

SCHEDULE 4

Protection of UK-wide Interests

PART 1

Protections for defence and national security

Interpretation: general

1.—(1) In this Part—

“right” means—

- (a) in relation to a person other than the manager—
 - (i) any right or interest of that person conveyed or granted by the manager in, under or over any part of the Scottish assets, or
 - (ii) any right or interest derived from such a right or interest; and
- (b) in relation to the manager—
 - (i) the use by or on behalf of the manager of any part of the Scottish assets, or
 - (ii) the exercise by or on behalf of the manager of any right or interest in, under or over any part of the Scottish assets; and

“Secretary of State” means the Secretary of State for Defence.

(2) In this Part, with the exception of the definition of “right” in sub-paragraph (1), any reference to the grant of a right includes a reference to the conveyance of a right.

Interpretation: meaning of market value

2.—(1) References to “market value” in this Part are to be construed in accordance with this paragraph.

(2) In paragraphs 3(3)(d) and 4(4), market value, in relation to a right, means the best consideration in money or money’s worth which can reasonably be obtained for the right, having regard to all the circumstances of the case but ignoring for that purpose—

- (a) any element of monopoly value which may exist, and
- (b) any reduction or increase in the consideration due solely to the Secretary of State’s involvement.

(3) In sub-paragraphs (1)(a) and (4) of paragraph 5, market value, in relation to a right, means such compensation as is calculated in accordance with Part 3 of the Land Compensation (Scotland) Act 1963⁽¹⁾.

(4) In paragraph 9(1), market value has the same meaning as in sub-paragraph (2) or (3) (as the case may be).

(5) In this paragraph, the reference to Part 3 of the Land Compensation (Scotland) Act 1963 is a reference to that Part as at the transfer date.

Renewal of existing rights of the Secretary of State

3.—(1) This paragraph applies to a right of the Secretary of State—

(1) 1963 c.51.

- (a) which—
 - (i) exists immediately before the transfer date, or
 - (ii) comes into existence on or after the transfer date (including by operation of any provision in this Schedule); and
 - (b) to which any of the following apply—
 - (i) the right has been granted for a specific term,
 - (ii) the right will terminate on the occurrence of a specific event,
 - (iii) the right may be terminated by the manager.
- (2) At any time before, or as soon as practicable after, the relevant event and following consultation with the manager the Secretary of State may give notice to the manager in writing stating—
- (a) that the Secretary of State requires the right to be renewed,
 - (b) the date on which the right is to begin, and
 - (c) the term for which the right is required to be granted.
- (3) Where notice is given under sub-paragraph (2), a right is deemed to be granted by the manager to the Secretary of State on the same terms and conditions as the existing right but subject to the following modifications—
- (a) the right begins on the date specified in the notice,
 - (b) the right is granted for the term specified in the notice,
 - (c) notwithstanding any provision to the contrary in relation to the existing right, the right will not terminate otherwise than on expiry of the term mentioned in paragraph (b), and
 - (d) the Secretary of State must pay market value for the right.
- (4) Sub-paragraph (3) is subject to any alternative agreement which the manager and the Secretary of State may reach.
- (5) In this paragraph—
- “the existing right” means the right mentioned in sub-paragraph (2)(a); and
 - “relevant event” means—
 - (a) in relation to a right mentioned in sub-paragraph (1)(b)(i), the expiry of the term for which the right was granted,
 - (b) in relation to a right mentioned in sub-paragraph (1)(b)(ii), the occurrence of the event which will terminate the right, and
 - (c) in relation to a right mentioned in sub-paragraph (1)(b)(iii), the termination of the right by the manager.

Grant of new rights to the Secretary of State

- 4.—(1) This paragraph applies where, after the Secretary of State has consulted with the manager—
- (a) the manager refuses to grant a right to the Secretary of State; and
 - (b) the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the right being granted to the Secretary of State.
- (2) The Secretary of State may give notice to the manager in writing stating—
- (a) that the Secretary of State requires the right to be granted;
 - (b) the Secretary of State’s reasons for requiring the right to be granted; and

- (c) the terms and conditions on which the right is to be granted, including—
 - (i) the date on which the right is to begin (which must not be any earlier than one month after the day on which the notice is given), and
 - (ii) the term for which the right is to be granted.
- (3) If the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the reasons mentioned in sub-paragraph (2)(b) not being made public—
 - (a) the Secretary of State must state that view in the notice, and
 - (b) sub-paragraph (2)(b) does not apply.
- (4) The terms and conditions mentioned in sub-paragraph (2)(c) must provide that the Secretary of State is to pay market value for the right.
- (5) Where notice is given under sub-paragraph (2), a right is deemed to be granted by the manager on the terms and conditions specified in the notice.
- (6) Sub-paragraph (5) is subject to any alternative agreement which the manager and the Secretary of State may reach.

Acquisition of third party rights by the Secretary of State

- 5.—**(1) This paragraph applies where, after the Secretary of State has consulted with a person—
- (a) that person refuses to assign or sell any right to the Secretary of State at market value; and
 - (b) the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the right being so assigned or sold.
- (2) The Secretary of State may give notice to the person in writing stating—
- (a) that the Secretary of State requires the right to be assigned or sold;
 - (b) the Secretary of State’s reasons for requiring the right to be so assigned or sold; and
 - (c) the terms and conditions on which the right is to be assigned or sold, including the date on which the assignation or sale is to occur (which must not be any earlier than one month after the day on which the notice is given).
- (3) If the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the reasons mentioned in sub-paragraph (2)(b) not being made public—
- (a) the Secretary of State must state that view in the notice, and
 - (b) sub-paragraph (2)(b) does not apply.
- (4) The terms and conditions mentioned in sub-paragraph (2)(c) must provide that the Secretary of State is to pay market value for the right.
- (5) Where notice is given under sub-paragraph (2), the right is deemed to be assigned or sold by the person on the terms and conditions specified in the notice.
- (6) Sub-paragraph (5) is subject to any alternative agreement which the person and the Secretary of State may reach.

Grant of new rights to third parties

- 6.—**(1) This paragraph applies where the manager is asked to do any of the following—
- (a) to grant a right to a person,
 - (b) to vary a right of a person,

- (c) to agree to the transfer of a right from one person to another,
 - (d) to agree to any plan or policy which would involve any of the matters in paragraphs (a) to (c).
- (2) If the manager considers that the request is likely to affect any defence operations or capabilities, the manager must notify the Secretary of State in writing of the request before responding to that request.
- (3) In making the consideration under sub-paragraph (2), the manager must have regard to any information which the Secretary of State has provided to the manager about defence operations and capabilities.
- (4) No later than 30 days after the day on which the Secretary of State is notified under sub-paragraph (2), and after the Secretary of State has consulted with the manager—
- (a) the Secretary of State may inform the manager in writing of the effects which the Secretary of State considers the request will have on defence operations or capabilities; or
 - (b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the matters in paragraph (a) not being made public, the Secretary of State may inform the manager in writing—
 - (i) of that view, and
 - (ii) (where relevant) of the Secretary of State’s opposition to the request.
- (5) The manager—
- (a) must have regard to any duly-made representation from the Secretary of State; and
 - (b) unless the manager proposes to reject the request, must notify the Secretary of State in writing of its proposed decision.
- (6) After notifying the Secretary of State under sub-paragraph (5)(b), the manager must not make the decision until the manager receives—
- (a) a direction under sub-paragraph (8), or
 - (b) written confirmation that the Secretary of State has no objection to the proposed decision (whether in a notice under paragraph 8(5)(b)(i) or otherwise).
- (7) Sub-paragraph (8) applies if the Secretary of State—
- (a) receives a notification under sub-paragraph (5)(b); and
 - (b) is of the view that, for reasons of defence or national security, there is an overriding public interest in the manager’s proposed decision being amended.
- (8) The Secretary of State may direct the manager in writing to make its decision in accordance with the terms of the direction.
- (9) Any direction under sub-paragraph (8)—
- (a) must state the Secretary of State’s reasons for making the direction; or
 - (b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in those reasons not being made public, must state that view.
- (10) The manager must comply with any direction made under sub-paragraph (8).
- (11) Sub-paragraph (10) is subject to any alternative agreement which the manager and the Secretary of State may reach and accordingly the Secretary of State may withdraw or vary any direction made under sub-paragraph (8).
- (12) In this paragraph, a “duly-made representation” means a representation made in accordance with sub-paragraph (4).

Use of Scottish assets by the manager

- 7.—(1) This paragraph applies where the manager proposes to do any of the following—
- (a) to exercise a right which has not previously been exercised by the Commissioners or the manager,
 - (b) to vary the existing exercise of a right,
 - (c) to agree to any plan or policy which would involve any of the matters in paragraph (a) or (b).
- (2) If the manager considers that the proposal is likely to affect any defence operations or capabilities, the manager must notify the Secretary of State in writing of the proposal before starting to implement that proposal.
- (3) In making the consideration under sub-paragraph (2), the manager must have regard to any information which the Secretary of State has provided to the manager about defence operations and capabilities.
- (4) No later than 30 days after the day on which the Secretary of State is notified under sub-paragraph (2), and after the Secretary of State has consulted with the manager—
- (a) the Secretary of State may inform the manager in writing of the effects which the Secretary of State considers the proposal will have on defence operations or capabilities; or
 - (b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the matters in paragraph (a) not being made public, the Secretary of State may inform the manager in writing—
 - (i) of that view, and
 - (ii) (where relevant) of the Secretary of State’s opposition to the proposal.
- (5) The manager—
- (a) must have regard to any duly-made representation from the Secretary of State; and
 - (b) unless the manager decides to abandon the proposal, must notify the Secretary of State in writing of how it proposes to act.
- (6) After notifying the Secretary of State under sub-paragraph (5)(b), the manager must not take any action until the manager receives—
- (a) a direction under sub-paragraph (8), or
 - (b) written confirmation that the Secretary of State has no objection to the proposed action (whether in a notice under paragraph 8(5)(b)(ii) or otherwise).
- (7) Sub-paragraph (8) applies if the Secretary of State—
- (a) receives a notification under sub-paragraph (5)(b); and
 - (b) is of the view that, for reasons of defence or national security, there is an overriding public interest in the manager’s proposed action being amended.
- (8) The Secretary of State may direct the manager in writing to act in accordance with the terms of the direction.
- (9) Any direction under sub-paragraph (8)—
- (a) must state the Secretary of State’s reasons for making the direction; or
 - (b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in those reasons not being made public, must state that view.
- (10) The manager must comply with any direction made under sub-paragraph (8).

(11) Sub-paragraph (10) is subject to any alternative agreement which the manager and the Secretary of State may reach and accordingly the Secretary of State may withdraw or vary any direction made under sub-paragraph (8).

(12) In this paragraph, a “duly-made representation” means a representation made in accordance with sub-paragraph (4).

Procedure

8.—(1) This paragraph applies where the Secretary of State proposes—

- (a) to give notice under paragraph 3(2), 4(2) or 5(2); or
- (b) to make a direction under paragraph 6(8) or 7(8).

(2) Before making the relevant decision, the Secretary of State must notify the manager and any relevant person in writing of the decision which the Secretary of State proposes to make.

(3) No later than 30 days after the day on which notification is given under sub-paragraph (2), an interested party may make representations to the Secretary of State giving reasons for those representations.

(4) The Secretary of State must have regard to any duly-made representations.

(5) No later than 60 days after the day on which the last duly-made representation is made, the Secretary of State must—

- (a) make the relevant decision; and
- (b) if the decision concerns—
 - (i) a notice under paragraph 5(2) or a direction under paragraph 6(8), notify the manager and the relevant person in writing of that decision,
 - (ii) a direction under paragraph 7(8), notify the manager.

(6) In this paragraph—

“duly-made representation” means a representation made in accordance with sub-paragraph (3);

“interested party” means—

- (a) the manager, or
- (b) a relevant person;

“relevant decision” means a decision—

- (a) whether to give notice as mentioned in sub-paragraph (1)(a), or
- (b) whether to make a direction as mentioned in sub-paragraph (1)(b); and

“relevant person” means—

- (a) in relation to a notice under paragraph 5(2), the person to whom the notice is to be given, and
- (b) in relation to a direction under paragraph 6(8), the person whose request is to be determined in accordance with the terms of the direction.

Disagreement

9.—(1) This paragraph applies where—

- (a) the Secretary of State is required to pay market value for a right, and
- (b) there is a disagreement about the calculation of that market value.

(2) The disagreement must be referred to—

- (a) such person as the parties to the disagreement may agree, or
 - (b) if no person is agreed, such person as may be nominated, on the joint application of the parties, by the Royal Institution of Chartered Surveyors.
- (3) The person to whom the disagreement is referred may charge a fee in respect of its consideration of the disagreement and may apportion the fee between the parties as it considers appropriate.

Annual report

10.—(1) Each reporting year the Secretary of State must prepare a report about the exercise of the Secretary of State’s powers under this Part.

(2) But a report is not required for a year if the Secretary of State did not exercise any of those powers in relation to that year.

(3) A report must not identify, or enable the identification of, any person (other than the manager) unless that person has consented to being so identified.

(4) Subject to sub-paragraph (3), each report must contain the following information—

- (a) the powers which the Secretary of State has exercised during the reporting year;
- (b) the number of occasions on which those powers have been exercised; and
- (c) in respect of each such occasion—
 - (i) the reasons why the power was exercised, and
 - (ii) the amount of any payment made by the Secretary of State.

(5) If the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the reasons mentioned in sub-paragraph (4)(c)(i) not being included in the report—

- (a) the Secretary of State must state that view in the report, and
- (b) sub-paragraph (4)(c)(i) does not apply.

(6) The Secretary of State must lay a copy of each report before Parliament and the Scottish Parliament.

(7) In this paragraph, “reporting year” means a period of 12 months ending with 31st March.