

SCHEDULES

SCHEDULE 3

Section 28.

ACQUISITION OF RIGHTS OVER LAND BY THE CREATION OF NEW RIGHTS

PART I

- 1 In this Schedule "right" means a right to which section 28(1) of this Act applies, or any right to which this Schedule is applied by any Act passed after this Act.

General modifications

- 2 (1) This Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition of a right as it applies to the compulsory acquisition of land, so that, in appropriate contexts, references in this Act to land are read as referring, or as including references, to the right acquired or to be acquired, or to land over which the right is, or is to be, exercisable, according to the requirements of the particular context.
- (2) Without prejudice to the generality of sub-paragraph (1) above, Part II of this Schedule shall apply to the compulsory acquisition of a right in substitution for Part III of this Act.

PART II

ACQUISITION OF NEW RIGHTS OVER SPECIAL KINDS OF LAND

Statutory undertakers land

- 3 (1) This paragraph applies where the land over which a right is to be acquired by virtue of a compulsory purchase order includes land which has been acquired by statutory undertakers for the purposes of their undertaking and on a representation made to the appropriate Minister before the expiration of the time within which objections to the order can be made he is satisfied—
- (a) that any of the said land is used for the purposes of the carrying on of their undertaking, or
 - (b) that an interest in any of the said land is held for those purposes.
- (2) The compulsory purchase order shall not be confirmed or made so as to authorise the compulsory purchase of a right over any land as to which the appropriate Minister is satisfied as aforesaid except land as to which he is satisfied that its nature and situation are such—
- (a) that the right can be purchased without serious detriment to the carrying on of the undertaking, or

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- (b) that any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them, and certifies accordingly.

Orders subject to special parliamentary procedure
Local authority and statutory undertakers' land

- 4 (1) This paragraph applies to land which—
- (a) is the property of a local authority, or
 - (b) has been acquired by statutory undertakers, who are not a local authority, for the purposes of their undertaking.
- (2) Subject to sub-paragraph (3) below, a compulsory purchase order shall, in so far as it authorises the compulsory purchase of rights over land to which this paragraph applies, be subject to special parliamentary procedure in any case where an objection to the order has been made by the local authority, or as the case may be the statutory undertakers, and has not been withdrawn.
- (3) Sub-paragraph (2) above shall not apply to the compulsory acquisition of an interest in land where the person acquiring the interest is a local authority (as defined in sub-paragraph (4) below), the Land Authority for Wales, the Peak Park Joint or Lake District Special Planning Board, any statutory undertakers or a Minister.
- (4) In sub-paragraph (3) above—
- "local authority" means—
 - (a) in relation to England, the council of a county or district, the council of a London borough, the Common Council of the City of London and the Greater London Council,
 - (b) in relation to Wales, the council of a county or district, and this definition applies to the Isles of Scilly as if the Council of those Isles were the council of a county ;
 - "statutory undertakers" has the same meaning as in section 17(3) of this Act.

National Trust land

- 5 (1) This paragraph applies to land belonging to the National Trust which is held by the Trust inalienably.
- (2) A compulsory purchase order shall, in so far as it authorises the compulsory purchase of rights over land to which this paragraph applies, be subject to special parliamentary procedure in any case where an objection to the order has been duly made by the National Trust and has not been withdrawn.
- (3) In this paragraph "held inalienably", in relation to land belonging to the National Trust, means that the land is inalienable under section 21 of the National Trust Act 1907 or section 8 of the National Trust Act 1939.

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Commons, open spaces etc.

- 6 (1) In so far as a compulsory purchase order authorises the acquisition of a right over land forming part of a common, open space or fuel or field garden allotment, it shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—
- (a) that the land, when burdened with that right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before, or
 - (b) that there has been or will be given in exchange for the right additional land which will as respects the persons in whom there is vested the land over which the right is to be acquired, the persons, if any, entitled to rights of common or other rights over that land, and the public, be adequate to compensate them for the disadvantages which result from the acquisition of the right, and that the additional land has been or will be vested in the persons in whom there is vested the land over which the right is to be acquired, and subject to the like rights, trusts and incidents as attach to that land apart from the compulsory purchase order, or
 - (c) that the land affected by the right to be acquired does not exceed 250 square yards in extent, and that the giving of other land in exchange for the right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public,
- and certifies accordingly.
- (2) In the case of a compulsory purchase order under the Highways Act 1980 sub-paragraph (1)(c) above shall have effect as if after the words " extent" there were inserted the words " or the right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway
- (3) Where it is proposed to give a certificate under this paragraph, the Secretary of State shall give public notice of his intention so to do, and—
- (a) after affording opportunity to all persons interested to make representations and objections in relation thereto, and
 - (b) after causing a public local inquiry to be held in any case where it appears to him to be expedient so to do, having regard to any representations or objections made,
- the Secretary of State may, after considering any representations and objections made and, if an inquiry has been held, the report of the person who held the inquiry, give the certificate.
- (4) A compulsory purchase order may provide for vesting land given in exchange as mentioned in sub-paragraph (1) above in the persons, and subject to the rights, trusts and incidents, therein mentioned, and for discharging the land over which any right is to be acquired from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of that right
- (5) In this paragraph—
- " common " includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green,
 - " fuel or field garden allotment" means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act,

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" open space " means any land laid out as a public garden, or used for the purpose of public recreation, or land being a disused burial ground.

Ancient monuments

- 7 (1) This paragraph applies, subject to sub-paragraph (2) below, to land being, or being the site of—
- (a) a monument with respect to which an interim preservation notice is in force, or
 - (b) subject to sub-paragraph (4) below, any other ancient monument as defined in the Ancient Monuments Acts 1913 and 1931.
- (2) Sub-paragraph (1) above shall not include a listed building, or any land or object comprised within the curtilage of a listed building, unless the building or object—
- (a) is specified in the Schedule to the Ancient Monuments Protection Act 1882, or
 - (b) is for the time being specified in a list published under section 12 of the Ancient Monuments Consolidation and Amendment Act 1913.
- (3) In so far as a compulsory purchase order authorises the purchase of a right over land to which this paragraph applies, the order shall be subject to special parliamentary procedure unless the Secretary of State is the acquiring authority or certifies that the acquiring authority has entered into an undertaking with the Secretary of State to observe such conditions as to the use of the land as in his opinion are requisite having regard to the nature thereof.
- (4) Sub-paragraph (1)(b) above is prospectively repealed by the Ancient Monuments and Archaeological Areas Act 1979 as amended by paragraph 29 of Schedule 4 to this Act, that is to say repealed by a provision which may be brought into force under section 65(2) of that Act.
- (5) In this paragraph—
- " interim preservation notice " means a notice served under section 10(1) of the Historic Buildings and Ancient Monuments Act 1953,
 - " listed building " has the meaning given by section 54 of the Town and Country Planning Act 1971.

Land within more than one provision in this Schedule

- 8 In the case of land falling within more than one of paragraphs 4 to 7 above, a compulsory purchase order shall be subject to special parliamentary procedure if required to be subject thereto by any of those paragraphs.

Notice of giving of certificate

- 9 As soon as may be after the giving of a certificate under this Schedule, the acquiring authority shall publish in one or more local newspapers circulating in the locality in which the land comprised in the order is situated a notice in the prescribed form stating that the certificate has been given.