

SCHEDULES

SCHEDULE 5

ACQUISITION OF LAND

PART III

PROCEDURE, COMPENSATION ETC (SCOTLAND)

New rights: specific adaptations of 1947 Act

- 16 Without prejudice to the generality of paragraph 15 above, Part III of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (requirement of special parliamentary procedure, and other special provisions, in the case of acquisition of certain descriptions of land) shall apply in relation to a universal service provider's compulsory acquisition of a right in Scotland by the creation of a new right with the modifications specified in paragraphs 17 to 21 below.
- 17 In paragraph 9 of that Schedule (compulsory purchase affecting land of the National Trust for Scotland) for references to the compulsory purchase of land there shall be substituted references to the compulsory acquisition of rights over land.
- 18 In paragraph 10 of that Schedule (land of statutory undertakers)—
- (a) for the words “land comprised in the order” there shall be substituted the words “land over which a right is to be acquired by virtue of the order”,
 - (b) for the words “purchase of” there shall be substituted the words “acquisition of a right over”,
 - (c) for the words “it can be purchased and not replaced” there shall be substituted the words “the right can be acquired”,
 - (d) for sub-paragraph (ii) there shall be substituted the following sub-paragraph—
 - “(ii) 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
 - (e) the references to “the Scottish Ministers” (as substituted by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999), however expressed, shall be construed as references to the Secretary of State.
- 19 In paragraph 11 of that Schedule (common or open space), for sub-paragraph (1) there shall be substituted the following sub-paragraph—
- “(1) In so far as a compulsory purchase order authorises the acquisition of a right over land forming part of a common or open space, it shall be

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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,
- (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 210 square metres 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.”

20 Paragraph 3(1) of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall be so modified as to secure that, as from the date on which the universal service provider has served notice to treat in respect of any right, he has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice).

21 For paragraph 4 of that Schedule (protection for owner against severance of property) there shall be substituted the following paragraphs—

“4 No person shall be required to grant any right over part only—

- (a) of any house, building or manufactory, or
- (b) of a park or garden belonging to a house,

if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal for Scotland determines that—

- (i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory, or
- (ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house,

and if it so determines, it shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.

4A In considering, for the purposes of paragraph 4 above, the extent of any material detriment to a house, building or manufactory, or any extent

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to which the amenity or convenience of a house is affected, the Lands Tribunal for Scotland shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase.”