

SCHEDULES

SCHEDULE 3

THE NEW TOWNS CODE

PART VI

STATUTORY UNDERTAKERS

*Assessment of compensation for compulsory
acquisition of statutory undertakers' operational land*

- 41 (1) Where statutory undertakers are entitled to compensation in respect of an acquisition of operational land under the new towns code or in respect of the extinguishment of a right or the imposition of a requirement as mentioned in paragraph 44(8) below, the amount of the compensation shall, subject to paragraph 42 below, be an amount calculated in accordance with the following provisions of this paragraph.
- (2) The said amount, subject to sub-paragraph (3) below, shall be the aggregate of the following amounts, that is to say—
- (a) the amount of any expenditure reasonably incurred in acquiring land, providing apparatus, erecting buildings or doing work for the purposes of any adjustment of the carrying on of the undertaking rendered necessary by the proceeding giving rise to compensation;
 - (b) whichever of the following is applicable, namely—
 - (i) where such an adjustment is made, the estimated amount of any decrease in net receipts from the carrying on of the undertaking pending the adjustment, in so far as the decrease is directly attributable to the proceeding giving rise to compensation, together with such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking in the period after the adjustment has been completed, in so far as the decrease is directly attributable to the adjustment, or
 - (ii) where no such adjustment is made, such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking which is directly attributable to the proceeding giving rise to compensation ;
 - (c) where the right to compensation arises under paragraph 44(8) below, and is in respect of the imposition of a requirement to remove apparatus, the amount of any expenditure reasonably incurred by the statutory undertakers in complying with the requirement, reduced by the value after removal of the apparatus removed.
- (3) Where any such adjustment as is mentioned in sub-paragraph (2)(a) above is made, the aggregate amount mentioned in that sub-paragraph shall be reduced by such amount (if any) as appears to the Lands Tribunal to be appropriate to offset—

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- (a) the estimated value of any property (whether movable or immovable) belonging to the statutory undertakers and used for the carrying on of their undertaking which, in consequence of the adjustment, ceases to be so used, in so far as the value of the property has not been taken into account under sub-paragraph (2)(c) above, and
- (b) the estimated amount of any increase in net receipts from the carrying on of the undertaking in the period after the adjustment has been completed, in so far as that amount has not been taken into account under sub-paragraph (2) (b) above and is directly attributable to the adjustment,

and by any further amount which appears to the Lands Tribunal to be appropriate, having regard to any increase in the capital value of immovable property belonging to the statutory undertakers which is directly attributable to the adjustment, allowance being made for any reduction made under paragraph (b) above.

- (4) References in this paragraph to a decrease in net receipts shall be construed as references to the amount by which a balance of receipts over expenditure is decreased, or a balance of expenditure over receipts is increased, or, where a balance of receipts over expenditure is converted into a balance of expenditure over receipts, as references to the aggregate of the two balances ; and references to an increase in net receipts shall be construed accordingly.
 - (5) In this paragraph—
 - " compensation in respect of an acquisition " includes compensation payable in connection with the acquisition for damage sustained by reason of the severing of the land acquired from other land held therewith or otherwise injuriously affecting such other land, and compensation payable for disturbance or any other matter not directly based on the value of the land ;
 - " proceeding giving rise to compensation " means the particular action (that is to say, the acquisition, the extinguishment of a right or the imposition of a requirement) in respect of which compensation falls to be assessed, as distinct from any development or project in connection with which that action may have been taken.
- 42 (1) Where statutory undertakers are entitled to compensation in respect of an acquisition of land under the new towns code, the statutory undertakers may by notice in writing under this paragraph elect that the compensation shall be ascertained in accordance with the enactments (other than rule (5) of the rules set out in section 5 of the Land Compensation Act 1961) which would be applicable apart from paragraph 41 above ; and if the undertakers so elect the compensation shall be ascertained accordingly.
- (2) An election under this paragraph may be made either in respect of the whole of the land comprised in the compulsory acquisition in question or in respect of part of that land.
 - (3) Any notice under this paragraph shall be given to the acquiring authority before the end of the period of two months from the date of service of notice to treat in respect of the interest of the statutory undertakers.
- 43 (1) Where the amount of any such compensation as is mentioned in sub-paragraph (1) of paragraph 41 above falls to be ascertained in accordance with the provisions of that paragraph, the compensation shall, in default of agreement, be assessed by the Lands Tribunal if apart from this paragraph it would not fall to be so assessed.

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- (2) For the purposes of any proceedings arising before the Lands Tribunal in respect of compensation falling to be ascertained as mentioned in sub-paragraph (1) above, the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply as they apply to proceedings on a question referred to the Tribunal under section 1 of that Act, but with the substitution in section 4 of that Act, for references to the acquiring authority, of references to the person from whom the compensation is claimed.

Extinguishment of rights of way, and rights as to apparatus, of statutory undertakers

- 44 (1) Subject to sub-paragraph (2) below, this paragraph applies to land which fulfils the following conditions, that is to say—
- (a) it must be land acquired under the new towns code or land acquired under this Act by agreement which could have been or have been required to be acquired under the new towns code ; and
 - (b) it must be land for the time being held by the Board, a local highway authority or the Secretary of State.
- (2) This paragraph shall not have effect, so far as regards a right of the Post Office with respect to a telegraphic line and so far as regards a telegraphic line of the Post Office, in a case in which paragraph 39 has effect.
- (3) Where, in the case of any land to which this paragraph applies—
- (a) there subsists over that land a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, being a right of way or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, or
 - (b) there is on, under or over the land apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking,
- the acquiring authority may serve on the statutory undertakers a notice stating that, at the end of such period as may be specified in the notice, the right will be extinguished, or requiring that, before the end of such period as may be so specified, the apparatus shall be removed.
- (4) The statutory undertakers on whom a notice is served under sub-paragraph (3) above may, before the end of the period of twenty-eight days from the service of the notice, serve a counter-notice on the acquiring authority stating that they object to all or any of the provisions of the notice, and specifying the grounds of their objection.
- (5) If no counter-notice is served under sub-paragraph (4) above—
- (a) any right to which the notice relates shall be extinguished at the end of the period specified in that behalf in the notice, and
 - (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the notice as to the removal of the apparatus has not been complied with, the acquiring authority may remove the apparatus and dispose of it in any way the authority may think fit.
- (6) If a counter-notice is served under sub-paragraph (4) above on the Board or local highway authority, the Board or authority may either withdraw the notice (without prejudice to the service of a further notice) or may apply to the Secretary of State and the appropriate Minister for an order under this paragraph embodying the provisions of the notice, with or without modification; and if such an application is made, the Secretary of State and the appropriate Minister may make an order under this paragraph accordingly.

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- (7) If a counter-notice is served under sub-paragraph (4) above on the Secretary of State, he may withdraw the notice (without prejudice to the service of a further notice) or he and the appropriate Minister may make an order under this paragraph embodying the provisions of the notice, with or without modification.
- (8) Where, by virtue of this paragraph, any right vested in or belonging to statutory undertakers is extinguished, or any requirement is imposed on statutory undertakers, those undertakers shall be entitled to compensation from the acquiring authority at whose instance the right was extinguished or the requirement imposed ; and the provisions of paragraphs 41 to 43 above shall have effect as regards the assessment of the amount of that compensation.
- (9) In this paragraph " telegraphic line " has the same meaning as in the Telegraph Act 1878.

Orders under paragraph 44

- 45 (1) Where the Secretary of State and the appropriate Minister propose to make an order under paragraph 44(7) above, they shall prepare a draft of the order.
- (2) Before making an order under paragraph 44(6) or (7) above, the Ministers proposing to make the order—
- (a) shall afford to the statutory undertakers on whom notice was served under sub-paragraph (3) of that paragraph an opportunity of objecting to the application for, or proposal to make, the order, and
 - (b) if any objection is made, shall consider the objection and afford to those statutory undertakers (and, in a case falling within sub-paragraph (b) of that paragraph, to the Board or local highway authority on whom the counter-notice was served) an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State and the appropriate Minister for the purpose,
- and may then, if they think fit, make the order in accordance with the application or in accordance with the draft order, as the case may be, either with or without modification.
- (3) Where an objection to an order under the said paragraph 44 is duly made and is not withdrawn before the making of the order, the order shall be subject to special parliamentary procedure.
- (4) Subject to sub-paragraph (3) above, where an order is made under paragraph 44 above—
- (a) any right to which the order relates shall be extinguished at the end of the period specified in that behalf in the order, and
 - (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the order as to the removal of the apparatus has not been complied with, the acquiring authority may remove the apparatus and dispose of it in any way the authority may think fit.

Extension or modification of functions of statutory undertakers

- 46 (1) The powers conferred by this paragraph shall be exercisable where, on a representation made by statutory undertakers, it appears to the Secretary of State

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and the appropriate Minister to be expedient that the powers and duties of those undertakers should be extended or modified in order—

- (a) to secure the provision of services which would not otherwise be provided, or satisfactorily provided, for the purposes of a new town under this Act, or
- (b) to facilitate an adjustment of the carrying on of the undertaking necessitated by any of the acts and events mentioned in sub-paragraph (2) below.

(2) The said acts and events are—

- (a) the acquisition of any land under the new towns code or the acquisition by agreement under this Act of any land which could have been or have been required to be acquired under the new towns code where that land is (in either case) land in which an interest was held, or land which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers in question ;
- (b) the extinguishment of a right or the imposition of any requirement by virtue of paragraph 44 above.

(3) The powers conferred by this paragraph shall also be exercisable where, on a representation made by the Board, it appears to the Secretary of State and the appropriate Minister to be expedient that the powers and duties of statutory undertakers should be extended or modified in order to secure the provision of new services, or the extension of existing services, for the purposes of a new town under this Act.

(4) Where the powers conferred by this paragraph are exercisable, the Secretary of State and the appropriate Minister may, if they think fit, by order provide for such extension or modification of the powers and duties of the statutory undertakers as appear to them to be requisite in order to secure the provision of the services in question, as mentioned in sub-paragraph (1)(a) or (3) above or to secure the adjustment in question, as mentioned in sub-paragraph (1)(b) above, as the case may be.

(5) Without prejudice to the generality of sub-paragraph (4) above, an order under this paragraph may make provision—

- (a) for empowering the statutory undertakers to acquire (whether compulsorily or by agreement) any land specified in the order, and to erect or construct any buildings or works so specified ;
- (b) for applying, in relation to the acquisition of any such land or the construction of any such works, enactments relating to the acquisition of land and the construction of works;
- (c) where it has been represented that the making of the order is expedient for the purposes mentioned in sub-paragraph (1)(a) or (3) above, for giving effect to such financial arrangements between the Board and the statutory undertakers as they may agree, or as, in default of agreement, may be determined to be equitable in such manner and by such tribunal as may be specified in the order ;
- (d) for such incidental and supplemental matters as appear to the Secretary of State and the appropriate Minister to be expedient for the purposes of the order.

Procedure in relation to orders under paragraph 46

- 47 (1) As soon as may be after making such a representation as is mentioned in paragraph 46(1) or (3) above—

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(a) the statutory undertakers, in a case falling within sub-paragraph (1) of that paragraph, or

(b) the Board, in a case falling within sub-paragraph (3) thereof,

shall publish, in such form and manner as may be directed by the Secretary of State and the appropriate Minister, a notice giving such particulars as may be so directed of the matters to which the representation relates, and specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made, and shall also, if it is so directed by the Secretary of State and the appropriate Minister, serve a like notice on such persons, or persons of such classes, as may be so directed.

(2) Orders under the said paragraph 46 shall be subject to special parliamentary procedure.

Relief of statutory undertakers from obligations rendered impracticable

48 (1) Where, on a representation made by statutory undertakers, the appropriate Minister is satisfied that the fulfilment of any obligation incurred by those undertakers in connection with the carrying on of their undertaking has been rendered impracticable by an act or event to which this sub-paragraph applies, the appropriate Minister may, if he thinks fit, by order direct that the statutory undertakers shall be relieved of the fulfilment of that obligation, either absolutely or to such extent as may be specified in the order.

(2) Sub-paragraph (1) above applies to the following acts and events, that is to say—

(a) the acquisition under the new towns code of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers;

(b) the extinguishment of a right or the imposition of any requirement by virtue of paragraph 44 above.

(3) As soon as may be after making a representation to the appropriate Minister under sub-paragraph (1) above, the statutory undertakers shall, as may be directed by the appropriate Minister, either—

(a) publish (in such form and manner as may be so directed) a notice giving such particulars as may be so directed of the matters to which the representation relates, and specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made, or

(b) serve such a notice on such persons, or persons of such classes, as may be so directed, or

(c) both publish and serve such notices.

(4) If any objection to the making of an order under this paragraph is duly made and is not withdrawn before the order is made, the order shall be subject to special parliamentary procedure.

(5) As soon as may be after an order has been made under this paragraph the appropriate Minister shall publish in such form and manner as he thinks fit a notice stating that the order has been made.

(6) The provisions of Part III of the new towns code as to the validity and date of operation of compulsory purchase orders shall have effect in relation to an order under this paragraph with the substitution for references to a compulsory purchase

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order and to publication in accordance with the provisions of that Part of the new towns code in that behalf of references to an order under this paragraph and to publication in accordance with sub-paragraph (5) above.

Objections to orders under paragraphs 46 and 48

- 49 (1) For the purposes of paragraphs 46 and 48 above an objection to the making of an order thereunder shall not be treated as duly made unless—
- (a) the objection is made within the time and in the manner specified in the notice required by the provisions under which the order is proposed to be made, and
 - (b) a statement in writing of the grounds of the objection is comprised in or submitted with the objection.
- (2) Where an objection to the making of such an order is duly made in accordance with sub-paragraph (1) above and is not withdrawn, the provisions of Part VII of the new towns code shall have effect in relation to the objection.