

## SCHEDULES

### SCHEDULE 5

#### SUPPLEMENTARY PROVISIONS AS TO ACQUISITION OF LAND

##### PART III

##### SUPPLEMENTARY

*Provision enabling owners and lessees to require purchase of their interests*

- 1 (1) If the Secretary of State makes an order under section 38(1) of this Act extending the time within which a notice to treat may be served in respect of any land the following provisions of this paragraph shall have effect as from the coming into operation of that order.
- (2) If any owner or lessee of any of that land gives notice in writing to the appropriate authority that he desires his interest in any part of the land specified in the notice to be acquired by the appropriate authority, the appropriate authority shall, within the period of three months after the receipt of such notice—
- (a) enter into an agreement with him for the acquisition of his interest in the land or such part thereof as may be specified in the agreement; or
  - (b) serve on him a notice to treat for the compulsory acquisition of his interest in the land specified in his notice, or in such part thereof as may be required by the appropriate authority; or
  - (c) serve on him notice in writing of their intention not to proceed with the purchase of his interest in the land specified in his notice.
- (3) Where notice is given under sub-paragraph (2) above by an owner or lessee in respect of his interest in land specified in the notice, then—
- (a) if the appropriate authority—
    - (i) fails to comply with the requirements of that sub-paragraph; or
    - (ii) withdraws a notice to treat served in compliance with paragraph (b) of that sub-paragraph; or
    - (iii) serves on him notice in compliance with paragraph (c) of that sub-paragraph;the power of the appropriate authority to serve a notice to treat in respect of that person's interest in the land so specified shall cease; or
  - (b) if the owner's or lessee's interest in part only of that land is acquired in pursuance of an agreement under paragraph (a) of that sub-paragraph, or a notice to treat served by virtue of paragraph (b) of that sub-paragraph, the power of the appropriate authority to serve a notice to treat in respect of that person's interest in the remainder of that land shall cease.

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- (4) In this paragraph "lessee" means a person who holds an interest under a lease for a period of which not less than 21 years is unexpired at the date of the giving of any notice by that person under sub-paragraph (2) above.
- (5) This paragraph shall not apply to any subsoil or under-surface of land required only for the construction of a work at a level more than 9 metres below the surface of the land or, in the case of a work below a watercourse or other area of water, the surface of the adjoining ground which is at all times above water level.

*Acquisition of subsoil or rights in land*

- 2 (1) The appropriate authority may, under section 8 or 36 of this Act—
- (a) acquire only so much as may be required for the purposes mentioned in those sections of the subsoil and under-surface of; or
  - (b) create and acquire such easements or rights as may be required for those purposes in;
- any land to which that section relates, not being land specified in the table in sub-paragraph (3) below, without being required to acquire any greater interest.
- (2) The provisions of Part I of the Compulsory Purchase Act 1965, as applied by section 37 of this Act, and the enactments relating to compensation for the compulsory purchase of land, shall with the necessary modifications (including the adaptations of that Part of that Act specified in paragraph 8 below) have effect in relation to the creation and acquisition of such easements or rights as if it were the purchase of land within the meaning of that Part of that Act, and any notice to treat in respect of any such easement or right shall describe its nature.
- (3) Notwithstanding the provisions of section 8 of this Act, the Secretary of State shall not acquire compulsorily under that section any interest in any part of any land specified in the following table, except the subsoil or under-surface or easements or rights in the subsoil and under-surface as provided by sub-paragraph (1) above—

THE TABLE

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>
District of Shepway—	
town of Folkestone	59 to 88
parish of Hawkinge	1 to 17
District of Dover—	
parish of Capel-le-Ferne	1 to 98
parish of Hougham Without	1 and 3 to 51
town of Dover	1 to 6, 19, 20, 21 and 32

- (4) For the purposes of sub-paragraph (3) above the subsoil and under-surface of any land specified in the table in that sub-paragraph shall not include any subsoil or under-surface which is within 9 metres of the level of the surface of the ground or, in the case of a building on the land, the level of the surface of the ground adjoining

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the building or, in the case of a watercourse or other area of water, the level of the surface of the adjoining ground which is at all times above water level.

*Acquisition of part only of certain properties*

- 3 (1) Where a copy of this paragraph is endorsed on, or annexed to, a notice to treat served under Part I of the Compulsory Purchase Act 1965, as applied by section 37 of this Act, the following provisions of this paragraph shall apply to the land subject to the notice instead of section 8(1) of that Act.
- (2) Where the land subject to the notice is part only of a house, building or factory, or part only of land consisting of a house together with any park or garden belonging thereto, then, if the person on whom the notice is served, within the period of two months beginning with the day on which the notice is served on him, serves on the appropriate authority a counter-notice objecting to the sale of the part and stating that he is willing and able to sell the whole (in this paragraph below referred to as "the land subject to the counter-notice"), the question whether he shall be required to sell the part shall, unless the appropriate authority agrees to take the land subject to the counter-notice, be referred to the Lands Tribunal.
- (3) If the said person does not serve such a counter-notice as aforesaid within the period of two months beginning with the day on which the notice to treat is served on him, or if on such a reference to the Lands Tribunal the tribunal determines that the part subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, in the case of part of any land consisting of a house together with a park or garden belonging thereto, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the said person shall be required to sell the part.
- (4) If, on such a reference to the Lands Tribunal, the tribunal determines that part only of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice, or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.
- (5) If, on such a reference to the Lands Tribunal, the tribunal determines that the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice but that the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the appropriate authority is authorised to acquire compulsorily under section 8 or 36 of this Act.
- (6) If the appropriate authority agrees to take the land subject to the counter-notice, or if the Lands Tribunal determines that—
- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or (as the case may be) without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

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- (b) the material detriment is not confined to a part of the land subject to the counter-notice;

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice, whether or not the whole of that land is land which the appropriate authority is authorised to acquire compulsorily under section 8 or 36 of this Act.

- (7) In any case where, by virtue of a determination by the Lands Tribunal under sub-paragraph (4), (5) or (6) above, a notice to treat is deemed to be a notice to treat for part of the land specified in the notice or for more land than is specified in the notice, the appropriate authority may, within six weeks after the tribunal makes its determination, withdraw the notice to treat and, if this is done, shall pay to the person on whom the notice to treat was served compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in default of agreement by the tribunal.
- (8) For the purposes of sub-paragraph (7) above, the determination shall not be deemed to be made so long as—
- (a) the time for requiring the tribunal to state a case with respect to the determination has not expired;
  - (b) any proceedings on points raised by a case so stated have not been concluded; or
  - (c) any proceedings on appeal from any decision on points raised by a case so stated have not been concluded.
- (9) Where a person is required under this paragraph to sell part only of a house, building or factory, or of land consisting of a house together with any park or garden belonging thereto, compensation shall be payable to him for any loss sustained by him due to the severance of that part in addition to the value of his interest therein.

#### *Minerals*

- 4 (1) Subject to sub-paragraph (2) below, Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 (exception of minerals from compulsory purchase and regulation of the working of mines or minerals underlying an authorised undertaking) shall have effect in relation to lands within the limits of land to be acquired as if those lands were comprised in a compulsory purchase order providing for the incorporation with that order of those Parts of that Schedule.
- (2) In the application of that Schedule to lands which the Secretary of State is authorised to acquire under section 36 of this Act, the prescribed distance in relation to any seam of minerals lying under land adjoining works forming part of the A20 improvement works shall be such a lateral distance from those works on every side as is equal at every point along those works to one half of the depth of the seam below the natural surface of the ground at that point or forty yards, whichever is the greater.

#### *Extinguishment of private rights of way*

- 5 (1) All private rights of way over any land which may be acquired compulsorily under this Act shall be extinguished on the acquisition of the land, whether compulsorily or by agreement, or on the entry on the land in pursuance of section 11(1) of the Compulsory Purchase Act 1965, as applied by section 37 of this Act, whichever is sooner.

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- (2) Any person who suffers loss by the extinguishment of any right under this paragraph shall be entitled to compensation.

*Provisions as to compensation*

- 6 (1) In determining a question with respect to compensation claimed in consequence of the compulsory acquisition of land under this Act, the Lands Tribunal shall not take into account—
- (a) any interest in land; or
  - (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made, whether on the land acquired or on any other land with which the claimant is (or was at the time of the erection, execution or making of the building, works, improvement or alteration) directly or indirectly concerned;
- if the tribunal are satisfied that the creation of the interest, or (as the case may be) the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.
- (2) Any dispute as to a person's entitlement to compensation under any provision of this paragraph, or as to the amount of the compensation, shall be determined under and in accordance with Part I of the Land Compensation Act 1961.

*Correction of deposited plans*

- 7 (1) If the deposited plans or the book of reference to those plans are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the appropriate authority, after giving not less than ten days' notice to the owner, lessee and occupier of the land in question, may apply to two justices having jurisdiction in the place where the land is situated for the correction thereof.
- (2) If on any such application it appears to the justices that the misstatement or wrong description arose from mistake or inadvertence, the justices shall certify accordingly and shall in their certificate state in what respect any matter is misstated or wrongly described.
- (3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office of the House of Commons and with the proper officer of each County Council or London Borough Council in whose area is situated the land to which the certificate relates, and thereupon the deposited plans or the book of reference thereto (as the case may be) shall be deemed to be corrected according to the certificate, and it shall be lawful for the appropriate authority, in accordance with the certificate, to proceed under this Act as if the deposited plans or the book of reference had always been in the corrected form.
- (4) A person with whom a copy of the certificate is deposited under this paragraph shall keep it with the documents to which it relates.

*Adaptation of Part I of the Compulsory Purchase Act 1965*

- 8 In relation to the compulsory creation and acquisition of an easement or right in land (in any enactment amended by this paragraph referred to as "a right over land")

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by virtue of paragraph 2 above, Part I of the Compulsory Purchase Act 1965 applies with the following modifications—

(a) 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 'a right over land is purchased' and for the words 'acquired or taken from him' there shall be substituted 'over which the right is exercisable'.”;

(b) For section 8(1) (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 under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or factory 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

(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 factory, that it cannot be made subject to the right without material detriment to it; or

(ii) where that land consists of such a park or garden, that it cannot be made subject to the right without seriously affecting the amenity or convenience of the house to which it belongs;

the compulsory purchase order 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.

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- (1A) Any question as to the extent of the land in which the compulsory purchase order is deemed to authorise the purchase of an interest by virtue of subsection (1) above shall be determined by the Tribunal.
- (1B) Where in consequence of a determination of the Tribunal that it is satisfied as mentioned in subsection (1) above the 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 acquiring authority to withdraw the notice.
- (1C) 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) above, 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 'right on the whole of the house, building or factory or of the house and the park or garden' and for the words 'part proposed' and 'part is' there shall be substituted respectively 'rights proposed' and 'right is'.';
- (c) The following provisions stating 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;
- (d) Section 11 (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have 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 sheriffs warrant in the event of obstruction) shall be modified correspondingly;
- (e) Section 20 (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;
- (f) Section 22 (protection of acquiring authority's possession of land where by inadvertence an interest in the land has not been purchased) shall

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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; and

- (g) Paragraph 2(1) of Schedule 1 (power of owners to sell to the acquiring authority) shall be modified to empower all persons who are seised or possessed of or entitled to any of the land over which a right is required by the acquiring authority to grant that right to the authority and to enter all necessary agreements for the purpose.