

SCHEDULES

SCHEDULE 5

ACQUISITION OF LAND

PART III

PROCEDURE, COMPENSATION ETC (SCOTLAND)

Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

- 14 The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to the compulsory purchase by a universal service provider of land or rights in Scotland as if he were a local authority within the meaning of that Act, and as if this Act had been in force immediately before the commencement of that Act.

New rights: application of 1947 Act and incorporated enactments

- 15 The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, and the enactments incorporated with this Act by virtue of paragraph 14 above and paragraph 1 of the Second Schedule to that Act, shall have effect with the modifications necessary to make them apply to a universal service provider's compulsory acquisition of a right in Scotland by the creation of a new right as they apply to the compulsory acquisition of land, so that, in appropriate contexts, references in those enactments and that Act to land are to be read as referring, or as including references, to—
- (a) the right acquired or to be acquired, or
 - (b) land over which the right is or is to be exercisable,
- according to the requirements of the particular context.

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)—

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- (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 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).

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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 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.”

New rights: specific adaptations of Lands Clauses Consolidation (Scotland) Act 1845

22 Without prejudice to the generality of paragraph 15 above, the Lands Clauses Consolidation (Scotland) Act 1845 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 23 to 26 below.

23 For section 61 of that Act (estimation of compensation) there shall be substituted the following section—

“61 In estimating the purchase money or compensation to be paid by the universal service provider under the special Act, in any of the cases aforesaid, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right, but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

24 The following provisions of that Act (being provisions stating the effect of a notarial instrument or of a disposition executed in various circumstances where there is no conveyance by persons with interests in the land)—

- section 74 (failure by owner to convey),
- section 76 (refusal to convey or show title or owner cannot be found), and
- section 98 (vesting of common land),

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shall be so modified as to secure that, as against persons with interests in the land over which the right is to be compulsorily acquired, such right is vested absolutely in the universal service provider.

25 Sections 114 (compensation to be made to tenants for a year etc.) and 115 (compensation where greater interest than tenant for a year) of that Act shall apply with the modifications necessary to secure that persons with such interests as are mentioned in those sections are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

26 Sections 117 (protection of promoter of undertaking where by inadvertence an interest in land has not been purchased etc.) and 118 (provisions supplementary to section 117) of that Act shall be so modified as to enable the universal service provider, in circumstances corresponding to those referred to in those sections, to continue to be entitled to exercise the right acquired, subject to compliance with those sections as respects compensation.

New rights: compensation

27 The enactments in force in Scotland with respect to compensation for the compulsory purchase of land shall apply as respects compensation in the case of a universal service provider's compulsory acquisition of a right by the creation of a new right as they apply to compensation on the compulsory purchase of land and interests in land.