

SCHEDULES

SCHEDULE 4

Section 44

WORKS: SUPPLEMENTARY

Metropolitan commons

- 1 In section 5 of the Metropolitan Commons Act 1866 (c. 122) (prohibition on inclosure), after “inclosure of a metropolitan common” insert “which is under the control and management of a London borough council”.
- 2 (1) The Schedule to the [Ministry of Housing and Local Government Provisional Order Confirmation \(Greater London Parks and Open Spaces\) Act 1967 \(c. xxix\)](#) is amended as follows.
 - (2) In article 12 (restriction on powers in relation to commons), in paragraph (1) omit “(which consent the Minister may give in such cases as he thinks fit)”.
 - (3) In that article, after paragraph (2) insert—
 - “(2A) Sections 39 and 40 of the Commons Act 2006 apply in relation to an application for consent under paragraph (1) as they apply in relation to an application for consent under section 38(1) of that Act.
 - (2B) Section 41 of that Act applies in relation to the carrying out of works in contravention of paragraph (1) as it applies to works carried out in contravention of section 38(1) of that Act (and as if references to consent under that provision were to consent under paragraph (1)).”
 - (4) Omit paragraph (3) of that article.
 - (5) In article 17 (street improvement), in paragraph (1), after “enactment” insert “or in any scheme made under, or confirmed by, any enactment”.
 - (6) In that article—
 - (a) in paragraph (2), omit the words from “and the Minister” to the end;
 - (b) after that paragraph insert—
 - “(2A) Where an application is made for consent under paragraph (2) in the case of any common, section 40 of the Commons Act 2006 applies in relation to the application as it applies in relation to an application for consent under section 38(1) of that Act.
 - (2B) Where an application is made for consent under paragraph (2) in any other case, the Minister before giving any consent shall have regard to any representations made to him in the manner specified in paragraph (3).”;
 - (c) in paragraph (3), after “paragraph (2)” insert “in a case to which paragraph (2B) applies”.

Status: This is the original version (as it was originally enacted).

National Trust property

- 3 (1) Section 29 of the [National Trust Act 1907 \(c. cxxxvi\)](#) (powers exercisable over common or commonable land) is amended as follows.
- (2) Renumber the existing provision as subsection (1).
- (3) In that subsection, for “consists of common or commonable land” substitute “is land to which this section applies”.
- (4) After that subsection insert—
- “(2) This section applies to—
- (a) any land registered as common land;
- (b) land not so registered which is—
- (i) regulated by an Act made under the Commons Act 1876 confirming a provisional order of the Inclosure Commissioners; or
- (ii) subject to a scheme under the Metropolitan Commons Act 1866 or the Commons Act 1899; and
- (c) land not falling within paragraph (a) or (b) which is in the New Forest and is subject to rights of common.”
- 4 (1) Section 23 of the [National Trust Act 1971 \(c. vi\)](#) (powers over common land) is amended as follows.
- (2) In subsection (2), omit the words from “, and in giving” to the end.
- (3) After that subsection insert—
- “(2A) Sections 39 and 40 of the Commons Act 2006 apply in relation to an application for consent under subsection (2) of this section as they apply in relation to an application for consent under section 38(1) of that Act.
- (2B) Section 41 of that Act applies in relation to the carrying out of works in contravention of subsection (2) of this section as it applies to works carried out in contravention of section 38(1) of that Act (and as if references to consent under that provision were to consent under subsection (2) of this section).
- (2C) Nothing in section 38 of the Commons Act 2006 applies in relation to land to which section 29 of the Act of 1907 applies.”

New parishes

- 5 In section 15 of the [New Parishes Measure 1943 \(No. 1\)](#) (land subject to rights of common), in subsection (1), for the words from “without the consent” to the end substitute “without the consent of the Secretary of State and sections 39 and 40 of the Commons Act 2006 apply in relation to an application for such consent as they apply in relation to an application for consent under section 38(1) of that Act.”

Transitional provision

- 6 In its application to any works carried out on or after 28 June 2005 but before the day on which section 38(1) above comes into force, section 194(2) of the Law of

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Property Act 1925 (c. 20) shall have effect as if the words “interested in the common” were omitted.

- 7 The prohibition in section 38(1) does not apply to works carried out in connection with the taking or working of minerals if—
- (a) the works were granted planning permission under any enactment before the commencement of section 38;
 - (b) the works are carried out in accordance with that planning permission in the period allowed for the works to be carried out (subject to any extension of time granted before or after the commencement of that section).