

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Development of Rural Wales Act 1976, Part V. (See end of Document for details)

SCHEDULES

SCHEDULE 3

THE NEW TOWNS CODE

Modifications etc. (not altering text)

- C1** Functions under Sch. 3 so far as exercisable jointly by Minister of Transport and Secretary of State now exercisable by Secretary of State for Transport: [S.I. 1981/238](#), [art. 2\(1\)\(b\)](#), Sch.

PART V

SPECIAL POWERS IN RELATION TO LAND ACQUIRED

Land to which this Part applies

- 34 This Part of the new towns code applies to land of the following descriptions, that is to say—
- (a) land acquired under the new towns code, and
 - (b) land acquired under this Act by agreement which could have been or have been required to be acquired under the new towns code.

Power to override easements and other rights

- 35 (1) The erection, construction or carrying out, or maintenance, of any building or work on land to which this Part of the new towns code applies, whether done by the Board or a local highway authority or by any other person, is authorised by virtue of this paragraph if it is done in accordance with planning permission, notwithstanding that it involves interference with an interest or right to which this paragraph applies, or involves a breach of a restriction as to the use of land arising by virtue of a contract: Provided that nothing in this sub-paragraph shall authorise interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land, being a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking [^{F1}or a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system].
- (2) This paragraph applies to the following interests and rights, that is to say, any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

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- (3) In respect of any interference or breach in pursuance of sub-paragraph (1) above, compensation shall be payable under section 7 or 10 of the ^{M1}Compulsory Purchase Act 1965, to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where the compensation is to be estimated in connection with a purchase by the Board or a local highway authority or the injury arises from the execution of works on land acquired by the Board or such an authority.
- (4) Where a person other than the Board or local highway authority by whom the land in question was acquired is liable to pay compensation by virtue of sub-paragraph (3) above, and fails to discharge that liability, the liability shall be enforceable against the Board or that authority:
Provided that nothing in this sub-paragraph shall be construed as affecting any agreement between the Board or that authority and any other person for indemnifying the Board or that authority against any liability under this sub-paragraph.
- (5) Nothing in this paragraph shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in sub-paragraph (1) above.
- (6) Nothing in this paragraph shall be construed as authorising any act or omission on the part of the Board or a local highway authority, or of any body corporate, in contravention of any limitation imposed by law on their capacity by virtue of the constitution of the Board, authority or body.

Textual Amendments

- F1** Words inserted by [Telecommunications Act 1984 \(c. 12, SIF 96\), Sch. 4 paras. 1\(2\), 67\(2\), Sch. 5 para. 45](#)

Marginal Citations

- M1** 1965 c. 56.

Use and development of consecrated land and burial grounds

- 36 (1) Any land to which this Part of the new towns code applies which is consecrated land may, subject to the following provisions of this paragraph—
- (a) in the case of land acquired by the Board or a local highway authority, be used by them, or by any other person, in any manner in accordance with planning permission, and
 - (b) in the case of land acquired by the Secretary of State, be used in any manner by him or on his behalf for any purpose for which he acquired the land, notwithstanding any obligation or restriction imposed under ecclesiastical law or otherwise in respect of consecrated land:
Provided that this sub-paragraph does not apply to land which consists or forms part of a burial ground.
- (2) Any use of consecrated land authorised by sub-paragraph (1) above, and the use of any land which is not consecrated land but is land to which this Part of the new towns code applies which at the time of acquisition included a church or other building

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used or formerly used for religious worship or the site thereof, shall be subject to compliance with the prescribed requirements with respect to the removal and reinterment of any human remains, and the disposal of monuments and fixtures and furnishings; and, in the case of consecrated land, shall be subject to such provisions as may be prescribed for prohibiting or restricting the use of the land, either absolutely or until the prescribed consent has been obtained, so long as any church or other building used or formerly used for religious worship, or any part thereof, remains on the land.

- (3) Any regulations made for the purposes of sub-paragraph (2) above—
- (a) shall contain such provisions as appear to the Secretary of State to be requisite for securing that any use of land which is subject to compliance with the regulations shall, as nearly as may be, be subject to the like control as is imposed by law in the case of a similar use authorised by an enactment not contained in the [^{F2}New Towns Act 1981] or this Act or by a Measure, or as it would be proper to impose on a disposal of the land in question otherwise than in pursuance of an enactment or Measure;
 - (b) shall contain requirements relating to the disposal of any such land as is mentioned in the said sub-paragraph (2) such as appear to the Secretary of State requisite for securing that the provisions of that sub-paragraph shall be complied with in relation to the use of the land; and
 - (c) may contain such incidental and consequential provisions (including provision as to the closing of registers) as appear to the Secretary of State to be expedient for the purposes of the regulations.
- (4) Any land to which this Part of the new towns code applies which consists of a burial ground or part of a burial ground may—
- (a) in the case of land acquired by the Board or a local highway authority, be used by them in any manner in accordance with planning permission, and
 - (b) in the case of land acquired by the Secretary of State, be used in any manner by him or on his behalf for any purpose for which he acquired the land,
- notwithstanding anything in any enactment relating to burial grounds or any obligation or restriction imposed under ecclesiastical law or otherwise in respect of burial grounds:
- Provided that this sub-paragraph shall not have effect in respect of any land which has been used for the burial of the dead until the prescribed requirements with respect to the removal and reinterment of human remains, and the disposal of monuments in or upon the land, have been complied with.
- (5) Provision shall be made by any regulations made for the purposes of sub-paragraph (2) above and the proviso to sub-paragraph (4) above—
- (a) for requiring the persons in whom the land is vested to publish notice of their intention to carry out the removal and reinterment of any human remains or the disposal of any monuments;
 - (b) for enabling the personal representatives or relatives of any deceased person themselves to undertake the removal and reinterment of the remains of the deceased, and the disposal of any monument commemorating the deceased, and for requiring the persons in whom the land is vested to defray the expenses of such removal, reinterment and disposal, not exceeding such amount as may be prescribed;
 - (c) for requiring compliance with such reasonable conditions (if any) as may be imposed, in the case of consecrated land, by the bishop of the diocese, with

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respect to the manner of removal, and the place and manner of reinterment of any human remains, and the disposal of any monuments, and with any directions given in any case by the Secretary of State with respect to the removal and reinterment of any human remains.

- (6) Subject to the provisions of any such regulations, no faculty shall be required for the removal and reinterment in accordance with the regulations of any human remains, or for the removal or disposal of any monuments, and the provisions of section 25 of the ^{M2}Burial Act 1857 (which prohibits the removal of human remains without the licence of the Secretary of State except in certain cases) shall not apply to a removal carried out in accordance with the regulations.
- (7) Any power conferred by this paragraph to use land in a manner therein mentioned shall be construed as a power so to use the land, whether it involves the erection, construction or carrying out of any building or work, or the maintenance of any building or work, or not.
- (8) Nothing in this paragraph shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in sub-paragraph (1) or sub-paragraph (4) above.
- (9) Nothing in this paragraph shall be construed as authorising any act or omission on the part of the Board or a local highway authority, or of any body corporate, in contravention of any limitation imposed by law on their capacity by virtue of the constitution of the Board, authority or body.
- (10) In this paragraph “burial ground” includes any church-yard, cemetery or other ground, whether consecrated or not, which has at any time been set apart for the purposes of interment, and “monument” includes a tombstone or other memorial.

Textual Amendments

F2 Words substituted by [New Towns Act 1981 \(c. 64, SIF 123:3\)](#), [Sch. 12 para. 21\(c\)](#)

Marginal Citations

M2 [1857 c. 81.](#)

Use and development of open spaces

- 37 (1) Any land to which this Part of the new towns code applies which is or forms part of a common, open space or fuel or field garden allotment, may—
- (a) in the case of land acquired by the Board or a local highway authority, be used by them, or by any other person, in any manner in accordance with planning permission.
 - (b) in the case of land acquired by the Secretary of State, be used in any manner by him or on his behalf for any purpose for which he acquired the land, notwithstanding anything in any enactment relating to land of that kind, or in any enactment by which the land is specially regulated.
- (2) Nothing in this paragraph shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds

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other than contravention of any such enactment as is mentioned in sub-paragraph (1) above.

- (3) Nothing in this paragraph shall be construed as authorising any act or omission on the part of the Board or a local highway authority, or of any body corporate, in contravention of any limitation imposed by law on their capacity by virtue of the constitution of the Board, authority or body.

Extinguishment of public rights of way over land acquired

- 38 (1) Where any land to which this Part of the new towns code applies is for the time being held by the Board, a local highway authority or the Secretary of State, the Secretary of State may by order extinguish any public right of way over the land.
- (2) Where the Secretary of State proposes to make an order under this paragraph, he shall publish in such manner as appears to him to be requisite a notice—
- (a) stating the effect of the order, and
 - (b) specifying the time (not being less than twenty-eight days from the publication of the notice) within which and the manner in which, objections to the proposal may be made;
- and shall serve a like notice—
- (i) on the district planning authority in whose area the land is situated, and
 - (ii) on the relevant highway authority.
- In this sub-paragraph “the relevant highway authority” means any authority which is a highway authority in relation to the right of way proposed to be extinguished by the order, other than an authority which has applied for the order to be made.
- (3) Where an objection to a proposal to make an order under this paragraph is duly made and is not withdrawn, the provisions of Part VII of the new towns code shall have effect in relation to the objection.
- (4) For the purposes of this paragraph an objection to such a proposal shall not be treated as duly made unless—
- (a) it is made within the time and in the manner specified in the notice required by this paragraph, and
 - (b) a statement in writing of the grounds of the objection is comprised in or submitted with the objection.
- (5) Where it is proposed to make an order under this paragraph extinguishing a public right of way over a road on land to which this Part of the new towns code applies which has been acquired by the Board, and compensation in respect of restrictions imposed under section 1 or section 2 of the ^{M3}Restriction of Ribbon Development Act 1935 in respect of that road has been paid by the highway authority (or, in the case of a trunk road, by the authority who, when the compensation was paid, were the authority for the purposes of section 4 of the ^{M4}Trunk Roads Act 1936), the order may provide for the payment by the Board to that authority, in respect of the compensation so paid, of such sums as the Secretary of State, with the consent of the Treasury, may determine.
- (6) Where the Secretary of State is satisfied that the construction or improvement of a road is or will be needed in consequence of the extinguishment under this paragraph of a public right of way, paragraph 2 of this Schedule shall apply as it applies where

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the Secretary of State is satisfied that the construction or improvement of a road is needed as mentioned in sub-paragraph (1) of that paragraph.

- (7) Where the Secretary of State makes an order under this paragraph on the application of the Board or a local highway authority, he shall send a copy of it to the Post Office.

Marginal Citations

M3 1935 c. 47.

M4 1936 c. 5 (1 Edw. 8 & 1 Geo. 6).

Provisions as to telegraphic lines

[^{F3}39 (1) Where an order under paragraph 38 above extinguishing a public right of way is made on the application of the Board or a local highway authority, and at the time of the publication of the notice required by sub-paragraph (2) of that paragraph any telecommunication apparatus was kept installed for the purposes of a telecommunications code system under, in, upon, over, along or across the land over which the right of way subsisted—

- (a) the power of the operator of the system to remove the apparatus shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of three months from the date on which the right of way is extinguished and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the system has given notice to the Board or local highway authority of his intention to remove the apparatus or that part of it, as the case may be;
- (b) the operator of the system may by notice given in that behalf to the Board or local highway authority not later than the end of the said period of three months abandon the telecommunication apparatus or any part of it;
- (c) subject to paragraph (b) above, the operator of the system shall be deemed at the end of that period to have abandoned any part of the apparatus which the operator has then neither removed nor given notice of his intention to remove;
- (d) the operator of the system shall be entitled to recover from the Board or local highway authority the expense of providing, in substitution for the apparatus and any other telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the first mentioned apparatus, any telecommunication apparatus in such other place as the operator may require;
- (e) where under the foregoing provisions of this sub-paragraph the operator of the system has abandoned the whole or any part of any telecommunication apparatus, that apparatus or that part of it shall vest in the Board or local highway authority and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.

- (2) Where the Secretary of State makes an order under paragraph 38 above in circumstances in which sub-paragraph (1) above applies in relation to the operator of any telecommunications code system, the Secretary of State shall send a copy of the order to the operator.]

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Textual Amendments

- F3** Sch. 3 para. 39 substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109(1)(4), Sch. 4 paras. 1(2), 67(4)(5), **Sch. 5 para. 45**

Creation of trunk roads

- 40 The Secretary of State may direct that any road constructed by him on land to which this Part of the new towns code applies shall, on such date as may be specified in the direction, become a trunk road within the meaning of [^{F4}the Highways Act 1980]; and the provisions of that Act relating to trunk roads shall apply to the roads accordingly.

Textual Amendments

- F4** Words substituted by [Highways Act 1980 \(c. 66, SIF 59\)](#), **Sch. 24 para. 28(b)**

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