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SCHEDULE 2

(Introduced by section 93)

COMPENSATION FOR CHANGING OR REVOKING INFRASTRUCTURE CONSENT ORDERS

Changing or revoking an infrastructure consent order: compensation

- 1 (1) This paragraph applies where—
 - (a) an infrastructure consent order is changed or revoked by an order under section 90, and
 - (b) the case in which the power is exercised is one falling within section 90(6).
- (2) Any person interested in the land to which the infrastructure consent order relates or interested in minerals on such land, or for whose benefit the infrastructure consent order has effect, is entitled, on making a claim to the Welsh Ministers, to be paid compensation by the Welsh Ministers for—
 - (a) any expenditure incurred by the person in carrying out work that becomes abortive because of the change or revocation of the infrastructure consent order;
 - (b) any other loss or damage suffered by the person that is directly attributable to the change or revocation.
- (3) Regulations may make provision about the way in which, and the period within which, a claim for compensation under this paragraph must be made.
- (4) For the purpose of this paragraph, expenditure incurred in the preparation of plans for the purposes of any work, or on other similar matters preparatory to any work, is to be treated as expenditure incurred in carrying out the work.
- (5) Subject to that, no compensation is payable under this paragraph in respect of—
 - (a) work carried out before the making of the infrastructure consent order that is changed or revoked, or
 - (b) other loss or damage (other than loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the infrastructure consent order was made.

Compensation for depreciation: introduction and key terms

- 2 (1) Paragraphs 3 to 9 apply where compensation becomes payable by the Welsh Ministers under paragraph 1 which includes compensation for depreciation of more than the minimum amount specified in regulations.
- (2) In this paragraph and paragraphs 3 to 10—
 - (a) “acquiring authority”, in relation to the acquisition or proposed acquisition of an interest in land (whether compulsorily or by agreement), means the public authority or other person by whom the interest is acquired or is proposed to be acquired;
 - (b) “compulsory acquisition” does not include the transfer of property from one person to another by an enactment;
 - (c) “compensation for depreciation” means compensation payable in respect of loss or damage consisting of depreciation of the value of an interest in land;
 - (d) “interest in land” means the fee simple or a tenancy of the land (and does not include any other interest in it);

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- (e) “compensation notice” has the meaning given in paragraph 4(1);
- (f) “registered”, in relation to a compensation notice, means registered in the local land charges register kept under section 3 of the Local Land Charges Act 1975 (c. 76).

Apportionment of compensation for depreciation and determination of disputes

- 3 (1) The Welsh Ministers—
- (a) if they consider that it is practicable to do so, must apportion the compensation for depreciation between different parts of the land to which the claim for compensation relates, and
 - (b) if they apportion the compensation, must give details of the apportionment to the claimant and to any other person with an interest in land which the Welsh Ministers consider is substantially affected by the apportionment.
- (2) In carrying out an apportionment, the Welsh Ministers must divide the land into parts and distribute the compensation for depreciation between those parts according to how they consider different parts of the land are differently affected by the order in consequence of which the compensation is payable.
- (3) If any of the following persons dispute an apportionment of compensation, they may refer the apportionment to the Upper Tribunal—
- (a) the claimant;
 - (b) any other person to whom details of the apportionment have been given;
 - (c) any other person who establishes that they have an interest in land which is substantially affected by the apportionment.
- (4) The claimant and every other person to whom details of an apportionment have been given are entitled to be heard by the Upper Tribunal on the reference.
- (5) On a reference of an apportionment, the Upper Tribunal must—
- (a) either confirm or vary the apportionment, and
 - (b) notify the parties of its decision.
- (6) Where on a reference to the Upper Tribunal it is shown that an apportionment—
- (a) relates wholly or partly to the same matters as a previous apportionment, and
 - (b) is consistent with the previous apportionment so far as it relates to those matters,
- the Tribunal must not vary the apportionment in a way that is inconsistent with the previous apportionment so far as it relates to those matters.
- (7) Sub-paragraphs (1) and (2) apply to an apportionment by the Upper Tribunal as if references to the Welsh Ministers were references to the Tribunal.

Notice of compensation for depreciation

- 4 (1) Where compensation becomes payable which includes compensation for depreciation of more than the minimum amount specified in regulations under paragraph 2 the Welsh Ministers must cause notice of that fact (a “compensation notice”) to be served—
- (a) on the council of the county or county borough for the area in which the land or any part of the land to which the notice relates is situated, and

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- (b) if that council is not the planning authority for the area in which the land or any part of the land is situated, on the planning authority for the area.
- (2) A compensation notice must specify—
- (a) the order in consequence of which the compensation is payable and the land to which the claim for compensation relates, and
 - (b) the amount of the compensation and any apportionment of it under paragraph 3.
- (3) A compensation notice is a local land charge, and for the purposes of the Local Land Charges Act 1975 (c. 76) the county or county borough council on which the notice is served is the originating authority as respects the charge.

Development not to be carried out until compensation paid or secured

- 5
- (1) A person must not carry out development to which this paragraph applies on land in respect of which a compensation notice has been registered until any amount that is recoverable in respect of the compensation specified in the notice by virtue of paragraph 6 has been paid or secured to the satisfaction of the Welsh Ministers in accordance with paragraph 7.
- (2) This paragraph applies to—
- (a) development that—
 - (i) is of a residential, commercial or industrial character, and
 - (ii) consists wholly or mainly of the construction of houses, flats, shop or office premises or industrial buildings (including warehouses), or any combination of them;
 - (b) development that consists of mining operations;
 - (c) development to which, having regard to the probable value of the development, the Welsh Ministers consider it reasonable that this paragraph should apply.
- (3) This paragraph does not apply to development by virtue of subparagraph (2)(c) if, on an application made to them, the Welsh Ministers have certified that, having regard to the probable value of the development, they do not consider it reasonable that this paragraph should apply.
- (4) Where the compensation specified in the compensation notice became payable in consequence of an order changing an infrastructure consent order, this paragraph does not apply to development in accordance with the changed infrastructure consent order.

Amount recoverable by Welsh Ministers in respect of compensation

- 6
- (1) The amount recoverable in respect of the compensation specified in a registered compensation notice is—
- (a) if the land on which development is to be carried out includes all of the land to which the notice relates (whether alone or with other land), the amount of compensation specified in the notice;
 - (b) if the land on which development is to be carried out includes only part of the land to which the notice relates (whether alone or with land to which the notice does not relate), the amount of the compensation specified in the notice that is attributable to that part.

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- (2) But the Welsh Ministers may defer recovery of all or part of the amount that would otherwise be recoverable in connection with a particular development of land if they consider, having regard to the probable value of any proper development of that land, that no proper development of it is likely to be carried out unless they exercise their powers under this sub-paragraph.
- (3) If the Welsh Ministers defer recovery of only part of the amount that would otherwise be recoverable in respect of any land, they must cause the registered compensation notice in question to be amended so that the amount of compensation stated in it, so far as attributable to that land, is the amount they have deferred.
- (4) Where an amount has become recoverable in respect of compensation in connection with the development of land, no amount is recoverable in respect of the compensation attributable to that land in connection with any later development of it.
- (5) Sub-paragraph (4) does not apply to an amount to the extent that recovery of the amount was deferred in connection with the earlier development.
- (6) No amount is recoverable by virtue of this paragraph in respect of any compensation by reference to which an amount has become recoverable from an acquiring authority under paragraph 8 (recovery on compulsory acquisition or sale).
- (7) For the purposes of this Schedule, the amount of the compensation specified in a compensation notice that is attributable to a part of the land to which the notice relates is to be calculated—
 - (a) if the notice includes an apportionment of the compensation between different parts of the land under paragraph 3, on the basis that—
 - (i) the compensation is distributed between those parts in accordance with the apportionment, and
 - (ii) the compensation attributed to each part is distributed evenly by area over that part;
 - (b) if the notice does not include an apportionment, on the basis that the compensation is distributed evenly by area over the land to which the notice relates.

Payment etc. of amount recoverable

- 7 (1) An amount recoverable by virtue of paragraph 6 in connection with the development of land is payable to the Welsh Ministers—
 - (a) as a single capital payment,
 - (b) as a series of instalments of capital and interest combined, or
 - (c) as a series of other annual or periodical payments, of the amounts, and payable at the times, that the Welsh Ministers direct.
- (2) Before giving a direction under sub-paragraph (1)(c), the Welsh Ministers must take into account any representations made by the person by whom the development is to be carried out.
- (3) If the amount payable under sub-paragraph (1) is not paid as a single capital payment, it must be secured by the person by whom the development is to be carried out in the way (whether by mortgage, covenant or otherwise) that the Welsh Ministers direct.
- (4) If a person begins development to which paragraph 5 applies in breach of that paragraph, the Welsh Ministers may serve a notice on the person—

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- (a) specifying the amount they consider to be recoverable under paragraph 6 in respect of the compensation in question, and
 - (b) requiring the person to pay that amount to the Welsh Ministers within a period specified in the notice.
- (5) The period specified in the notice must be at least 3 months beginning with the day after the day on which the notice is served.

Recovery of compensation from acquiring authority on compulsory acquisition or sale

- 8 (1) This paragraph applies where—
- (a) an interest in land is compulsorily acquired or is sold to an authority possessing compulsory purchase powers,
 - (b) a compensation notice is registered in respect of any of the land, whether before or after the completion of the acquisition or sale, and
 - (c) the compensation specified in the notice is payable in consequence of a change or revocation of an infrastructure consent order that was made before the service of the notice to treat, or the making of the contract, in pursuance of which the acquisition or sale is effected.
- (2) The Welsh Ministers are entitled to recover from the acquiring authority an amount equal to the amount of the compensation specified in the compensation notice that is attributable to the land acquired or sold.
- (See paragraph 6(7) for provision about calculating the amount of compensation that is attributable to a part of the land to which a compensation notice relates.)
- (3) If, immediately after the completion of the acquisition or sale, a person other than the acquiring authority continues to have an interest in the land acquired or sold, the amount that is recoverable under this paragraph does not become payable until that interest either ceases to exist or becomes vested in the acquiring authority.
- (4) No amount is recoverable under this paragraph in connection with the acquisition or sale if the Welsh Ministers are satisfied that the interest in question is being acquired for the purposes of the use of the land as an open space.
- (5) A power under any enactment to pay a grant in respect of expenditure incurred by the acquiring authority in connection with the acquisition or sale includes the power to pay a grant in respect of any amount recoverable from the authority under this paragraph.
- (6) In sub-paragraph (1)(a), “authority possessing compulsory purchase powers” means—
- (a) a person who could be or has been authorised to acquire the interest in question compulsorily for the purpose for which the interest is sold, or
 - (b) a community council on whose behalf a county council or county borough council could be or has been authorised to acquire the interest for that purpose (see section 125 of the Local Government Act 1972 (c. 70)).
- (7) In a case where a notice to treat is deemed to be served by virtue of an enactment, the reference in sub-paragraph (1)(c) to the service of the notice to treat is to be read as a reference to the date on which the notice is deemed to be served.
- (8) For the purpose of assessment of compensation for the compulsory acquisition of an interest in land where a compensation notice relating to the land is registered under

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this Schedule, section 12 of the Land Compensation Act 1961 (c. 33) applies subject to any necessary modifications.

General provisions about compensation for depreciation

- 9 (1) The rules in section 5 of the Land Compensation Act 1961 (c. 33) have effect for the purpose of assessing any compensation for depreciation that is payable under this Schedule, so far as relevant and with any necessary modifications, as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (2) Where an interest in land is subject to a mortgage—
- (a) any compensation for depreciation that is payable under this Schedule in respect of the interest must be assessed as if the interest were not subject to the mortgage;
 - (b) a claim for compensation for depreciation may be made by any mortgagee of the interest, but that does not affect the right of the person whose interest is subject to the mortgage to make a claim;
 - (c) no compensation for depreciation is payable in respect of the interest of the mortgagee (as distinct from the interest that is subject to the mortgage);
 - (d) any compensation for depreciation that is payable in respect of the interest subject to the mortgage must be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee; and it must be applied by the mortgagee to whom it is paid as if it were proceeds of sale.

Determination of claims for compensation

- 10 (1) Any question of disputed compensation under this Schedule is to be referred to and determined by the Upper Tribunal.
- (2) Section 4 of the Land Compensation Act 1961 (c. 33) applies to the determination of a question referred under this paragraph as it applies to the determination of a question referred under section 1 of that Act, but as if references to the acquiring authority were references to the Welsh Ministers.