

SCHEDULES

SCHEDULE 9

Article 228

ORDERS CONFERRING COMPULSORY WORKS POWERS

Applications for orders

1.—(1) Where a water undertaker applies to the Department for a compulsory works order, the undertaker shall—

- (a) submit to the Department a draft of the order applied for;
- (b) publish a notice with respect to the application, at least once in each of two successive weeks, in at least two newspapers circulating in each relevant locality;
- (c) not later than the date on which that notice is first published serve a copy of the notice on such persons as may be prescribed by the Department;
- (d) publish a notice in the Belfast Gazette which—
 - (i) states that the draft order has been submitted to the Department;
 - (ii) specifies a place where a copy of the draft order and of any relevant map or plan may be inspected; and
 - (iii) gives the name of every newspaper in which the notice required by virtue of head (b) was published and the date of an issue containing the notice.

(2) The notice required by virtue of sub-paragraph (1)(b) to be published with respect to an application for an order by a water undertaker shall—

- (a) state the general effect of the order applied for;
- (b) in the case of an application made wholly or partly for the purpose of enabling any discharges of water to be made—
 - (i) contain particulars of the proposed discharges, stating the purposes of the discharges and specifying each place of discharge;
 - (ii) specify the places at which the water to be comprised in the proposed discharges is to be taken and the treatment (if any) which the draft order proposes to require the water, or any of it, to receive before being discharged under the order; and
 - (iii) state the effect which, in the opinion of the undertaker, the proposed discharges would have on the flow, level and quality of water in any inland waters or underground strata;
- (c) specify a place where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times during the period of 28 days beginning with the date of the first publication of the notice; and
- (d) state that any person may, within that period, by notice to the Department object to the making of the order.

(3) In this paragraph “relevant locality”, in relation to an application for an order a draft of which is submitted to the Department by a water undertaker, means—

Status: Point in time view as at 01/01/2007.

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- (a) any locality which would be affected by any provision proposed to be made by the order for the purpose of enabling any engineering or building operations to be carried out; and
- (b) where provision is proposed to be made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the proposed discharges is situated or in which there appears to that undertaker to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the proposed discharges.

Commencement Information

- I1** Sch. 9 para. 1 wholly in operation at 1.4.2007; Sch. 9 para. 1 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); Sch. 9 para. 1 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Supply of copies of draft orders

2. A water undertaker applying for a compulsory works order shall, at the request of any person and on payment by that person of such charge (if any) as the undertaker may reasonably require, furnish that person with a copy of the draft order submitted to the Department under paragraph 1 and of any relevant map or plan.

Commencement Information

- I2** Sch. 9 para. 2 wholly in operation at 1.4.2007; Sch. 9 para. 2 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); Sch. 9 para. 2 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Powers on an application

3.—(1) On an application for a compulsory works order, the Department may make the order either in the terms of the draft order submitted to it or, subject to sub-paragraphs (2) and (3), in those terms as modified in such manner as it thinks fit, or may refuse to make an order.

(2) The Department shall not make such a modification of a draft order submitted to it by any water undertaker as it considers is likely adversely to affect any persons unless the Department is satisfied that the undertaker has given and published such additional notices, in such manner, as the Department may have required.

(3) The Department shall not, unless all interested parties consent, make a compulsory works order so as to confer in relation to any land any powers of compulsory acquisition which would not have been conferred in relation to that land if the order were made in the terms of the draft order submitted to it under paragraph 1.

(4) Where, on an application by a water undertaker for a compulsory works order, the Department refuses to make an order, the undertaker shall, as soon as practicable after the refusal, notify the refusal to every person on whom it was, by virtue of paragraph 1(1)(c), required to serve a copy of the notice with respect to the application.

(5) The duty of a water undertaker under sub-paragraph (4) shall be enforceable under Article 30 by the Department.

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Commencement Information

- I3** Sch. 9 para. 3 wholly in operation at 1.4.2007; Sch. 9 para. 3 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); Sch. 9 para. 3 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Consideration of objections etc.

4.—(1) If, where an application for a compulsory works order has been made by a water undertaker, any notice of an objection to it is received, before the end of the relevant period, by the Department from—

- (a) any person on whom a notice under paragraph 1 or 3 is required to be served; or
- (b) from any other person appearing to the Department to be affected by the order as submitted to it or as proposed to be modified under paragraph 3,

then, unless the objection is withdrawn or the Department is satisfied that it solely of a frivolous or vexatious nature, the Department shall, before making the order, cause a local inquiry to be held by the Appeals Commission and consider the report of that inquiry.

(2) Where any objection received by the Department as mentioned in sub-paragraph (1) relates to any powers of compulsory acquisition, the Department may require the objector to state in writing the grounds of his objection; and if the Department is satisfied that the objection relates exclusively to matters that can be dealt with in the assessment of compensation, it may disregard the objection for the purposes of that sub-paragraph.

(3) In this paragraph “the relevant period”, in relation to an application for any order, means the period ending with whichever is the later of—

- (a) the end of the period of 28 days beginning with the date of the first publication of the notice published with respect to the application for the purposes of paragraph 1(1)(b); and
- (b) the end of the period of 25 days beginning with the date of the publication in the Belfast Gazette of the notice published for the purposes of the application by virtue of paragraph 1(1)(d),

together, in the case of an application for an order modifications to which have been proposed by the Department, with any further periods specified with respect to the modifications in notices under paragraph 3(2).

Commencement Information

- I4** Sch. 9 para. 4 wholly in operation at 1.4.2007; Sch. 9 para. 4 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); Sch. 9 para. 4 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Notice after making of order

5.—(1) As soon as practicable after a compulsory works order has been made, the undertaker on whose application it is made shall—

- (a) publish a notice of the making of the order, at least once in each of two successive weeks, in at least two newspapers circulating in each relevant locality; and

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- (b) not later than the date on which that notice is first published serve a copy of the notice on every person on whom that undertaker was, by virtue of paragraph 1(1)(c), required to serve a copy of the notice with respect to the application for the order.
- (2) The notice required by virtue of sub-paragraph (1)(a) to be published with respect to a compulsory works order shall—
 - (a) state the general effect of the order;
 - (b) in the case of an order made wholly or partly for the purpose of enabling any discharges of water to be made—
 - (i) contain particulars of the discharges, stating the purposes of the discharges and specifying each place of discharge;
 - (ii) specify the places at which the water to be comprised in the discharges is to be taken and the treatment (if any) which the order requires the water, or any of it, to receive before being discharged under the order; and
 - (iii) state the effect which, in the opinion of the applicant undertaker, the discharges would have on the flow, level and quality of water in any inland waters or underground strata; and
 - (c) specify a place where a copy of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times.
- (3) Where a compulsory works order has been made, the undertaker on whose application it was made shall, at the request of any person and on payment by that person of such charge (if any) as that undertaker may reasonably require, furnish that person with a copy of the order and of any relevant map or plan.
- (4) The duties of a water undertaker under this paragraph shall be enforceable under Article 30 by the Department.
- (5) In this paragraph “relevant locality”, in relation to any compulsory works order, means—
 - (a) any locality which is affected by any provision made by the order for the purpose of enabling any engineering or building operations to be carried out; and
 - (b) where provision is made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the discharges is situated or in which there appears to the undertaker which applied for the order to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the discharges.

Commencement Information

I5 Sch. 9 para. 5 wholly in operation at 1.4.2007; Sch. 9 para. 5 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); Sch. 9 para. 5 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Compulsory acquisition provisions

6. The statutory provisions for the time being in force with respect to compensation for the compulsory acquisition of land shall apply in relation to so much of a compulsory works order as confers powers of compulsory acquisition as they apply in relation to a vesting order made by virtue of Article 216.

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Commencement Information

- I6** Sch. 9 para. 6 wholly in operation at 1.4.2007; Sch. 9 para. 6 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); Sch. 9 para. 6 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Compensation in respect of powers other than acquisition powers

7.—(1) If the value of any estate in any relevant land is depreciated by the coming into force of so much of any compulsory works order as—

- (a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
- (b) grants authority for the carrying out of the operations,

the person entitled to that estate shall be entitled to compensation from the applicant for the order of an amount equal to the amount of the depreciation.

(2) Where the person entitled to an estate in any relevant land sustains loss or damage which—

- (a) is attributable to so much of any compulsory works order as—
 - (i) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
 - (ii) grants authority for the carrying out of the operations;
- (b) does not consist in depreciation of the value of that estate; and
- (c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under Article 216 in pursuance of a vesting order made before the date on which the order comes into operation,

he shall be entitled to compensation from the applicant for the order in respect of that loss or damage, in addition to compensation under sub-paragraph (1).

(3) Where any damage (other than the depreciation of an estate in land) is attributable to so much of any compulsory works order as—

- (a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
- (b) grants authority for the carrying out of the operations,

the applicant for the order shall pay compensation in respect of that damage to every person suffering that damage.

(4) For the purposes of sub-paragraph (3) any extra expenditure—

- (a) which it becomes reasonably necessary for any water undertaker or public authority (other than the undertaker making the discharge) to incur for the purpose of properly carrying out any statutory functions; and
- (b) which is attributable to so much of any compulsory works order as is mentioned in heads (a) and (b) of that sub-paragraph,

shall be deemed to be a loss sustained by the undertaker or public authority.

(5) In this paragraph “relevant land”, in relation to a compulsory works order, means any land which is not land in relation to which powers of compulsory acquisition are conferred by the order but is—

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- (a) land where any operations for which authority is granted by the order are to be carried out;
 - (b) land in relation to which compulsory powers are conferred by the order; or
 - (c) land held with any land falling within head (a) or (b).
- (6) Any question of disputed compensation under this paragraph shall be referred to and determined by the Lands Tribunal.
- (7) In calculating the value of any estate for the purposes of this paragraph—
- (a) rules (2) to (4) of the rules set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 (NI 9) shall, so far as applicable have effect as they have effect for the purpose of assessing compensation for the compulsory purchase of land; and
 - (b) if an estate to be valued is mortgaged, it shall be treated as if the mortgage had been discharged.

Commencement Information

- I7** Sch. 9 para. 7 wholly in operation at 1.4.2007; Sch. 9 para. 7 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); Sch. 9 para. 7 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Protection of public undertakings

8. The provisions of Article 248 and of Part I of Schedule 10 shall apply, as they apply in relation to the carrying out of works in exercise of powers under this Order, in relation to the carrying out of works by virtue of an authority granted by so much of any compulsory works order as makes provision other than provision conferring powers of compulsory acquisition.

Commencement Information

- I8** Sch. 9 para. 8 wholly in operation at 1.4.2007; Sch. 9 para. 8 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); Sch. 9 para. 8 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Interpretation

9. In this Schedule—

“compulsory works order” means an order under Article 228;

“powers of compulsory acquisition” means any such powers as are mentioned in paragraph (4) (a) of Article 228.

Commencement Information

- I9** Sch. 9 para. 9 wholly in operation at 1.4.2007; Sch. 9 para. 9 in operation at 1.1.2007 in so far as it confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power, see art. 1(3)(e); Sch. 9 para. 9 in operation at 1.4.2007 insofar as not already in operation by S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

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