

SCHEDULES

SCHEDULE 1

Section 13(3).

ADAPTATION OF ENACTMENTS IN CONNECTION WITH COMPULSORY PURCHASES OF RIGHTS

PART I

ADAPTATION OF PART III OF SCHEDULE 1 TO THE ACT OF 1946

- 1 In paragraph 9 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946 (which relates to land belonging to local authorities, statutory undertakers or the National Trust), for references to the purchase of land there shall be substituted references to the purchase of rights over land.
- 2 In paragraph 10 of that Schedule (which relates to land belonging to statutory undertakers)—
 - (a) for the words " comprised in " there shall be substituted the words " over which a right is to be acquired by virtue of ";
 - (b) after the words "purchase of" there shall be inserted the words " a right over ";
 - (c) for the words " it can be purchased and not replaced " there shall be substituted the words " the right can be purchased ";
 - (d) for sub-paragraph (ii) there shall be substituted the following—
 - “(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.”
- 3 In paragraph 11 of that Schedule (which relates to land forming part of a common, open space or allotment) for sub-paragraph (1) there shall be substituted the following—
 - “(1) In so far as a compulsory purchase order authorises the purchase 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 to the 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 purchased, 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

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disadvantages which result from the purchase 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 purchased 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 purchased 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.”

- 4 In sub-paragraph (3) of the said paragraph 11, after the words " the land " there shall be inserted the words " over which any right is to be " and at the end of the sub-paragraph there shall be inserted the words " so far as their continuance would be inconsistent with the exercise of that right ".
- 5 In paragraph 12 of that Schedule (which among other things relates to ancient monuments), after the words " purchase of " there shall be inserted the words " rights over ".

PART II

ADAPTATION OF PART I OF THE ACT OF 1965

- 6 In the Compulsory Purchase Act 1965 (hereafter in this Schedule referred to as " the Act") for section 7 (which relates to compensation) there shall be substituted the following—
- “7 (1) In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent, if any, to which the value of the land over which the right is purchased is depreciated by the purchase but also to the damage, if any, to be sustained by the owner of the land by reason of injurious affection of other land of the owner by the exercise of the right.
- (2) The modifications subject to which subsection (1) of section 44 of the Land Compensation Act 1973 is to have effect, as applied by subsection (2) of that section to compensation for injurious affection under this section, are that for the words " land is acquired or taken " there shall be substituted the words " a right over land is purchased " and for the words " acquired or taken from him" there shall be substituted the words " over which the right is exercisable ".”
- 7 For section 8 of the Act (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following—
- “8 (1) Where in consequence of the service on a person in pursuance of section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (hereafter in this subsection referred to as " the relevant land ")—
- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (hereafter in this section referred to as " the Tribunal "); and

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- (b) before the Tribunal has determined that question the person satisfies the Tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—
- (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs.

the compulsory purchase order to which the notice to treat relates shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the Tribunal directs.

- (2) Any question as to the extent of the land in which a compulsory purchase order is deemed to authorise the purchase of an interest by virtue of the preceding subsection shall be determined by the Tribunal.
- (3) Where in consequence of a determination of the Tribunal that it is satisfied as mentioned in subsection (1) of this section a compulsory purchase order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made ; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.
- (4) The modifications subject to which subsection (1) of section 58 of the Land Compensation Act 1973 is to have effect, as applied by subsection (2) of that section to the duty of the Tribunal in determining whether it is satisfied as mentioned in subsection (1) of this section, are that at the beginning of paragraphs (a) and (b) there shall be inserted the words " a right over ", for the word " severance " there shall be substituted the words " right on the whole of the house, building or manufactory or of the house and the park or garden " and for the words "part proposed" and "part is" there shall be substituted respectively the words " right proposed " and " right is "".

8 The following provisions of the Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), namely—

- section 9(4) (failure of owners to convey);
- paragraph 10(3) of Schedule 1 (owners under incapacity);
- paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be purchased compulsorily is vested absolutely in the acquiring authority.

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- 9 Section 11 of the Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it 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); and sections 12 (penalty for unauthorised entry) and 13 (entry on sheriff's warrant in the event of obstruction) of the Act shall be modified correspondingly.
- 10 Section 20 of the Act (compensation for short-term tenants) shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of the interests but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right in question.
- 11 Section 22 of the Act (protection of acquiring authority's possession of land where by inadvertence an interest in the land has not been purchased) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right in question, subject to compliance with that section as respects compensation.