

## SCHEDULES

### SCHEDULE 21

Section 177.

#### CCOMPENSATION ETC. IN RESPECT OF CERTAIN WORKS POWER

##### *Compensation in respect of street works powers*

- 1 (1) This paragraph applies, in relation to the <sup>F1</sup>appropriate agency], to the powers conferred on it in relation to streets by sections 159 and 162 of this Act.
- (2) It shall be the duty of the <sup>F1</sup>appropriate agency]—
- (a) to do as little damage as possible in the exercise of the powers to which this paragraph applies; and
  - (b) to pay compensation for any loss caused or damage done in the exercise of those powers.
- (3) Any dispute as to whether compensation should be paid under sub-paragraph (2) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the Secretary of State.
- (4) Until the coming into force of Part III of the <sup>M1</sup>New Roads and Street Works Act 1991, a payment of compensation under this paragraph shall be treated for the purposes of section 32 of the <sup>M2</sup>Public Utilities Street Works Act 1950 (provisions against duplication of compensation) as made under an enactment passed before that Act of 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this paragraph).

#### Textual Amendments

- F1** Words in Sch. 21 para. 1 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 313](#) (with Sch. 7)

#### Marginal Citations

- M1** 1991 c. 22.  
**M2** 1950 c. 39.

##### *Compensation in respect of pipe-laying works on private land*

- 2 (1) If the value of any interest in any relevant land is depreciated by virtue of the exercise by the <sup>F2</sup>appropriate agency] of any power to carry out pipe-laying works on private land, the person entitled to that interest shall be entitled to compensation from the <sup>F2</sup>appropriate agency] of an amount equal to the amount of the depreciation.

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- (2) Where the person entitled to an interest in any relevant land sustains loss or damage which—
- (a) is attributable to the exercise by the [F<sup>2</sup>appropriate agency] of any power to carry out pipe-laying works on private land;
  - (b) does not consist in depreciation of the value of that interest; 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 section 154 of this Act,
- he shall be entitled to compensation from the [F<sup>2</sup>appropriate agency] in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.
- (3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to the exercise by the [F<sup>2</sup>appropriate agency], of any power to carry out pipe-laying works on private land, the [F<sup>2</sup>appropriate agency] shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.
- (4) The Secretary of State may by regulations make provision requiring the [F<sup>2</sup>appropriate agency], where it is proposing or has begun, in a prescribed case, to exercise any power to carry out pipe-laying works on private land, to make advance payments on account of compensation that will become payable in respect of the exercise of that power.
- (5) In this paragraph “relevant land”, in relation to any exercise of a power to carry out pipe-laying works on private land, means the land where the power is exercised or land held with that land.
- (6) In this paragraph the references to a power to carry out pipe-laying works on private land are references to any of the powers conferred by virtue of section 160 or 162(3) of this Act.

#### Textual Amendments

- F2** Words in *Sch. 21 para. 2* substituted (1.4.2013) by *The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755)*, art. 1(2), **Sch. 2 para. 313** (with *Sch. 7*)

#### *Assessment of compensation under paragraph 2*

- 3 (1) Any question of disputed compensation under paragraph 2 above shall be referred to and determined by the [F<sup>3</sup>Upper Tribunal] ; and in relation to the determination of any such compensation the provisions of [F<sup>4</sup>section] 4 of the <sup>M3</sup>Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (2) For the purpose of assessing any compensation under paragraph 2 above, so far as that compensation is in respect of loss or damage consisting in depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (3) Where the interest in land in respect of which any compensation falls to be assessed in accordance with sub-paragraph (2) above is subject to a mortgage—

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- (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
  - (b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
  - (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.
- (4) Where, apart from this sub-paragraph, any person entitled to an interest in any land would be entitled under paragraph 2 above to an amount of compensation in respect of any works, there shall be deducted from that amount an amount equal to the amount by which the carrying out of the works has enhanced the value of any other land which—
- (a) is contiguous or adjacent to that land; and
  - (b) is land to an interest in which that person is entitled in the same capacity.

#### Textual Amendments

- F3** Words in Sch. 21 para. 3(1) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 235(a)(i)** (with Sch. 5)
- F4** Word in Sch. 21 para. 3(1) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 235(a)(ii)** (with Sch. 5)

#### Marginal Citations

- M3** 1961 c. 33.

#### *Compensation in respect of discharges for works purposes*

- 4 (1) It shall be the duty of the [<sup>F5</sup>appropriate agency]—
- (a) to cause as little loss and damage as possible in the exercise of the powers conferred on it by section 163 of this Act; and
  - (b) to pay compensation for any loss caused or damage done in the exercise of those powers.
- (2) For the purposes of sub-paragraph (1) above any extra expenditure—
- (a) which it becomes reasonably necessary for any water undertaker, sewerage undertaker or public authority (other than the [<sup>F5</sup>appropriate agency] itself) to incur for the purpose of properly carrying out any statutory functions; and
  - (b) which is attributable to any discharge of water under section 163 of this Act, shall be deemed to be a loss sustained by the undertaker or public authority and to have been caused in exercise of the powers conferred by that section.
- (3) Any dispute as to whether compensation should be paid under sub-paragraph (1) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to

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the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

#### Textual Amendments

- F5** Words in Sch. 21 para. 4 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 313** (with Sch. 7)

#### *Compensation in respect of flood defence and drainage works*

- 5 (1) Where injury is sustained by any person by reason of the exercise by the [<sup>F6</sup>appropriate agency] of any powers under section 165(1) to (3) of this Act, the [<sup>F6</sup>appropriate agency] shall be liable to make full compensation to the injured party.
- (2) In case of dispute, the amount of any compensation under sub-paragraph (1) above shall be determined by the [<sup>F7</sup>Upper Tribunal] .
- (3) Where injury is sustained by any person by reason of the exercise by the [<sup>F6</sup>appropriate agency] of its powers under subsection (1)(b) of section 167 of this Act—
- (a) the [<sup>F6</sup>appropriate agency] may, if it thinks fit, pay to him such compensation as it may determine; and
  - (b) if the injury could have been avoided if those powers had been exercised with reasonable care, the provisions of sub-paragraphs (1) and (2) above shall apply as if the injury had been sustained by reason of the exercise by the [<sup>F6</sup>appropriate agency] of its powers under section 165(1) to (3) of this Act.

#### Textual Amendments

- F6** Words in Sch. 21 para. 5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 313** (with Sch. 7)
- F7** Words in Sch. 21 para. 5(2) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 235(b)** (with Sch. 5)

#### Modifications etc. (not altering text)

- C1** Sch. 21 para. 5(1)(2) applied (16.3.1992) by [Avon Weir Act 1992 \(c. v\)](#), s. 7(5) (with s. 61)
- C2** Sch. 21 para. 5(1)(2) applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, 8
- C3** Sch. 21 para. 5(1)(2) applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, 7
- C4** Sch. 21 para. 5(1)(2) applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), 7
- C5** Sch. 21 para. 5(1)(2) applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), 8

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