

SCHEDULES

SCHEDULE 3

Section 11

MAIN POWERS IN RELATION TO LAND OF THE HCA

PART 1

POWERS TO OVERRIDE EASEMENTS ETC.

Powers to override easements etc. in undertaking works or using land

- 1 (1) The HCA or any other person may undertake any construction or maintenance works on land of the HCA even if undertaking the works involves—
- (a) interference with a relevant right or interest, or
 - (b) a breach of a restriction as to the user of land arising by virtue of a contract.
- (2) But the construction or maintenance works must still be in accordance with planning permission.
- (3) The HCA or any other person may use any land of the HCA even if the use involves—
- (a) interference with a relevant right or interest, or
 - (b) a breach of a restriction as to the user of land arising by virtue of a contract.
- (4) But the use of the land must be in accordance with planning permission.
- (5) Sub-paragraphs (1) to (4) do not authorise interference with—
- (a) any right of way on, under or over land, or
 - (b) any right of laying down, erecting, continuing or maintaining apparatus on, under or over land,
- if the right is a protected right.
- (6) In this paragraph—
- “construction or maintenance works” means the erection, construction, carrying out or maintenance of any building or work,
- “protected right” means—
- (a) a right vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking, or
 - (b) a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network,
- “relevant right or interest” means any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support),
- “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of the

Status: This is the original version (as it was originally enacted).

Town and Country Planning Act 1990 (c. 8); and “statutory undertaking” is to be read in accordance with section 262 of that Act (meaning of “statutory undertakers”).

Compensation for overridden easements etc.

- 2 (1) Compensation is payable under section 7 or 10 of the Compulsory Purchase Act 1965 (c. 56) in respect of any interference or breach made in pursuance of paragraph 1.
- (2) The compensation is 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—
- (a) the compensation is to be estimated in connection with a purchase by the HCA, or
 - (b) the injury arises from the execution of works on, or use of, land acquired by the HCA.
- (3) Sub-paragraph (4) applies if a person other than the HCA—
- (a) is liable to pay compensation by virtue of sub-paragraphs (1) and (2), and
 - (b) fails to discharge that liability.
- (4) The liability is enforceable against the HCA.
- (5) But sub-paragraph (4) does not affect any agreement between the HCA and any other person for indemnifying the HCA against any liability under that sub-paragraph.

PART 2

POWERS TO EXTINGUISH PUBLIC RIGHTS OF WAY

Powers of Secretary of State to extinguish public rights of way by order

- 3 The Secretary of State may by order extinguish any public right of way over land of the HCA if the Secretary of State is satisfied that—
- (a) an alternative right of way has been, or will be, provided, or
 - (b) the provision of an alternative right of way is not required.

Notification of proposal to make order

- 4 (1) This paragraph applies if the Secretary of State is proposing to make an order under paragraph 3.
- (2) The Secretary of State must—
- (a) publish a notice stating—
 - (i) the effect of the order,
 - (ii) the time (not less than 28 days starting with the date of publication of the notice) within which objections to the proposal may be made, and
 - (iii) the manner in which objections to the proposal may be made, and
 - (b) serve a copy of the notice on—
 - (i) the local planning authority in whose area the land is situated, and

Status: This is the original version (as it was originally enacted).

- (ii) the relevant highway authority.
- (3) In sub-paragraph (2) “the relevant highway authority” means any authority which is a highway authority in relation to the right of way which is proposed to be extinguished by the order.
- (4) Publication under sub-paragraph (2) must be in such manner as the Secretary of State considers appropriate.

Duty to consider objections

- 5 (1) The Secretary of State must proceed under paragraph 6 if—
 - (a) an objection to a proposal to make 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 4, 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 Secretary of State—
 - (a) decides, irrespective of the objection, not to make the order, or
 - (b) decides to make a modification to the proposal which is agreed to by the objector as meeting the objection.
- 6 (1) The Secretary of State 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 Secretary of State may require the objector to submit within a particular period a further written statement as to any of the matters to which the objection relates.

Duty to give opportunity to appear

- 7 (1) The Secretary of State 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 Secretary of State.
- (2) Sub-paragraph (3) applies if the objector takes advantage of this opportunity.
- (3) The Secretary of State must give an opportunity of appearing and being heard on the same occasion as the objector to—
 - (a) the HCA, and
 - (b) any other persons whom the Secretary of State considers ought to be given the opportunity.
- (4) Sub-paragraphs (1) to (3) do not apply so far as the Secretary of State has the power to proceed under paragraph 8 or 9.

Status: This is the original version (as it was originally enacted).

Power to treat objection as irrelevant

- 8 The Secretary of State may treat the objection as irrelevant for the purpose of making a final decision—
- (a) if the Secretary of State 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 Secretary of State 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

- 9 The Secretary of State may make a final decision without further investigation as to the matters to which the objection relates if—
- (a) the Secretary of State—
 - (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 6(2) but is not submitted within the required period.

Power to hold public local inquiry

- 10 (1) The Secretary of State must cause a public local inquiry to be held in relation to an objection to a proposal to make an order under paragraph 3 if the Secretary of State considers that the matters to which the objection relates are such as to require investigation by such an inquiry before the Secretary of State makes a final decision.
- (2) The duty in sub-paragraph (1) is effective despite any other provisions of paragraphs 4 to 9.
- (3) The other provisions of those paragraphs are to be ignored if no effect has been given to them when the Secretary of State decides to cause an inquiry to be held.

Orders relating to electronic communications apparatus: removal or abandonment of apparatus

- 11 Paragraphs 12 and 13 apply if—
- (a) an order under paragraph 3 extinguishing a public right of way is made, and
 - (b) at the time of the publication of the notice required by paragraph 4 any electronic communications apparatus was kept installed for the purposes of an electronic communications code network under, in, on, over, along or across the land over which the right of way subsisted.
- 12 (1) The power of the operator of the network to remove the apparatus is exercisable, despite the order, at any time not later than the end of the period of 3 months beginning with the day on which the right of way is extinguished.
- (2) The power of the operator of the network to remove the whole or any part of the apparatus is exercisable after the end of that period if, before the end of the period, the operator has served notice on the HCA of the operator's intention to remove the apparatus or (as the case may be) part.

Status: This is the original version (as it was originally enacted).

- 13 (1) The operator of the network may abandon the electronic communications apparatus, or any part of it, by serving notice to that effect on the HCA not later than the end of the period of 3 months beginning with the day on which the right of way is extinguished.
- (2) In the absence of such a notice, the operator of the network is to be treated at the end of the period of 3 months as having abandoned any part of the apparatus which, at that time, the operator has neither—
- (a) removed, nor
 - (b) served notice of intention to remove.
- 14 (1) The operator of the network may recover from the HCA the expense of providing any substitute electronic communications apparatus in such other place as the operator may require.
- (2) In sub-paragraph (1) “substitute electronic communications apparatus” means electronic communications apparatus in substitution for—
- (a) the electronic communications apparatus removed or abandoned, and
 - (b) any other electronic communications apparatus connected with the removed or abandoned apparatus which is made useless in consequence of the removal or abandonment.
- 15 Electronic communications apparatus, or any part of it, abandoned by the operator of an electronic communications code network under paragraph 13—
- (a) vests in the HCA, and
 - (b) is deemed, with its abandonment, to cease to be kept installed for the purposes of an electronic communications code network.

Orders relating to electronic communications apparatus: notice requirements

- 16 (1) The Secretary of State must serve notice on the operator of an electronic communications code network of the making of an order under paragraph 3 if the order extinguishes a public right of way in circumstances in which paragraphs 12 and 13 apply in relation to the operator.
- (2) The notice must be served as soon as practicable after the making of the order.

Supplementary: Part 2

- 17 The power of the Secretary of State to make orders under paragraph 3 includes power to—
- (a) vary or revoke such orders, and
 - (b) make supplementary, incidental, consequential, transitional, transitory or saving provision.
- 18 In this Part of this Schedule, in relation to an order, any reference to making a final decision is a reference to deciding whether to make the order or what modification (if any) ought to be made.

Status: This is the original version (as it was originally enacted).

PART 3

POWERS IN RELATION TO BURIAL GROUNDS AND CONSECRATED LAND ETC.

Burial grounds

- 19 (1) This paragraph applies in relation to any land of the HCA which consists in, or forms part of, a burial ground.
- (2) The HCA may use the land in any way which accords with planning permission despite—
- (a) anything in any enactment relating to burial grounds, or
 - (b) any obligation or restriction imposed under ecclesiastical law or otherwise in respect of burial grounds.
- (3) But sub-paragraph (2) does not apply in relation to any land which has been used for the burial of the dead until prescribed requirements about the removal and reinterment of human remains and the disposal of monuments have been complied with in relation to the land.

Consecrated land other than burial grounds

- 20 (1) This paragraph applies in relation to any land of the HCA which—
- (a) is consecrated land (whether or not including a building), and
 - (b) does not consist in, or form part of, a burial ground.
- (2) The HCA or any other person may use the land in any way which accords with planning permission despite any obligation or restriction imposed under ecclesiastical law or otherwise in respect of consecrated land.
- (3) But any such use of the land is subject to—
- (a) prescribed requirements about the disposal of monuments, and
 - (b) prescribed provisions for prohibiting or restricting the use of the land while—
 - (i) any church or other building used, or formerly used, for religious worship remains on the land, or
 - (ii) any part of any such church or other building remains on the land.
- (4) Prohibitions or restrictions prescribed under sub-paragraph (3)(b) may be absolute or until a prescribed consent is obtained.

Other land connected to religious worship

- 21 (1) This paragraph applies in relation to any land of the HCA which—
- (a) is neither consecrated land nor land which consists in, or forms part of, a burial ground, and
 - (b) at the time of acquisition included—
 - (i) a church or other building used, or formerly used, for religious worship, or
 - (ii) the site of such a church or other building.
- (2) Any use of the land is subject to prescribed requirements about the disposal of monuments.

Regulations: general

- 22 (1) Regulations under this Part of this Schedule must secure that any use of land which is subject to compliance with the regulations is (so far as possible) subject to an appropriate level of control.
- (2) For the purposes of sub-paragraph (1) an appropriate level of control is the same control—
- (a) as imposed by law in relation to a similar use authorised by an enactment not contained in this Part of this Act,
 - (b) as imposed by a Measure, or
 - (c) as it would be proper to impose on a disposal of the land concerned otherwise than in pursuance of an enactment or Measure.
- (3) Regulations under this Part of this Schedule must impose such requirements in relation to the disposal of the land as the Secretary of State considers appropriate to secure that the requirements and other provisions in the regulations about the use of the land are complied with.
- (4) Regulations made for the purposes of paragraphs 19 to 21 may, in particular, include incidental or consequential provision about the closing of registers.

Regulations about human remains and monuments

- 23 (1) Regulations under this Part of this Schedule about the removal and reinterment of human remains and the disposal of monuments must require 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.
- (2) Regulations under this Part of this Schedule about the removal and reinterment of human remains and the disposal of monuments must make provision for—
- (a) enabling the personal representatives or relatives of any deceased person themselves—
 - (i) to undertake the removal and reinterment of the remains of the deceased, and
 - (ii) the disposal of any monument commemorating the deceased, and
 - (b) requiring the persons in whom the land is vested to meet the expenses of such removal, reinterment and disposal provided that they are not more than such amount as may be prescribed.
- (3) Regulations under this Part of this Schedule about the removal and reinterment of human remains and the disposal of monuments must require compliance with such reasonable conditions (if any) as may be imposed, in the case of consecrated land, by the bishop of the diocese, in relation to—
- (a) the manner of removal of any human remains,
 - (b) the place and manner of reinterment of any human remains, and
 - (c) the disposal of any monuments.
- (4) Regulations under this Part of this Schedule about the removal and reinterment of human remains must require compliance with any directions given in any case by the Secretary of State in relation to the removal and reinterment of any human remains.

Status: This is the original version (as it was originally enacted).

Disapplication of faculties

- 24 (1) No faculty is required for—
- (a) the removal and reinterment of any human remains, or
 - (b) the removal or disposal of any monuments,
- in accordance with regulations under this Part of this Schedule.
- (2) Sub-paragraph (1) is subject to any provision to the contrary made by regulations under this Part of this Schedule.

Disapplication of section 25 of the Burial Act 1857

- 25 Section 25 of the Burial Act 1857 (c. 81) (which prohibits the removal of human remains without the licence of the Secretary of State except in certain cases) does not apply to a removal of human remains carried out in accordance with regulations under this Part of this Schedule.

Interpretation: Part 3

- 26 (1) In this Part of this Schedule—
- “burial ground” includes any churchyard, cemetery or other ground (whether or not consecrated) which has at any time been set apart for the purposes of interment,
 - “monument” includes a tombstone or other memorial,
 - “prescribed” means prescribed by regulations made by the Secretary of State.
- (2) Any power conferred by paragraph 19(2) or 20(2) to use land is to be read as a power to use the land, whether or not it involves—
- (a) the erection, construction or carrying out of any building or work, or
 - (b) the maintenance of any building or work.