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## SCHEDULES

### FIFTH SCHEDULE

Sections 43, 44.

#### SUPPLEMENTARY PROVISIONS AS TO PURCHASE OF OWNER-OCCUPIER'S INTEREST

##### *Interpretation of Part IV of Act*

- 1 (1) If any question arises—
  - (a) whether the appropriate authority in relation to any land for the purposes of Part IV of this Act is the Minister of Transport and Civil Aviation or a local highway authority, or
  - (b) which of two or more local highway authorities is the appropriate authority in relation to any land for those purposes,that question shall be referred to the Minister of Transport and Civil Aviation, whose decision shall be final.
- (2) Subject to the preceding sub-paragraph, if any question arises as to which of two or more local authorities is the appropriate authority in relation to any land for the purposes of Part IV of this Act, that question shall be referred to the Minister, whose decision shall be final.
- 2 (1) The definition of " the appropriate enactment" in Part IV of this Act shall have effect subject to the following provisions of this paragraph.
- (2) In relation to land falling within the description contained in paragraph (b) of subsection (1) of section thirty-nine of this Act, an enactment shall, for the purposes of that definition, be taken to be an enactment which provides for the compulsory acquisition of land as being land falling within that description if—
  - (a) the enactment provides for the compulsory acquisition of land for the purposes of the functions which are indicated in the development plan as being the functions for the purposes of which the land is allocated or is proposed to be developed, or
  - (b) where no particular functions are so indicated in the development plan, the enactment provides for the compulsory acquisition of land for the purposes of any of the functions of the government department, local authority or other body for the purposes of whose functions the land is allocated or is defined as the site of proposed development.
- (3) Where, in accordance with the circumstances by virtue of which any land falls within any of the specified descriptions, it is indicated that the land is proposed to be acquired for highway purposes, any enactment under which a highway authority are or (subject to the fulfilment of the relevant conditions) could be authorised to acquire that land compulsorily for highway purposes shall, for the purposes of the said definition, be taken to be an enactment providing for the compulsory acquisition of that land as being land falling within the description in question.

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- (4) In the last preceding sub-paragraph the reference to the fulfilment of the relevant conditions is a reference to such one or more of the following as are applicable to the circumstances in question, that is to say,—
- (a) the coming into operation of any requisite order under the provisions of Part II of the Highways Act, 1959, relating to trunk roads;
  - (b) the coming into operation of any requisite scheme or order under the provisions of the said Part II relating to special roads;
  - (c) the making or approval of any requisite plans.
- (5) If, apart from this sub-paragraph, two or more enactments would be the appropriate enactment in relation to any land for the purposes of Part IV of this Act, the appropriate enactment for those purposes shall be taken to be that one of those enactments under which, in the circumstances in question, it is most likely that (apart from the provisions of Part IV of this Act) the land would have been acquired by the appropriate authority.
- (6) If any question arises as to which enactment is the appropriate enactment in relation to any land for the purposes of Part IV of this Act, that question shall be referred—
- (a) where the appropriate authority are a government department, to the Minister or Board in charge of that department ;
  - (b) Where the appropriate authority are a local highway authority, to the Minister of Transport and Civil Aviation;
  - (c) where the appropriate authority are statutory undertakers, to the appropriate Minister ; and
  - (d) in any other case, to the Minister,
- and the decision of the Minister or Board to whom a question is referred under this sub-paragraph shall be final.
- 3 (1) The provisions of this paragraph shall have effect in relation to the definition of "hereditament" in Part IV of this Act.
- (2) Where any land is on the boundary between two or more rating areas, and accordingly—
- (a) different parts of that land form the subject of single entries in the valuation lists for the time being in force for those areas respectively, but
  - (b) if the whole of that land had been in one of those areas, it would have formed the subject of a single entry in the valuation list for that area,
- the whole of that land shall be treated, for the purposes of that definition, as if it formed the subject of a single entry in the valuation list for a rating area.
- (3) Land which forms the subject of an entry in the valuation list by reason only that it is land over which any shooting, fishing or other sporting rights are exercisable, or that it is land over which a right of exhibiting advertisements is let out or reserved, shall not be taken to be a hereditament within the said definition.
- 4 Where, in accordance with the last preceding paragraph, land whereof different parts form the subject of single entries in the valuation lists for the time being in force for two or more rating areas is treated as if it formed the subject of a single entry in the valuation list for a rating area, the definition of " annual value " in Part IV of this Act shall apply as if any reference therein to a value shown in the valuation list were a reference to the aggregate of the values shown (as rateable

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values or as net annual values, as the case may be) in those valuation lists in relation to the different parts of that land.

- 5 (1) For the purposes of the application of Part IV of this Act to a hereditament or agricultural unit occupied for the purposes of a partnership firm—
- (a) occupation for the purposes of the firm shall be treated as occupation by the firm, and not as occupation by any one or more of the partners individually, and the definitions of "owner-occupier" in Part IV of this Act shall apply in relation to the firm accordingly ; and
  - (b) if, after the service by the firm of a notice under section thirty-nine of this Act, any change occurs (whether by death or otherwise) in the constitution of the firm, any proceedings, rights or obligations consequential upon that notice may be carried on or exercised by or against, or (as the case may be) shall be incumbent upon, the partners for the time being constituting the firm.
- (2) Nothing in Part IV of this Act or in this paragraph shall be construed as indicating an intention to exclude the operation of section nineteen of the Interpretation Act, 1889 (whereby, unless the contrary intention appears, "person" includes any body of persons corporate or unincorporate) in relation to any of the provisions of Part IV of this Act or this Schedule.
- (3) Sub-paragraph (1) of this paragraph shall not affect the definition of "resident owner-occupier" in Part IV of this Act.

*Compensation for compulsory acquisition in pursuance of notice under Part IV of Act*

- 6 The compensation payable in respect of a compulsory acquisition in pursuance of a notice served under section thirty-nine of this Act in respect of a hereditament—
- (a) shall not include any amount attributable to damage sustained by reason that the hereditament is severed from other land held therewith, and
  - (b) shall not include any amount attributable to disturbance:

Provided that sub-paragraph (a) of this paragraph shall not apply to an amount attributable to damage sustained by reason that the hereditament is severed from agricultural land held therewith.

- 7 The compensation payable in respect of a compulsory acquisition in pursuance of a notice served under section thirty-nine of this Act in respect of an agricultural unit shall not include any amount attributable to disturbance.

*Withdrawal of notice under Part IV of Act*

- 8 Subject to the next following paragraph, the person by whom a notice has been served under section thirty-nine of this Act may withdraw the notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the notice has been determined by the Lands Tribunal, or at any time before the end of the period of six weeks beginning with the date on which the compensation is so determined ; and, where such a notice is withdrawn by virtue of this paragraph, any notice to treat deemed to have been served in consequence thereof shall be deemed to have been withdrawn.

- 9 A person shall not be entitled by virtue of the last preceding paragraph to withdraw a notice after the appropriate authority have exercised a right of entering upon and taking possession of land in pursuance of a notice to treat deemed to have been served in consequence of that notice.

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- 10 No compensation shall be payable in respect of the withdrawal of a notice to treat which is deemed to have been withdrawn by virtue of paragraph 8 of this Schedule.

*Effect on powers of compulsory acquisition of counter-notice disclaiming intention to acquire*

- 11 (1) The provisions of this paragraph shall have effect where the grounds of objection specified in a counter-notice served under section forty of this Act consist of or include the grounds mentioned in paragraph (b) of subsection (2) of that section, and either—
- (a) the objection on the grounds mentioned in that paragraph is referred to and upheld by the Lands Tribunal, or
  - (b) the time for referring that objection to the Lands Tribunal expires without its having been so referred.
- (2) If a compulsory purchase order has been made under the appropriate enactment in respect of land which consists of or includes the whole or part of the hereditament or agricultural unit to which the counter-notice relates, or if the land in question falls within paragraph (d) of subsection (1) of section thirty-nine of this Act, any power conferred by that order, or by the special enactment, as the case may be, for the compulsory acquisition of the interest of the claimant in the hereditament or agricultural unit or any part thereof shall cease to have effect.
- (3) If the land in question falls within paragraph (a) of subsection (1) of section thirty-nine of this Act, then (without prejudice to the effect of any subsequent designation) the development plan shall have effect as if no part of the hereditament, or (in the case of an agricultural unit) no part of the affected area, were designated therein as land subject to compulsory acquisition.
- 12 (1) The provisions of this paragraph shall have effect where the grounds of objection specified in a counter-notice under section forty of this Act consist of or include the grounds mentioned in paragraph (c) of subsection (2) of that section, and either—
- (a) the objection on the grounds mentioned in that paragraph is referred to and upheld by the Lands Tribunal, or
  - (b) the time for referring that objection to the Lands Tribunal expires without its having been so referred.

In the following provisions of this paragraph any reference to " the part of the affected area not required " is a reference to the whole of that area except the part specified in the counter-notice as being the part which the appropriate authority propose to acquire as therein mentioned.

- (2) If a compulsory purchase order has been made under the appropriate enactment in respect of land which consists of or includes any of the part of the affected area not required, or if the land in question falls within paragraph (d) of subsection (1) of section thirty-nine of this Act, any power conferred by that order, or by the special enactment, as the case may be, for the compulsory acquisition of the interest of the claimant in any land comprised in the part of the affected area not required shall cease to have effect.
- (3) If the land in question falls within paragraph (d) of subsection (1) of section thirty-nine of this Act, then (without prejudice to the effect of any subsequent designation) the development plan shall have effect as if no land comprised in the part of the affected area not required were designated therein as land subject to compulsory acquisition.

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*Supplementary and general provisions*

- 13 (1) In relation to any time after the death of a person who has served a notice under section thirty-nine of this Act, subsection (1) of section forty, subsection (1) of section forty-one and subsection (3) of section forty-two of this Act shall apply subject to the following provisions of this paragraph.
- (2) In the application of those subsections to England and Wales, any reference to the claimant shall be construed as a reference to the claimant's personal representatives.
- (3) In the application of those subsections to Scotland, any reference to the claimant shall be construed as a reference to the person who, on the claimant's death, has succeeded to his interest in the hereditament or agricultural unit in question.
- 14 Without prejudice to the provisions of paragraph 8 of this Schedule, the power conferred by subsection (2) of section five of the Act of 1919 to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of Part IV of this Act.
- 15 Expressions used in this Schedule and in Part IV of this Act have the same meanings in this Schedule as in that Part of this Act.
- 16 Where by any provision of this Schedule power is conferred to determine any question for the purposes of Part IV of this Act, any exercise of that power shall have effect for the purposes of this Schedule as well as for the purposes of that Part of this Act.
- 17 In the application of this Schedule to Scotland, for any reference to the Minister of Transport and Civil Aviation there shall be substituted a reference to the Minister; for any reference to a highway (except in the expression " highway authority " ) there shall be substituted a reference to a road ; for any reference to a rating area there shall be substituted a reference to a valuation area, and, in relation to a valuation area, for any reference to the valuation list there shall be substituted a reference to the valuation roll; and for references to the provisions of Part II of the Highways Act, 1959, relating to trunk roads and special roads there shall be substituted references respectively to the Trunk Roads Act, 1946, and the Special Roads Act, 1949.