SCHEDULES

SCHEDULE 9

POWERS IN RELATION TO LAND: SPECIAL PROVISIONS RELATING TO STATUTORY UNDERTAKERS

PART 2

ADJUSTMENT OF THE FUNCTIONS OF STATUTORY UNDERTAKERS

Modification of powers and duties of statutory undertakers

4 (1) The Secretary of State may make an order under this paragraph if satisfied, on the representation of a person carrying on a statutory undertaking, that it is expedient to do so in order to facilitate an adjustment of the carrying on of the undertaking necessitated by the making or proposed making of an order under section 39 or 41.

(2) An order under this paragraph may extend or modify the powers and duties of a statutory undertaker.

(3) An order under this paragraph may make provision—

(a) giving a statutory undertaker powers to acquire (whether compulsorily or by agreement) specified land or to erect or construct specified buildings or works;

(b) applying, in relation to the acquisition of specified land or the construction of specified works, enactments relating to the acquisition of land or the construction of works.

"Specified" means specified in the order.

(4) An order under this paragraph may contain incidental and supplementary provision.

(5) Sub-paragraphs (3) and (4) do not limit sub-paragraph (2).

Relief of statutory undertakers from obligations

5 (1) Where this paragraph applies, the Secretary of State may by order direct that a statutory undertaker is relieved from the fulfilment of an obligation either—

(a) absolutely, or

(b) to the extent specified in the order.

(2) This paragraph applies where, on the representation of a person carrying on a statutory undertaking, the Secretary of State is satisfied that, as a result of the making of an order under section 39 or 41, it is impracticable for the person to fulfil an obligation incurred in connection with the carrying on of the undertaking.

Procedure before making an order under paragraph 4 or 5

6 (1) As soon as possible after making a representation under paragraph 4 or 5, the statutory undertaker must—
(a) publish a notice in the manner directed, and
(b) if directed to do so, serve a notice on such persons or classes of persons as directed.

(2) A notice under sub-paragraph (1) must—
(a) be in the form directed;
(b) give such particulars about the representation as directed;
(c) specify the day by which, and the manner in which, objections to the making of the order on the representation may be made.

(3) In this paragraph "directed" means directed by the Secretary of State.

Objections to order under paragraph 4

7 (1) Where no objection is made under paragraph 6, or all objections are withdrawn, the Secretary of State may make the relevant order.

(2) If an objection is made under paragraph 6 and not withdrawn—
(a) in the case of land in England and Wales, subsections (3) to (11) of section 278 of the 1990 Act (objections to orders under sections 275 and 277 of that Act) have effect —
(i) in relation to an order under paragraph 4, as if it were an order under section 275 of that Act;
(ii) in relation to an order under paragraph 5, as if it were an order under section 277 of that Act;
(b) in the case of land in Scotland, subsections (3) to (10) of section 231 of the 1997 Act (objections to orders under sections 228 and 230 of that Act) have effect—
(i) in relation to an order under paragraph 4, as if it were an order under section 228 of that Act;
(ii) in relation to an order under paragraph or 5, as if it were an order under section 230 of that Act;
(c) subject to those provisions, the Secretary of State may make the relevant order.

Special parliamentary procedure

8 (1) An order under paragraph 4 is subject to special parliamentary procedure.

(2) An order under paragraph 5 is subject to special parliamentary procedure if—
(a) an objection is made under paragraph 6 to the making of the order, and
(b) the objection is not withdrawn before the order is made.

Power of entry for purposes of survey

9 (1) Where the Secretary of State makes, or is considering the making of, an order under paragraph 4, the Secretary of State may authorise a person to enter any of the relevant land—

(a) to carry out any survey that the Secretary of State requires to be carried out for the purpose of determining whether the order should be made, or

(b) to carry out any survey that the statutory undertaker requires to be carried out for the purpose of any steps to be taken in consequence of the order.

(2) An authorisation under sub-paragraph (1) must be in writing.

(3) A person authorised under sub-paragraph (1)—

(a) may enter the relevant land at any reasonable time for the purpose of carrying out the survey;

(b) must, if asked, produce evidence of the person's authority to enter the land.

(4) A person authorised under sub-paragraph (1) may demand admission as of right to any land that is occupied only if eight days' notice of the intended entry has been served on the occupier.

(5) A person who obstructs a person authorised under sub-paragraph (1) in the exercise of a power under this paragraph commits an offence.

(6) Proceedings for an offence under this paragraph may be instituted in England and Wales only by or with the consent of the Secretary of State or the Director of Public Prosecutions.

Compensation for damage to land

10 (1) Where land is damaged—

(a) in the exercise of a power conferred under paragraph 9, or

(b) in carrying out a survey for the purposes for which such a power is conferred,

the relevant person must pay just compensation to the persons interested in the land.

(2) In this paragraph "the relevant person" means—

(a) where land is damaged in the exercise of a power conferred to enable the carrying out of any survey required by a statutory undertaker, or in carrying out such a survey, the statutory undertaker;

(b) otherwise, the Secretary of State.

(3) Where any dispute arises—

(a) as to whether compensation is payable under this paragraph,

(b) as to the amount of compensation payable, or

(c) as to the persons to whom compensation is payable,

the dispute is to be referred to and determined by the appropriate tribunal (see paragraph 2(2)).