until the prescribed requirements with respect to the removal and reinterment of human remains and the disposal of monuments in or upon the land have been complied with.
- (7) Provision shall be made by any regulations made for the purposes of sub-paragraphs (3) and (6)—
- (a) for requiring the persons in whom the land is vested to publish notice of their intention to carry out the removal and reinterment of any human remains or the disposal of any monuments;
 - (b) for enabling the personal representatives or relatives of any deceased person themselves to undertake the removal and reinterment of the remains of the deceased and the disposal of any monument commemorating the deceased, and for requiring the persons in whom the land is vested to defray the expenses of such removal, reinterment and disposal, not exceeding such amount as may be prescribed;
 - (c) for requiring compliance with such reasonable conditions (if any) as may be imposed, in the case of consecrated land, by the bishop of the diocese, with respect to the manner of removal and the place and manner of reinterment of any human remains and the disposal of any monuments; and
 - (d) for requiring compliance with any directions given in any case by the Secretary of State with respect to the removal and reinterment of any human remains.
- (8) Subject to the provisions of any such regulations as are referred to in sub-paragraph (7), no faculty shall be required—

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- (a) for the removal and reinterment in accordance with the regulations of any human remains, or
 - (b) for the removal or disposal of any monuments;
- and the provisions of section 25 of the ^{M3}Burial Act 1857 (which prohibits the removal of human remains without the licence of the Secretary of State except in certain cases) shall not apply to a removal carried out in accordance with the regulations.
- (9) Any power conferred by this paragraph to use land in a manner therein mentioned shall be construed as a power so to use the land, whether or not it involves—
 - (a) the erection, construction or carrying out of any building or work, or
 - (b) the maintenance of any building or work.
 - (10) Nothing in this paragraph shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in sub-paragraph (1) or (5).
 - (11) Sub-paragraph (8) of paragraph 2 shall apply in relation to this paragraph as it applies in relation to that.
 - (12) In this paragraph—
 - “burial ground” includes any churchyard, cemetery or other ground, whether consecrated or not, which has at any time been set apart for the purposes of interment; and
 - “monument” includes a tombstone or other memorial.
 - (13) In this paragraph “prescribed” means prescribed by regulations made by the Secretary of State.
 - (14) The power to make regulations under this paragraph shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Marginal Citations

M3 1857 c. 81.

Open spaces

- 4 (1) Any land being, or forming part of, a common, open space or fuel or field garden allotment, which has been vested in or acquired by a regional development agency under this Act may be used by the agency, or by any other person, in any manner in accordance with planning permission, notwithstanding anything in any enactment—
 - (a) relating to land of that kind, or
 - (b) by which the land is specially regulated.
- (2) Nothing in this paragraph shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such enactment as is mentioned in sub-paragraph (1).
- (3) Sub-paragraph (8) of paragraph 2 shall apply in relation to this paragraph as it applies in relation to that.

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Displacement of persons

- 5 If the Secretary of State certifies that possession of a house which—
- (a) has been vested in or acquired by a regional development agency under this Act, and
 - (b) is for the time being held by the agency for its purposes,
- is immediately required for those purposes, nothing in the ^{M4}Rent (Agriculture) Act 1976, the ^{M5}Rent Act 1977 or the ^{M6}Housing Act 1988 shall prevent the agency from obtaining possession of the house.

Marginal Citations

- M4** 1976 c. 80.
M5 1977 c. 42.
M6 1988 c. 50.

Extinguishment of public rights of way

- 6 (1) Where any land has been vested in or acquired by a regional development agency under this Act, and is for the time being held by the agency for the purposes of its objects, the Secretary of State may by order extinguish any public right of way over the land, if he is satisfied—
- (a) that an alternative right of way has been or will be provided, or
 - (b) that the provision of an alternative right of way is not required.
- (2) Where the Secretary of State proposes to make an order under this paragraph, he shall—
- (a) publish in such manner as appears to him to be requisite a notice—
 - (i) stating the effect of the order, and
 - (ii) specifying the time (not being less than 28 days from the publication of the notice) within which, and the manner in which, objections to the proposal may be made, and
 - (b) serve a like notice—
 - (i) on the local planning authority in whose area the land is situated, and
 - (ii) on the relevant highway authority.
- (3) In sub-paragraph (2) “the relevant highway authority” means any authority which is a highway authority in relation to the right of way proposed to be extinguished by the order under this paragraph.
- (4) Where an objection to a proposal to make an order under this paragraph is duly made and is not withdrawn, the provisions of paragraph 7 shall have effect in relation to the proposal.
- (5) For the purposes of this paragraph an objection to such a proposal shall not be treated as duly made unless—
- (a) it is made within the time and in the manner specified in the notice required by this paragraph, and
 - (b) a statement in writing of the grounds of the objection is comprised in or submitted with the objection.

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- 7 (1) In this paragraph any reference to making a final decision, in relation to an order, is a reference to deciding whether to make the order or what modification, if any, ought to be made.
- (2) Unless the Secretary of State decides apart from the objection not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, the Secretary of State—
- (a) shall, before making a final decision, consider the grounds of the objection as set out in the statement comprised in or submitted with the objection, and
 - (b) may, if he thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates.
- (3) In so far as the Secretary of State, after considering the grounds of the objection as set out in the original statement and in any such further statement, is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation, he may treat the objection as irrelevant for the purpose of making a final decision.
- (4) In any case where—
- (a) after considering the grounds of the objection as set out in the original statement and in any such further statement, the Secretary of State is satisfied that, for the purpose of making a final decision, he is sufficiently informed as to the matters to which the objection relates, or
 - (b) a further statement has been required but is not submitted within the specified period,
- the Secretary of State may make a final decision without further investigation as to the matters to which the objection relates.
- (5) Subject to sub-paragraphs (3) and (4), the Secretary of State, before making a final decision, shall afford to the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the Secretary of State; and if the objector avails himself of that opportunity, the Secretary of State shall afford an opportunity of appearing and being heard on the same occasion—
- (a) to the person on whose representation the order is proposed to be made, and
 - (b) to any other persons to whom it appears to the Secretary of State to be expedient to afford such an opportunity.
- (6) Notwithstanding anything in the preceding provisions of this paragraph, if it appears to the Secretary of State that the matters to which the objection relates are such as to require investigation by public local inquiry before he makes a final decision, he shall cause such an inquiry to be held; and where he determines to cause such an inquiry to be held, any of the requirements of those provisions to which effect has not been given at the time of that determination shall be dispensed with.

Telegraphic lines

- 8 (1) Where an order under paragraph 6 extinguishing a public right of way is made and at the time of the publication of the notice required by sub-paragraph (2) of that paragraph any [^{F7}electronic communications apparatus] was kept installed for the purposes of [^{F8}an electronic communications code network] under, in, on, over, along or across the land over which the right of way subsisted—

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- (a) the power of the operator of [^{F9}the network] to remove the apparatus shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of 3 months from the date on which the right of way is extinguished and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of [^{F9}the network] has given notice to the regional development agency concerned of his intention to remove the apparatus or that part of it, as the case may be;
- (b) the operator of [^{F9}the network] may by notice given in that behalf to the regional development agency concerned not later than the end of the said period of 3 months abandon the [^{F7}electronic communications apparatus] or any part of it;
- (c) subject to paragraph (b), the operator of [^{F9}the network] shall be deemed at the end of that period to have abandoned any part of the apparatus which he has then neither removed nor given notice of his intention to remove;
- (d) the operator of [^{F9}the network] shall be entitled to recover from the regional development agency concerned the expense of providing, in substitution for the apparatus and any other [^{F7}electronic communications apparatus] connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any [^{F7}electronic communications apparatus] in such other place as the operator may require; and
- (e) where under the preceding provisions of this sub-paragraph the operator of [^{F9}the network] has abandoned the whole or any part of any [^{F7}electronic communications apparatus], that apparatus or that part of it shall vest in the regional development agency concerned and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of [^{F8}an electronic communications code network].
- (2) As soon as practicable after the making of an order under paragraph 6 extinguishing a public right of way in circumstances in which sub-paragraph (1) applies in relation to the operator of [^{F8}an electronic communications code network], the Secretary of State shall give notice to the operator of the making of the order.

Textual Amendments

- F7** Words in Sch. 6 para. 8 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 155\(2\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F8** Words in Sch. 6 para. 8 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 155\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F9** Words in Sch. 6 para. 8 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 155\(2\)\(d\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))

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Statutory undertakers

- 9 (1) Where any land has been vested in or acquired by a regional development agency under this Act and—
- (a) there subsists over that land a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, being a right of way or a right of laying down, erecting, continuing or maintaining apparatus on, under or over that land, or
 - (b) there is on, under or over the land apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, the agency may serve on the statutory undertakers a notice stating that, at the end of the period of 28 days from the date of service of the notice or such longer period as may be specified therein, the right will be extinguished or requiring that, before the end of that period, the apparatus shall be removed.
- (2) The statutory undertakers on whom a notice is served under sub-paragraph (1) may, before the end of the period of 28 days from the service of the notice, serve a counter-notice on the agency stating that they object to all or any provisions of the notice and specifying the grounds of their objection.
- (3) If no counter-notice is served under sub-paragraph (2)—
- (a) any right to which the notice relates shall be extinguished at the end of the period specified in that behalf in the notice, and
 - (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the notice as to the removal of the apparatus has not been complied with, the agency may remove the apparatus and dispose of it in any way it may think fit.
- (4) If a counter-notice is served under sub-paragraph (2) on the agency, it may either withdraw the notice (without prejudice to the service of a further notice) or apply to the Secretary of State and the appropriate Minister for an order under this paragraph embodying the provisions of the notice with or without modification.
- (5) Where by virtue of this paragraph any right vested in or belonging to statutory undertakers is extinguished, or any requirement is imposed on statutory undertakers, those undertakers shall be entitled to compensation from the regional development agency concerned.
- (6) Sections 280 and 282 of the ^{M7}Town and Country Planning Act 1990 (measure of compensation to statutory undertakers) shall apply to compensation under sub-paragraph (5) as they apply to compensation under section 279(4) of that Act.
- (7) Except in a case where paragraph 8 applies—
- (a) the reference in paragraph (a) of sub-paragraph (1) to a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to a right conferred by or in accordance with [^{F10}the electronic communications code] on the operator of [^{F11}an electronic communications code network] ; and
 - (b) the reference in paragraph (b) of that sub-paragraph to apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to [^{F12}electronic communications apparatus] kept installed for the purposes of any [^{F13}such network] .

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- (8) Where paragraph (a) or (b) of sub-paragraph (1) has effect as mentioned in sub-paragraph (7), in the rest of this paragraph and in paragraph 10—
- (a) any reference to statutory undertakers shall have effect as a reference to the operator of any ^{F13}such network] as is referred to in sub-paragraph (7); and
 - (b) any reference to the appropriate Minister shall have effect as a reference to ^{F14}the Secretary of State for Business, Enterprise and Regulatory Reform] .

Textual Amendments

- F10** Words in Sch. 6 para. 9 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 155\(2\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1 \(with art. 3\)](#) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with art. 11)
- F11** Words in Sch. 6 para. 9 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 155\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1 \(with art. 3\)](#) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with art. 11)
- F12** Words in Sch. 6 para. 9 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 155\(2\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1 \(with art. 3\)](#) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with art. 11)
- F13** Words in Sch. 6 para. 9 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 155\(2\)\(d\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1 \(with art. 3\)](#) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with art. 11)
- F14** Words in Sch. 6 para. 9(8)(b) substituted (12.12.2007) by [The Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007 \(S.I. 2007/3224\), art. 1\(2\), Sch. para. 8](#)

Marginal Citations

M7 1990 c. 8.

- 10 (1) Before making an order under paragraph 9 the Secretary of State and the appropriate Minister—
- (a) shall afford to the statutory undertakers on whom notice was served under paragraph 9(1) an opportunity of objecting to the application for the order, and
 - (b) if any objection is made, shall consider the objection and afford to those statutory undertakers and to the agency on which the counter-notice was served an opportunity of appearing before and being heard by a person appointed by the Secretary of State and the appropriate Minister for the purpose,
- and the Secretary of State and the appropriate Minister may then, if they think fit, make the order in accordance with the application either with or without modification.
- (2) Where an order is made under paragraph 9—
- (a) any right to which the order relates shall be extinguished at the end of the period specified in that behalf in the order, and
 - (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the order as to the removal of the apparatus has not been

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complied with, the regional development agency concerned may remove the apparatus and dispose of it in any way it may think fit.

- 11 (1) Where any land has been vested in or acquired by a regional development agency under this Act and—
- (a) there is on, under or over the land apparatus vested in or belonging to statutory undertakers, and
 - (b) the undertakers claim that development to be carried out on the land is such as to require, on technical or other grounds connected with the carrying on of their undertaking, the removal or re-siting of the apparatus affected by the development,
- the undertakers may serve on the agency a notice claiming the right to enter on the land and carry out such works for the removal or re-siting of the apparatus or any part of it as may be specified in the notice.
- (2) Where, after the land has been vested or acquired as mentioned in sub-paragraph (1), development of the land is begun to be carried out, no notice under this paragraph shall be served later than 21 days after the beginning of the development.
 - (3) Where a notice is served under this paragraph the agency on which it is served may, before the end of the period of 28 days from the date of service, serve on the statutory undertakers a counter-notice stating that it objects to all or any of the provisions of the notice and specifying the grounds of its objection.
 - (4) If no counter-notice is served under sub-paragraph (3), the statutory undertakers shall, after the end of the said period of 28 days, have the rights claimed in their notice.
 - (5) If a counter-notice is served under sub-paragraph (3), the statutory undertakers who served the notice under this paragraph may either withdraw it or apply to the Secretary of State and the appropriate Minister for an order under this paragraph conferring on the undertakers—
 - (a) the rights claimed in the notice, or
 - (b) such modified rights as the Secretary of State and the appropriate Minister think it expedient to confer on them.
 - (6) Where by virtue of this paragraph or an order made by the Secretary of State and the appropriate Minister under it, statutory undertakers have the right to execute works for the removal or re-siting of apparatus, they may arrange with the regional development agency concerned for the works to be carried out by the agency, under the superintendence of the undertakers, instead of by the undertakers themselves.
 - (7) Where works are carried out for the removal or re-siting of statutory undertakers' apparatus, being works which the undertakers have the right to carry out by virtue of this paragraph or an order made by the Secretary of State and the appropriate Minister under it, the undertakers shall be entitled to compensation from the regional development agency concerned.
 - (8) Sections 280 and 282 of the ^{M8}Town and Country Planning Act 1990 (measure of compensation to statutory undertakers) shall apply to compensation under sub-paragraph (7) as they apply to compensation under section 279(4) of that Act.
 - (9) In sub-paragraph (1)(a), the reference to apparatus vested in or belonging to statutory undertakers shall include a reference to ^{F15}electronic communications apparatus kept installed for the purposes of ^{F16}an electronic communications code network .

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- (10) Where sub-paragraph (1)(a) has effect as mentioned in sub-paragraph (9), in the rest of this paragraph—
- (a) any reference to statutory undertakers shall have effect as a reference to the operator of any [^{F17}such network] as is referred to in sub-paragraph (9); and
 - (b) any reference to the appropriate Minister shall have effect as a reference to [^{F18}the Secretary of State for Business, Enterprise and Regulatory Reform] .

Textual Amendments

- F15** Words in Sch. 6 para. 11 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\)](#), [Sch. 17 para. 155\(2\)\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F16** Words in Sch. 6 para. 11 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\)](#), [Sch. 17 para. 155\(2\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F17** Words in Sch. 6 para. 11 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\)](#), [Sch. 17 para. 155\(2\)\(d\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F18** Words in [Sch. 6 para. 11\(10\)\(b\)](#) substituted (12.12.2007) by [The Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007 \(S.I. 2007/3224\), art. 1\(2\)](#), [Sch. para. 8](#)

Marginal Citations

- M8** [1990 c. 8.](#)

- 12 (1) The powers conferred by this paragraph shall be exercisable where, on a representation made by statutory undertakers, it appears to the Secretary of State and the appropriate Minister to be expedient that the powers and duties of those undertakers should be extended or modified, in order—
- (a) to secure the provision in the area of a regional development agency of services which would not otherwise be provided, or which would not otherwise be satisfactorily provided, or
 - (b) to facilitate an adjustment of the carrying on of the undertaking necessitated by any of the acts and events mentioned in sub-paragraph (2).
- (2) The said acts and events are—
- (a) the vesting in or acquisition by a regional development agency under this Act of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers in question, and
 - (b) the extinguishment of a right or the imposition of any requirement by virtue of paragraph 9.
- (3) The powers conferred by this paragraph shall also be exercisable where, on a representation made by a regional development agency, it appears to the Secretary of State and the appropriate Minister to be expedient that the powers and duties of statutory undertakers should be extended or modified in order to secure the provision of new services, or the extension of existing services, in the agency's area.

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- (4) Where the powers conferred by this paragraph are exercisable, the Secretary of State and the appropriate Minister may, if they think fit, by order provide for such extension or modification of the powers and duties of the statutory undertakers as appears to them to be requisite in order to secure—
- (a) the provision of the services in question, as mentioned in sub-paragraph (1)(a) or sub-paragraph (3); or
 - (b) the adjustment in question, as mentioned in sub-paragraph (1)(b), as the case may be.
- (5) Without prejudice to the generality of sub-paragraph (4), an order under this paragraph may make provision—
- (a) for empowering the statutory undertakers to acquire (whether compulsorily or by agreement) any land specified in the order, and to erect or construct any buildings or works so specified,
 - (b) for applying, in relation to the acquisition of any such land or the construction of any such works, enactments relating to the acquisition of land and the construction of works,
 - (c) where it has been represented that the making of the order is expedient for the purposes mentioned in sub-paragraph (1)(a) or (3), for giving effect to such financial arrangements between the regional development agency concerned and the statutory undertakers as they may agree, or as, in default of agreement, may be determined to be equitable in such manner and by such tribunal as may be specified in the order, and
 - (d) for such incidental and supplemental matters as appear to the Secretary of State and the appropriate Minister to be expedient for the purposes of the order.
- 13 (1) As soon as may be after making such a representation as is mentioned in sub-paragraph (1) or (3) of paragraph 12—
- (a) the statutory undertakers, in a case falling within sub-paragraph (1), or
 - (b) the regional development agency, in a case falling within sub-paragraph (3),
- shall publish, in such form and manner as may be directed by the Secretary of State and the appropriate Minister, a notice giving such particulars as may be so directed of the matters to which the representation relates, and specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made, and shall also, if so directed by the Secretary of State and the appropriate Minister, serve a like notice on such persons, or persons of such classes, as may be so directed.
- (2) Orders under paragraph 12 shall be subject to special parliamentary procedure.
- 14 (1) Where, on a representation made by statutory undertakers, the appropriate Minister is satisfied that the fulfilment of any obligations incurred by those undertakers in connection with the carrying on of their undertaking has been rendered impracticable by an act or event to which this sub-paragraph applies, the appropriate Minister may, if he thinks fit, by order direct that the statutory undertakers shall be relieved of the fulfilment of that obligation, either absolutely or to such extent as may be specified in the order.
- (2) Sub-paragraph (1) applies to the following acts and events—

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- (a) the vesting in or acquisition by a regional development agency under this Act of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers, and
 - (b) the extinguishment of a right or the imposition of any requirement by virtue of paragraph 9.
- (3) As soon as may be after making a representation to the appropriate Minister under sub-paragraph (1), the statutory undertakers shall, as may be directed by the appropriate Minister, do either or both of the following, that is to say—
- (a) publish (in such form and manner as may be so directed) a notice—
 - (i) giving such particulars as may be so directed of the matters to which the representation relates, and
 - (ii) specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made, and
 - (b) serve a like notice on such persons, or persons of such classes, as may be so directed.
- (4) If any objection to the making of an order under this paragraph is duly made and is not withdrawn before the order is made, the order shall be subject to special parliamentary procedure.
- (5) Immediately after an order is made under this paragraph by the appropriate Minister, he shall publish a notice stating that the order has been made and naming a place where a copy of it may be seen at all reasonable hours, and shall serve a like notice—
- (a) on any person who duly made an objection to the order and has sent to the appropriate Minister a request in writing to serve him with the notice required by this sub-paragraph, specifying an address for service, and
 - (b) on such other persons (if any) as the appropriate Minister thinks fit.
- (6) Subject to the following provisions of this paragraph, an order under this paragraph shall become operative on the date on which the notice required by sub-paragraph (5) is first published.
- (7) Where in accordance with sub-paragraph (4) the order is subject to special parliamentary procedure, sub-paragraph (6) shall not apply.
- (8) If any person aggrieved by an order under this paragraph wishes to question the validity of the order on the ground—
- (a) that it is not within the powers conferred by this paragraph, or
 - (b) that any requirement of this paragraph has not been complied with in relation to the order,
- he may, within 6 weeks from the date on which the notice required by sub-paragraph (5) is first published, make an application to the High Court under this paragraph.
- (9) On any application under sub-paragraph (8) the High Court—
- (a) may by interim order wholly or in part suspend the operation of the order, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings, and
 - (b) if satisfied—
 - (i) that the order is wholly or to any extent outside the powers conferred by this paragraph, or

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- (ii) that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of this paragraph, may wholly or in part quash the order, either generally or in so far as it affects any property of the applicant.
- (10) Subject to sub-paragraph (8), the validity of an order under this paragraph shall not be questioned in any legal proceedings whatsoever, either before or after the order has been made.
- 15 (1) For the purposes of paragraphs 12 and 14, an objection to the making of an order thereunder shall not be treated as duly made unless—
- (a) the objection is made within the time and in the manner specified in the notice required by paragraph 13 or 14 (as the case may be), and
 - (b) a statement in writing of the grounds of the objection is comprised in or submitted with the objection.
- (2) Where an objection to the making of such an order is duly made in accordance with sub-paragraph (1) and is not withdrawn, the following provisions of this paragraph shall have effect in relation thereto; but, in the application of those provisions to an order under paragraph 12, any reference to the appropriate Minister shall be construed as a reference to the Secretary of State and the appropriate Minister.
- (3) Unless the appropriate Minister decides apart from the objection not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, the appropriate Minister, before making a final decision—
- (a) shall consider the grounds of the objection as set out in the statement, and
 - (b) may, if he thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates.
- (4) In so far as the appropriate Minister after considering the grounds of the objection as set out in the original statement and in any such further statement, is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation, the appropriate Minister may treat the objection as irrelevant for the purpose of making a final decision.
- (5) In any case where—
- (a) after considering the grounds of the objection as set out in the original statement and in any such further statement, the appropriate Minister is satisfied that, for the purpose of making a final decision, he is sufficiently informed as to the matters to which the objection relates, or
 - (b) a further statement has been required but is not submitted within the specified period,
- the appropriate Minister may make a final decision without further investigation as to the matters to which the objection relates.
- (6) Subject to sub-paragraphs (4) and (5), the appropriate Minister, before making a final decision, shall afford to the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the appropriate Minister; and if the objector avails himself of that opportunity, the appropriate Minister shall afford an opportunity of appearing and being heard on the same occasion—
- (a) to the person on whose representation the order is proposed to be made, and

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- (b) to any other persons to whom it appears to the appropriate Minister to be expedient to afford such an opportunity.
- (7) Notwithstanding anything in the preceding provisions of this paragraph, if it appears to the appropriate Minister that the matters to which the objection relates are such as to require investigation by public local inquiry before he makes a final decision, he shall cause such an inquiry to be held; and where he determines to cause such an inquiry to be held, any of the requirements of those provisions to which effect has not been given at the time of that determination shall be dispensed with.
- (8) In this paragraph any reference to making a final decision, in relation to an order, is a reference to deciding whether to make the order or what modification (if any) ought to be made.

Interpretation

16 ^{F19}(1)

- (2) In this Schedule “statutory undertakers” means persons who are or are deemed to be statutory undertakers for the purposes of any provision of Part XI of the ^{M9}Town and Country Planning Act 1990; and “statutory undertaking” shall be construed in accordance with section 262 of that Act (meaning of “statutory undertaker”).
- (3) In this Schedule “the appropriate Minister” shall be construed as if contained in Part XI of the Town and Country Planning Act 1990; and any reference to the Secretary of State and the appropriate Minister shall be similarly construed.

Textual Amendments

F19 Sch. 6 para. 16(1) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with art. 11)

Marginal Citations

M9 1990 c. 8.

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