

SCHEDULES

SCHEDULE 4

PART II

COMPULSORY PURCHASES AFFECTING SUPPLIES OF WATER

4 This Part of this Schedule shall apply where the land or rights purchased under section 13 of this Act comprise, or relate to, a well, borehole or shaft which is used for the purpose of providing a supply of water which is obtained in exercise of a protected right (as defined in [^{F1}Chapter II of Part II of the Water Resources Act 1991 or within the meaning of that Chapter so far as it applies in relation to any application for a licence which is a licence of right for the purposes of Schedule 7 to the Water Resources Act 1991]).

5 (1) Where the persons entitled to exercise the right are statutory water [^{F2}undertakers, the Environment Agency or the Natural Resources Body for Wales, the gas transporter shall, if the statutory water undertakers, the Environment Agency or the Natural Resources Body for Wales provide] an alternative supply of water, pay to them the costs reasonably incurred by them in doing so:

Provided that the [^{F3}public gas supplier] shall not be liable for those costs if and so far as they are attributable to the supply so provided being superior in quantity or quality to the supply which was being, or might have been, obtained in exercise of the protected right.

(2) Where the persons entitled to exercise the protected right are not statutory water [^{F4}undertakers, the Environment Agency or the Natural Resources Body for Wales, the gas transporter shall], at the request of those persons, and if it is reasonably practicable and economical so to do, provide without charge an alternative supply of water which is in quantity and quality equivalent to the supply which was being, or might have been, obtained in exercise of the protected right.

(3) In assessing compensation under the Lands Clauses Acts for injurious affection of any interest in land held with the land purchased, or the land in which the rights purchased are exercisable, account shall be taken of any mitigation of that injurious affection attributable to the provision of the alternative supply of water; and the foregoing provisions of this paragraph shall be in lieu of compensation for the value of any interest in land so far as that value is attributable to the use of the land for the construction and use of the well, borehole or shaft.

(4) Compensation payable under the Lands Clauses Acts (whether under section 63 or section 68 of the ^{M1}Lands Clauses Consolidation Act 1845) for injurious affection sustained by the persons entitled to the supply of water shall include—

(a) compensation for any loss or damage suffered by them in the period before effective action is taken under this paragraph, and

Changes to legislation: There are currently no known outstanding effects for the Gas Act 1965, Part II. (See end of Document for details)

(b) where the [^{F5}amounts payable, by virtue of [^{F6}section 123 of the Water Resources Act 1991], in respect of an alternative supply of water to which the foregoing provisions of this paragraph relate exceed the amounts payable by virtue of that section in respect of the protected right (or where amounts are payable by virtue of that section in respect of an alternative supply but no amounts] were so payable in respect of the protected right), a lump sum by way of compensation for the additional burden thereby imposed on the persons entitled to the protected right.

6 Where paragraph 5 of this Schedule does not apply, then without prejudice to the generality of the principles applicable in assessing compensation payable under the Lands Clauses Acts (whether under section 63 or section 68 of the ^{M2}Lands Clauses Consolidation Act 1845) for injurious affection sustained by the person entitled to the supply of water, compensation so payable shall include compensation for any expenditure in providing the well, borehole or shaft, or the apparatus used in connection with it, which is rendered abortive by the compulsory purchase, and for any other loss or damage which is attributable to the compulsory purchase.

Marginal Citations

M2 1845 c. 19.(28:2)

7 Any dispute arising under this Part of this Schedule as to whether it is reasonably practicable and economical to provide an alternative supply of water shall be referred to and determined by the Minister and the Minister concerned with water resources acting jointly.

Before determining a dispute referred to them under this paragraph, the said Ministers shall afford to the parties to the dispute an opportunity of being heard before a person appointed by the Ministers for the purpose, and shall, in determining the dispute, take the report of the hearing into consideration.

Modifications etc. (not altering text)

C1 Sch. 4 para. 7 explained by S.I. 1970/1681, Sch. 3 para. 10(2)

8 Without prejudice to the generality of the principles on which compensation is payable under the Lands Clauses Acts, in assessing compensation under those Acts in cases affected by this Part of this Schedule account shall be taken of the provisions of the ^{M3}Water Resources Act 1963 and of any other enactment restricting rights or powers of abstracting water.

Marginal Citations

M3 1963 c. 38.(130)

9 In the application of this Part of this Schedule to Scotland—

(a) for any reference to a protected right (as defined in section 26 of the ^{M4}Water Resources Act 1963) there shall be substituted a reference to a right (whether statutory or not) to take water;

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- (b) for any reference to the ^{M5}Lands Clauses Consolidation Act 1845 and to section 63 thereof, there shall be substituted respectively references to the ^{M6}Lands Clauses Consolidation (Scotland) Act 1845 and to section 61 thereof, and for any reference to section 68 of the Act first named there shall be substituted a reference to section 6 of the ^{M7}Railway Clauses Consolidation (Scotland) Act 1845, and the enactments substituted as aforesaid shall be construed with any necessary modifications;

^{F7}(c)

Textual Amendments

F7 Sch. 4 para. 9(c) repealed (S.) (14.7.2004) by [The Water Industry \(Scotland\) Act 2002 \(Consequential Modifications\) Order 2004 \(S.I. 2004/1822\)](#), **Sch. para. 4(6)(c)**

Marginal Citations

- M4** 1963 c. 38.(130)
- M5** 1845 c. 18.(28:2)
- M6** 1845 c. 19.(28:2)
- M7** 1845 c. 19.(28:2)

Changes to legislation:

There are currently no known outstanding effects for the Gas Act 1965, Part II.