

SCHEDULES

SCHEDULE 4

POWERS IN RELATION TO, AND FOR, STATUTORY UNDERTAKERS

PART 4

RELIEVING UNDERTAKERS OF OBLIGATIONS

Orders to relieve obligations

- 28 (1) The appropriate Minister may by order provide for statutory undertakers to be relieved (whether absolutely or so far as specified in the order) of the need to meet an obligation relating to the carrying on of their undertaking if conditions 1 and 2 are met.
- (2) Condition 1 is that the statutory undertakers have made representations on the subject to the appropriate Minister.
- (3) Condition 2 is that the appropriate Minister is satisfied that meeting some or all of the obligation has been made impracticable by any of the acts and events mentioned in sub-paragraph (4).
- (4) The acts and events are—
- (a) the acquisition by the HCA under this Part of this Act of any land—
 - (i) in which an interest was held for the purpose of carrying on the undertaking concerned, or
 - (ii) which was used for that purpose, and
 - (b) the extinguishment of a right, or the imposition of any requirement, by virtue of Part 1 of this Schedule.

Notification of proposal to make order

- 29 (1) Statutory undertakers must, as soon as possible after making representations of the kind mentioned in paragraph 28(2), proceed as directed by the appropriate Minister.
- (2) The appropriate Minister may direct the statutory undertakers to do either or both of the following—
- (a) publish a notice—
 - (i) giving such particulars as the appropriate Minister may direct of the matters to which the representations relate,
 - (ii) specifying the time within which objections to the making of an order as a result of the representations may be made, and
 - (iii) specifying the manner in which objections to the making of such an order may be made, and

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- (b) serve a corresponding notice on such persons, or descriptions of persons, as the appropriate Minister may direct.
- (3) Publication under sub-paragraph (2) must be in such form and manner as the appropriate Minister may direct.

Duty to consider objections

- 30 (1) The appropriate Minister must proceed under paragraph 31 if—
 - (a) an objection to the making of an order is properly made and not withdrawn, and
 - (b) the matter is not otherwise dealt with.
- (2) For the purposes of sub-paragraph (1) an objection is properly made if (and only if)—
 - (a) it is made—
 - (i) within the time, and
 - (ii) in the manner,
 stated in the notice under paragraph 29(2), and
 - (b) a written statement of the grounds of the objection is comprised in, or submitted with, the objection.
- (3) For the purposes of sub-paragraph (1) the matter is otherwise dealt with if (and only if) the appropriate Minister—
 - (a) decides, irrespective of the objection, not to make the order, or
 - (b) decides to make a modification which is agreed to by the objector as meeting the objection.
- 31 (1) The appropriate Minister must, before making a final decision, consider the grounds of the objection as set out in the statement comprised in, or submitted with, the objection.
- (2) The appropriate Minister may require the objector to submit within a specified period a further written statement as to any of the matters to which the objection relates.

Duty to give opportunity to appear

- 32 (1) The appropriate Minister must, before making a final decision, give the objector an opportunity to appear before, and be heard by, a person appointed for the purpose by the appropriate Minister.
- (2) The appropriate Minister must give an opportunity of appearing and being heard on the same occasion to—
 - (a) the statutory undertakers as a result of whose representations the order is proposed to be made, and
 - (b) any other persons whom the appropriate Minister considers ought to be given the opportunity,
 if the objector takes advantage of the opportunity mentioned in sub-paragraph (1).
- (3) Sub-paragraphs (1) and (2) do not apply so far as the appropriate Minister has the power to proceed under paragraph 33 or 34.

Power to treat objection as irrelevant

- 33 The appropriate Minister may treat the objection as irrelevant for the purpose of making a final decision—
- (a) if the appropriate Minister has considered the grounds of the objection as set out in the original statement and in any further statement, and
 - (b) so far as the appropriate Minister is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation.

Power to curtail decision-making process

- 34 The appropriate Minister may make a final decision without further investigation as to the matters to which the objection relates if—
- (a) the appropriate Minister—
 - (i) has considered the grounds of the objection as set out in the original statement and in any further statement, and
 - (ii) is satisfied that, for the purpose of making a final decision, sufficient information is available as to the matters to which the objection relates, or
 - (b) a further statement has been required under paragraph 31(2) but is not submitted within the specified period.

Power to hold public local inquiry

- 35 (1) The appropriate Minister may cause a public local inquiry to be held in relation to an objection under this Part of this Schedule if the appropriate Minister considers that the matters to which the objection relates are such as to require investigation by such an inquiry before the appropriate Minister makes a final decision.
- (2) The power in sub-paragraph (1) is effective despite any other provisions of this Part of this Schedule.
- (3) The other provisions of this Part of this Schedule are to be ignored if, when the Secretary of State decides to cause an inquiry to be held, effect has not been given to them.

Notification procedure after the making of an order

- 36 (1) The appropriate Minister must, immediately after making an order under paragraph 28, proceed under sub-paragraphs (2) and (3).
- (2) The appropriate Minister must publish a notice stating—
- (a) that the order has been made, and
 - (b) a place where a copy of it may be seen at any reasonable hour.
- (3) The appropriate Minister must serve a copy of the notice on—
- (a) any person who—
 - (i) duly made an objection to the order, and
 - (ii) has sent the appropriate Minister a written request for the notice with an address for service, and
 - (b) any other person whom the appropriate Minister considers appropriate.

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Operative date of orders

- 37 An order under paragraph 28 which is not subject to special parliamentary procedure becomes operative on the date on which the notice required by paragraph 36(2) is first published.

Special parliamentary procedure for orders

- 38 (1) An order under paragraph 28 is subject to special parliamentary procedure if any objection to the making of the order is properly made and not withdrawn before the order is made.
- (2) Sub-paragraph (2) of paragraph 30 applies for the purposes of sub-paragraph (1) above as it applies for the purposes of sub-paragraph (1) of that paragraph.

Legal challenges to orders

- 39 (1) Sub-paragraph (2) applies if a person aggrieved by an order under paragraph 28 wishes to question its validity on the ground that—
- (a) it is not within the powers conferred by this Part of this Schedule, or
- (b) any requirement of this Part of this Schedule has not been complied with in relation to the order.
- (2) The person may, within 6 weeks beginning with the date on which the notice required by paragraph 36(2) is first published, apply to the High Court.
- (3) The High Court may, on an application under sub-paragraph (2), make an interim order suspending (whether wholly or in part) the operation of the order under paragraph 28 until the final determination of the proceedings.
- (4) The operation of the order may be suspended generally or so far as affecting any property of the applicant.
- (5) The High Court may, on an application under sub-paragraph (2), quash (whether wholly or in part) the order under paragraph 28 if satisfied that—
- (a) the order is wholly or to any extent outside the powers conferred by this Part of this Schedule, or
- (b) the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of this Part of this Schedule.
- (6) The order under paragraph 28 may be quashed generally or so far as affecting any property of the applicant.