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## SCHEDULES

### SCHEDULE 28

#### URBAN DEVELOPMENT CORPORATIONS: LAND

##### PART III

##### LAND: SUPPLEMENTARY

##### *Statutory undertakers*

- 14 (1) Where any land has been acquired by an urban development corporation under section 142 above 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 corporation, if satisfied that the extinguishment of the right or, as the case may be, the removal of the apparatus, is necessary for the purpose of carrying out any development, 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) above may, before the end of the period of 28 days from the service of the notice, serve a counter-notice on the corporation 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) above—
- (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 corporation 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) above on a corporation, the corporation may either withdraw the notice (without prejudice to the service of a further notice) or may 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.

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- (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 corporation.
- (6) [<sup>F1</sup>Sections 280 and 282 of the 1990 Act] or as the case may be [<sup>F2</sup>sections 233 and 235 of the 1997 Act] (measure of compensation for statutory undertakers) shall apply to compensation under sub-paragraph (5) above as they apply to compensation under [<sup>F1</sup>section 279(2) of the 1990 Act], or as the case may be [<sup>F2</sup>section 232(4) of the 1997 Act].
- [<sup>F3</sup>(7) Except in a case in which paragraph 13 above has effect—
- (a) the reference in paragraph (a) of sub-paragraph (1) above 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 [<sup>F4</sup>the electronic communications code] on the operator of [<sup>F5</sup>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 [<sup>F6</sup>electronic communications apparatus] kept installed for the purposes of any [<sup>F7</sup>such network];
- and for the purposes of this sub-paragraph, in this paragraph (except the said paragraphs (a) and (b)) and in paragraph 15 below, references to statutory undertakers shall have effect as references to the operator of any [<sup>F7</sup>such network] and references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.]

#### Textual Amendments

- F1** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2 para. 44(11)(a)**
- F2** Words in Sch. 28 para. 14(6) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 31(10)(c)**
- F3** Para. 14(7) substituted for para 14(7)(8) by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 75(6), **Sch. 5 para. 45**
- F4** Words in Sch. 28 para. 14 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. 52(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)
- F5** Words in Sch. 28 para. 14 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. 52(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)
- F6** Words in Sch. 28 para. 14 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. 52(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)
- F7** Words in Sch. 28 para. 14 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. 52(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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- 15 (1) Before making an order under paragraph 14(4) above the Ministers proposing to make the order—
- (a) shall afford to the statutory undertakers on whom notice was served under paragraph 14(1) above 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 corporation on whom 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 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 14(4) above—
- (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, and requirement of the order as to the removal of the apparatus has not been complied with, the corporation may remove the apparatus and dispose of it in any way it may think fit.
- 16 (1) Subject to this paragraph, where any land has been acquired by an urban development corporation under section 142 above 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 corporation 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 acquired as mentioned in sub-paragraph (1) above, 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 corporation 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) above, 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) above, the statutory undertakers who served the notice under this paragraph may either withdraw it or may apply to the Secretary of State and the appropriate Minister for an order under this paragraph conferring on the undertakers the rights claimed in the notice or such modified rights as the Secretary of State and the appropriate Minister think it expedient to confer on them.

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- (6) Where by virtue of this paragraph or an order of Ministers made under it, statutory undertakers have the right to execute works for the removal or re-siting of apparatus, they may arrange with the corporation for the works to be carried out by the corporation, 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 of Ministers made under it, the undertakers shall be entitled to compensation from the corporation.
- (8) [<sup>F8</sup>Sections 280 and 282 of the 1990 Act] or as the case may be [<sup>F9</sup>sections 233 and 235 of the 1997 Act](measure of compensation for statutory undertakers) shall apply to compensation under sub-paragraph (7) above as they apply to compensation under [<sup>F8</sup>section 279(4) of the 1990 Act] or, as the case may be, [<sup>F9</sup>section 232(4) of the 1997 Act].
- [<sup>F10</sup>(9) In sub-paragraph (1)(a) above, the reference to apparatus vested in or belonging to statutory undertakers shall include a reference to [<sup>F11</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F12</sup>an electronic communications code network]; and for the purposes of this sub-paragraph, in this paragraph references (except in the said sub-paragraph (1)(a) to statutory undertakers shall have effect as references to the operator of any [<sup>F13</sup>such network] and references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.]

#### Textual Amendments

- F8** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 4, Sch. 2 para. 44\(11\)\(b\)](#)
- F9** Words in Sch. 28 para. 16(8) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\), Sch. 2 para. 31\(10\)\(d\)](#)
- F10** Para. 16(9) inserted by [Telecommunications Act 1984 \(c. 12, SIF 96\), s. 109, Sch. 4 para. 75\(7\), Sch. 5 para. 45](#)
- F11** Words in Sch. 28 para. 16 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. 52\(2\)\(c\)](#) (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)
- F12** Words in Sch. 28 para. 16 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. 52\(2\)\(b\)](#) (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)
- F13** Words in Sch. 28 para. 16 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. 52\(2\)\(d\)](#) (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)

- 17 (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—

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- (a) to secure the provision for an urban development area 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) below.
- (2) The said acts and events are—
- (a) the acquisition under this Part of 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;
  - (b) the extinguishment of a right or the imposition of any requirements by virtue of paragraph 14 above.
- (3) The powers conferred by this paragraph shall also be exercisable where, on a representation made by an urban development corporation, 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, for the purposes of an urban development area under this Part of this Act.
- (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 the provision of the services in question, as mentioned in sub-paragraph (1)(a) or (3) above, or to secure the adjustment in question, as mentioned in sub-paragraph (1)(b) above, as the case may be.
- (5) Without prejudice to the generality of sub-paragraph (4) above, 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) above, for giving effect to such financial arrangements between the urban development corporation 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;
  - (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.
- 18 (1) As soon as may be after making such a representation as is mentioned in sub-paragraph (1) or (3) of paragraph 17 above—
- (a) the statutory undertakers, in a case falling within sub-paragraph (1); or
  - (b) the urban development corporation, 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 representation relates, and specifying the time within which,

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and the manner in which, objections to the making of an order on the representation may be made, and shall also, if it is 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 17 above shall be subject to special parliamentary procedure.
- 19 (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) above applies to the following acts and events:—
- (a) the compulsory acquisition under the Part of 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;
  - (b) the extinguishment of a right or the imposition of any requirement by virtue of paragraph 14 above.
- (3) As soon as may be after making a representation to the appropriate Minister under sub-paragraph (1) above, the appropriate statutory undertakers shall, as may be directed by the appropriate Minister, either publish (in such form and manner as may be so directed) 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, or serve such a notice on such persons, or persons of such classes, as may be so directed, or both publish and serve such notices.
- (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) above is first published.
- (7) Where in accordance with sub-paragraph (4) above the order is subject to special parliamentary procedure, sub-paragraph (6) above 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 that it is not within the powers conferred by this paragraph, or that any requirement of this paragraph has not been complied with in relation to the order, he may, within six weeks from the date on which the notice

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required by sub-paragraph (5) above is first published, make an application to the High Court (or in Scotland the Court of Session) under this paragraph.

- (9) On any application under sub-paragraph (8) above the High Court (or the Court of Session)—
- (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;
  - (b) if satisfied that the order is wholly or to any extent outside the powers conferred by this paragraph, or 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) above, 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.
- 20 (1) For the purposes of paragraphs 17 and 19 above, 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 18 or (as the case may be) 19 above; 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) above 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 17 above, 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 an 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, shall consider the grounds of the objection as set out in the statement, and 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) If, 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 if, where a further statement has been required, it is not submitted within the specified period, the appropriate Minister may make a final decision without further investigation as to those matters.
- (6) Subject to sub-paragraphs (4) and (5) above, 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

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if the objector avails himself of that opportunity, the appropriate Minister shall afford an opportunity of appearing and being heard on the same occasion to the statutory undertakers, local authority or Minister on whose representation the order is proposed to be made, and 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.

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