# SCHEDULES

## SCHEDULE 19 E+W

Section 168.

## ORDERS CONFERRING COMPULSORY WORKS POWERS

**Modifications etc. (not altering text)**

**C1** Sch. 19 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2(1), **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

**C2** Sch. 19 applied (2.5.2006 for E., 11.5.2006 for W.) by Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2(1), **Sch. Pt. I**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

### *Applications for orders*

1 (1) Where the **[**[F1]appropriate agency**]** applies to either of the Ministers for a compulsory works order, it shall—

(a) submit to that Minister a draft of the order applied for;

(b) publish a notice with respect to the application, at least once in each of two successive weeks, in one or more newspapers circulating in each relevant locality;

(c) not later than the date on which that notice is first published—

(i) serve a copy of the notice on each of the persons specified in relation to the application in sub-paragraph (3) below; and

(ii) in the case of a draft order which would authorise the stopping-up or diversion of a footpath**[**[F2], bridleway or restricted byway**]**, cause such a copy, together with a plan showing the general effect of the draft order so far as it relates to the footpath**[**[F2], bridleway or restricted byway**]**, to be displayed in a prominent position at the ends of the part of the path or way to be stopped up or diverted;

and

(d) publish a notice in the London Gazette which-

(i) states that the draft order has been submitted to that Minister;

(ii) names every local authority on whom a notice is required to be served under this paragraph;

(iii) specifies a place where a copy of the draft order and of any relevant map or plan may be inspected; and

(iv) gives the name of every newspaper in which the notice required by virtue of paragraph (b) above was published and the date of an issue containing the notice.

(2) The notice required by virtue of sub-paragraph (1)(b) above to be published with respect to an application for an order by the **[**[F1]appropriate agency**]** shall—

(a) state the general effect of the order applied for;

(b) in the case of an application made wholly or partly for the purpose of enabling any discharges of water to be made—

(i) contain particulars of the proposed discharges, stating the purposes of the discharges and specifying each place of discharge;

(ii) specify the places at which the water to be comprised in the proposed discharges is to be taken and the treatment (if any) which the draft order proposes to require the water, or any of it, to receive before being discharged under the order; and

(iii) state the effect which, in the opinion of the **[**[F1]appropriate agency**]**, the proposed discharges would have on the flow, level and quality of water in any inland waters or underground strata;

(c) specify a place where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date of the first publication of the notice; and

(d) state that any person may within that period, by notice to the Minister applied to, object to the making of the order.

(3) The persons mentioned in sub-paragraph (1)(c) above in relation to an application for a compulsory works order a draft of which has been submitted to either of the Ministers are—

(a) every local authority whose area is or includes the whole or any part of a relevant locality and which is not **[**[F3]an English county**]** council;

(b) every water undertaker whose area is or includes the whole or any part of such a locality;

(c) every navigation authority, harbour authority and conservancy authority which would be affected by, or has functions in relation to any inland waters which would be affected by, any provision proposed to be made by the order;

**[**[F4](d) every person who—

(i) is an owner, lessee, tenant (whatever the tenancy period) or occupier of any land in relation to which compulsory powers would become exercisable if the order were made in the terms of the draft order; or

(ii) who the water undertaker thinks is likely to be entitled to make a claim for compensation under section 10 of the Compulsory Purchase Act 1965 if the order is confirmed and the compulsory powers become exercisable, so far as he is known to the water undertaker after making diligent inquiry;**]**

(e) every person who has given notice to the **[**[F1]appropriate agency**]** requiring it to notify him of applications for compulsory works orders and has paid such reasonable charge as the **[**[F1]appropriate agency**]** may have required him to pay for being notified by virtue of this paragraph;

(f) such other persons as may be prescribed.

(4) In this paragraph "relevant locality", in relation to an application for an order, means—

(a) any locality which would be affected by any provision proposed to be made by the order for the purpose of enabling any engineering or building operations to be carried out; and

(b) where provision is proposed to be made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the proposed discharges is situated or in which there appears to the **[**[F1]appropriate agency**]** to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the proposed discharges.

**Textual Amendments**

**F1** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

**F2** Words in Sch. 19 para. 1(1)(c)(ii) substituted (2.5.2006 for E., 11.5.2006 for W.) by Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), reg. 1(2)(4), **Sch. Pt. I**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

**F3** Words in Sch. 19 para. 1(3)(a) substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(11)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1) 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

**F4** Sch. 19 para. 1(3)(d) substituted (24.5.2007) by Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007 (S.I. 2007/1519), art. 1(1), **Sch. para. 9(a)** (with art. 1(3))

*Supply of copies of draft orders*

2 Where the **[**[F1]appropriate agency**]** is applying for a compulsory works order, it shall, at the request of any person and on payment by that person of such charge (if any) as the **[**[F1]appropriate agency**]** may reasonably require, furnish that person with a copy of any draft order submitted to either of the Ministers under paragraph 1 above and of any relevant map or plan.

**Textual Amendments**

**F1** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

*Powers on an application*

3 (1) On an application for a compulsory works order, the Minister or the Secretary of State may make the order either in the terms of the draft order submitted or, subject to sub-paragraphs (2) and (3) below, in those terms as modified in such manner as he thinks fit, or may refuse to make an order.

(2) Neither of the Ministers shall make such a modification of a draft order as he considers is likely adversely to affect any persons unless he is satisfied that the **[**[F1]appropriate agency**]** has given and published such additional notices, in such manner, as he may have required.

(3) Neither of the Ministers shall, unless all interested parties consent, make a compulsory works order so as to confer in relation to any land any powers of compulsory acquisition which would not have been conferred in relation to that land if the order were made in the terms of the draft order submitted under paragraph 1 above.

(4) Where one of the Ministers refuses, on an application for a compulsory works order, to make an order, the **[**[F1]appropriate agency**]** shall, as soon as practicable after the refusal, notify the refusal to every person on whom it was, by virtue of paragraph 1(1)(c)(i) above, required to serve a copy of the notice with respect to the application.

**Textual Amendments**

**F1** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

*Consideration of objections etc.*

4 (1) If, where an application for a compulsory works order has been made, either of the Ministers receives any notice of an objection to it, before the end of the relevant period, from—

(a) any person on whom a notice under paragraph 1 or 3 above is required to be served; or

(b) from any other person appearing to that Minister to be affected by the order as submitted or as proposed to be modified under paragraph 3 above,

then, unless the objection is withdrawn, the Minister or the Secretary of State shall, before making the order, either cause a local inquiry to be held or afford to the objector and to the **[**[F1]appropriate agency**]** an opportunity of appearing before, and being heard by, a person appointed by him for the purpose.

(2) Where any objection received by one of the Ministers as mentioned in sub-paragraph (1) above relates to any powers of compulsory acquisition, the Minister or the Secretary of State—

(a) may require the objector to state in writing the grounds of his objection; and

(b) if he is satisfied that the objection relates exclusively to matters that can be dealt with in the assessment of compensation, may disregard the objection for the purposes of that sub-paragraph.

(3) In this paragraph "the relevant period", in relation to an application for any order, means the period ending with whichever is the later of—

(a) the end of the period of twenty-eight days beginning with the date of the first publication of the notice published with respect to the application for the purposes of paragraph 1(1)(b) above; and

(b) the end of the period of twenty-five days beginning with the date of the publication in the London Gazette of the notice published for the purposes of the application by virtue of paragraph 1(1)(d) above,

together, in the case of an application for an order modifications to which have been proposed by the Minister considering the application, with any further periods specified with respect to the modifications in notices under paragraph 3(2) above.

**Textual Amendments**

**F1** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

*Notice after making of order*

5 (1) As soon as practicable after a compulsory works order has been made, the **[**[F1]appropriate agency**]** shall—

(a) publish a notice of the making of the order, at least once in each of two successive weeks, in one or more newspapers circulating in each relevant locality; and

(b) not later than the date on which that notice is first published—

(i) serve a copy of the notice on every person on whom the **[**[F1]appropriate agency**]** was, by virtue of paragraph 1(1)(c)(i) above, required to serve a copy of the notice with respect to the application for the order; and

(ii) in the case of an order authorising the stopping-up or diversion of a footpath**[**[F5], bridleway or restricted byway**]**, cause such a copy, together with a plan showing the general effect of the order so far as it relates to the footpath**[**[F5], bridleway or restricted byway**]**, to be displayed in a prominent position at the ends of the appropriate part of the path or way.

(2) The notice required by virtue of sub-paragraph (1)(a) above to be published with respect to a compulsory works order shall—

(a) state the general effect of the order;

(b) in the case of an order made wholly or partly for the purpose of enabling any discharges of water to be made—

(i) contain particulars of the discharges, stating the purposes of the discharges and specifying each place of discharge;

(ii) specify the places at which the water to be comprised in the discharges is to be taken and the treatment (if any) which the order requires the water, or any of it, to receive before being discharged under the order; and

(iii) state the effect which, in the opinion of the applicant, the discharges would have on the flow, level and quality of water in any inland waters or underground strata; and

(c) specify a place where a copy of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times.

(3) Where a compulsory works order has been made, the **[**[F1]appropriate agency**]** shall, at the request of any person and on payment by that person of such charge (if any) as the **[**[F1]appropriate agency**]** may reasonably require, furnish that person with a copy of the order and of any relevant map or plan.

(4) In this paragraph "relevant locality", in relation to any compulsory works order, means—

(a) any locality which is affected by any provision made by the order for the purpose of enabling any engineering or building operations to be carried out; and

(b) where provision is made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the discharges is situated or in which there appears to the **[**[F1]appropriate agency**]** to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the discharges.

**Textual Amendments**

**F1** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

**F5** Words in Sch. 19 para. 5(1)(b)(ii) substituted (2.5.2006 for E., 11.5.2006 for W.) by Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), reg. 1(2)(4), Sch. Pt. I; S.I. 2006/1172, art. 2(a)-(d) (with art. 3); S.I. 2006/1279, art. 2(a)-(d) (with art. 3)

*Compulsory acquisition provisions*

6 (1) Without prejudice to the provisions of Schedule 23 to this Act—

(a) Part I of the [M1]Compulsory Purchase Act 1965;

(b) **[**[F6]sections 2A and**]** 4 and Part III of, and Schedule 3 to, the [M2]Acquisition of Land Act 1981; and

(c) the enactments for the time being in force with respect to compensation for the compulsory purchase of land,

shall apply in relation to so much of a compulsory works order as confers powers of compulsory acquisition as they apply in relation to a compulsory purchase order made by virtue of section 154 of this Act and, accordingly, shall so apply, where the case so requires, with the modifications made by Schedule 18 to this Act.

(2) Subject to the provisions of sub-paragraph (6) below, if any person aggrieved by a compulsory works order containing powers of compulsory acquisition, or by a certificate given under the special land provisions in connection with such an order, desires—

(a) to question the validity of the order, or of any provision of the order, on the grounds that any powers of compulsory acquisition conferred by the order are not authorised by this Act to be so conferred, or that any of the relevant requirements have not been complied with in relation to the order; or

(b) to question the validity of the certificate on the grounds that any of the relevant requirements have not been complied with in relation to the certificate,

he may make an application for the purpose to the High Court at any time before the end of the period of six weeks beginning with the date on which notice of the making of the order is first published in accordance with paragraph 5 above or, as the case may be, notice of the giving of the certificate is first published in accordance with the special land provisions.

(3) On any application under sub-paragraph (2) above with respect to any order or certificate, the High Court—

(a) may by interim order suspend the operation of the order, or any provision of the order, or of the certificate (either generally or in so far as it affects any property of the applicant to the High Court) until the final determination of the proceedings; and

(b) if satisfied—

(i) that any powers of compulsory acquisition conferred by the order are not authorised by this Act to be so conferred; or

(ii) that the interests of that applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to the order or the certificate,

may quash the order, or any provision of the order, or the certificate (either generally or in so far as it affects any property of that applicant).

(4) Except as provided by sub-paragraph (2) above, the validity of any such order or certificate as is mentioned in that sub-paragraph shall not, either before or after the order or certificate has been made or given, be questioned in any legal proceedings whatsoever.

(5) Subject to any order of the High Court under sub-paragraph (3) above, any such order or certificate as is mentioned in sub-paragraph (2) above shall become operative (except, in the case of an order, where it is subject by virtue of the special land provisions to special parliamentary procedure) on the date on which notice of the making or giving of the order or certificate is published as mentioned in the said sub-paragraph (2).

(6) Where an order such as is mentioned in sub-paragraph (2) above is subject to special parliamentary procedure, sub-paragraphs (2) to (4) of this paragraph—

(a) shall not apply to the order if it is confirmed by Act of Parliament under section **[**[F7]4 or**]** 6 of the [M3]Statutory Orders (Special Procedure) Act 1945; and

(b) in any other case, shall have effect as if the reference in sub-paragraph (2) of this paragraph to the date on which notice of the making of the order is first published in accordance with paragraph 5 above were a reference to the date on which the order becomes operative under the said Act of 1945.

(7) In this paragraph—

"the special land provisions" means the provisions, as applied by virtue of sub-paragraph (1) above, of Part III of the [M4]Acquisition of Land Act 1981 or, as the case may require, of Part II of Schedule 3 to that Act; and

"the relevant requirements", in relation to an order or certificate, means the requirements of this Schedule and such requirements of the special land provisions or of any other enactment as are applicable to that order or certificate by virtue of this paragraph.

**Textual Amendments**

**F6** Words in Sch. 19 para. 6(1)(b) substituted (3.2.2017) by Housing and Planning Act 2016 (c. 22), s. 216(3), **Sch. 17 para. 11**; S.I. 2017/75, reg. 3(g)

**F7** Words in Sch. 19 para. 6(6)(a) inserted (25.6.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 25(9)**, 35(1); S.I. 2013/1488, art. 3(e) (with art. 8(3))

**Marginal Citations**

**M1** 1965 c. 56.

**M2** 1981 c. 67.

**M3** 1945 c. 18 (9 & 10 Geo. 6).

**M4** 1981 c. 67.

*Compensation in certain cases of compulsory acquisition*

7 Where—

(a) in connection with any engineering or building operations to which a compulsory works order relates, a licence under Chapter II of Part II of this Act is granted, or is deemed to be granted, to the **[**[F8]appropriate agency**]**; and

(b) that licence is a licence to abstract water or to obstruct or impede the flow of any inland waters,

no compensation shall be payable by virtue of sub-paragraph (1) of paragraph 6 above in respect of any land or interest injuriously affected by the carrying out of those operations, in so far as that land or interest is injuriously affected by the abstraction of water, or the obstruction or impeding of the flow, in accordance with the provisions of the licence.

**Textual Amendments**

**F8** Words in Sch. 19 para. 7 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

*Compensation in respect of powers other than acquisition powers*

8 (1) If the value of any interest in any relevant land is depreciated by the coming into force of so much of any compulsory works order as—

(a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and

(b) grants authority for the carrying out of the operations,

the person entitled to that interest shall be entitled to compensation from the **[**[F9]appropriate agency**]** of an amount equal to the amount of the depreciation.

(2) Where the person entitled to an interest in any relevant land sustains loss or damage which—

(a) is attributable to so much of any compulsory works order as—

(i) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and

(ii) grants authority for the carrying out of the operations;

(b) does not consist in depreciation of the value of that interest; and

(c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 154 of this Act in pursuance of a notice to treat served on the date on which the order comes into force,

he shall be entitled to compensation from the **[**[F9]appropriate agency**]** in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.

(3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to so much of any compulsory works order as—

(a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and

(b) grants authority for the carrying out of the operations,

the **[**[F9]appropriate agency**]** shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.

(4) A person who sustains any loss or damage which is attributable to any discharge of water made by the **[**[F9]appropriate agency**]** in pursuance of a compulsory works order shall be entitled to recover compensation from the **[**[F9]appropriate agency**]** in respect of the loss or damage.

(5) For the purposes of sub-paragraph (4) above any extra expenditure—
   (a) which it becomes reasonably necessary for any water undertaker or public authority (other than the **[**[F9]appropriate agency**]**) to incur for the purpose of properly carrying out any statutory functions; and
   (b) which is attributable to any such discharge of water as is mentioned in that sub-paragraph,

shall be deemed to be a loss sustained by the undertaker or public authority and to be so attributable.

(6) Any question of disputed compensation under this paragraph, shall be referred to and determined by the **[**[F10]Upper Tribunal**]**; and in relation to the determination of any such compensation the provisions of **[**[F11]section**]** 4 of the [M5]Land Compensation Act 1961 shall apply, subject to any necessary modifications.

(7) For the purpose of assessing any compensation under this paragraph, so far as that compensation is in respect of loss or damage consisting in depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(8) Where the interest in land in respect of which any compensation falls to be assessed in accordance with sub-paragraph (7) above is subject to a mortgage—
   (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
   (b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
   (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
   (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

(9) In this paragraph "relevant land", in relation to a compulsory works order, means any land which is not land in relation to which powers of compulsory acquisition are conferred by the order but is—
   (a) land where any operations for which authority is granted by the order are to be carried out;
   (b) land in relation to which compulsory powers are conferred by the order; or
   (c) land held with any land falling within paragraph (a) or (b) above.

**Textual Amendments**

**F9** Words in Sch. 19 para. 8 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

**F10** Words in Sch. 19 para. 8(6) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 233(a)** (with Sch. 5)

**F11** Word in Sch. 19 para. 8(6) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 233(b)** (with Sch. 5)

**Marginal Citations**

**M5** 1961 c. 33.

*Protection of public undertakings*

9 The provisions of section 179 and paragraphs 1, 2 and 5 of Schedule 22 to this Act shall apply, as they apply in relation to the carrying out of works in exercise of the powers specified in those provisions, in relation to the carrying out of works by virtue of an authority granted by so much of any compulsory works order as makes provision other than provision conferring powers of compulsory acquisition.

*Interpretation*

10 In this Schedule—

"bridleway" and "footpath" have the same meanings as in the [M6]Highways Act 1980;

"compulsory works order" means an order under section 168 of this Act;

"powers of compulsory acquisition" means any such powers as are mentioned in subsection (4)(a) of section 168 of this Act;

**[**[F12]"restricted byway" has the same meaning as in Part 2 of the Countryside and Rights of Way Act 2000;**]**

[F13] . . . . . .

**Textual Amendments**

**F12** Words in Sch. 19 para. 10 inserted (2.5.2006 for E., 11.5.2006 for W.) by Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), reg. 1(2)(4), **Sch. Pt. I**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

**F13** Words in Sch. 19 para. 10 omitted (24.5.2007) by virtue of Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007 (S.I. 2007/1519), art. 1(1), **Sch. para. 9(b)** (with art. 1(3))

**Marginal Citations**

**M6** 1980 c. 66.

**Changes to legislation:**
There are currently no known outstanding effects for the Water Resources Act 1991, SCHEDULE 19.