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Your Ref:
Our Ref: GRE SLCs 14 & 15
Direct Dial: 020 7901 7326
Email: sonia.brown@ofgem.gov.uk

Cc. All Interested Parties

6 September 2005

Dear colleague,

Request from the Green Renewable Energy Company Ltd for a Direction under Standard Condition 14 (“Compulsory Acquisition of Land etc”) and a Direction under Standard Condition 15 (“Other Powers etc”) of the Electricity Generation Licence

The Gas and Electricity Markets Authority (“the Authority”)¹ is considering an application for an electricity generation licence made by The Green Renewable Energy Company Ltd (“GRE”) on 8 June 2005.

As part of its application GRE submitted a request to the Authority seeking that the provisions of paragraphs 5 to 7 of Standard Licence Condition 14 (“SLC 14”) “Compulsory Acquisition of Land etc” and paragraphs 5 to 8 of Standard Licence Condition 15 (“SLC 15”) “Other Powers etc” be given effect in its electricity generation licence.

SLC 14 and SLC 15 refer to the powers and rights conferred by Schedule 3 and Schedule 4 of the Electricity Act 1989. They are only applicable to a holder of a generation licence to the extent that the licence so provides.² The generation licence makes provision for the Authority to make directions under SLC 14 and SLC 15 to give effect to certain paragraphs in those conditions which give the licence holder Schedule 3 and Schedule 4 rights (see below as to the detail of those rights).

This letter explains the background to GRE’s requests and invites views on the Authority’s preliminary view that it should issue the directions sought.

¹ Ofgem is the Office of the Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority, the regulator of the gas and electricity industries in Great Britain. Ofgem’s aim is to bring choice and value to all gas and electricity customers by promoting competition and regulating monopolies. The Authority’s powers are provided for under the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000. The terms ‘Ofgem’ and the ‘Authority’ are used interchangeably in this document.

² Section 10(1) of the Electricity Act 1989.

Background to SLC 14

Paragraphs 5 to 7 of SLC 14 set out the purposes for which the powers and rights conferred under Schedule 3³ of the Electricity Act 1989 shall have effect.

Schedule 3 provides for the Secretary of State to authorise a licence holder to purchase compulsorily any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.

The purposes referred to in SLC 14 (in paragraph 6 specifically) are:

- (a) the construction or extension of a generating station;
- (b) activities connected with the construction or extension of a generating station or connected with the operation of a generating station; and
- (c) the installation, maintenance, removal or replacement of electric lines, and electrical plant associated with them, connecting a generating station with:
 - (i) a transmission system; or
 - (ii) a distribution system.

For the purpose of clarification, the Authority does not have the vires to take a decision in respect of whether the land in question can be compulsorily purchased. Any such decisions fall to the Secretary of State (although where the land in question belongs to another licence holder, the Authority's consent to the Secretary of State's authorisation must be sought under paragraph 2(1) of Schedule 3).

Paragraphs 1 and 2 of SLC 14 specify how paragraphs 5 to 7 can be given effect. Paragraph 1 of SLC 14 relates to the provisions of paragraphs 5 to 7 of SLC 14 being brought into effect by the Secretary of State.⁴ Paragraph 2 of SLC 14 sets out that the Authority may issue a direction that the provisions of paragraphs 5 to 7 of SLC 14 shall have effect for a period specified in the direction and that this period may be extended by a further direction of the Authority.

Details of those licences in which paragraphs 5 to 7 of SLC 14 have been given effect are available on the electronic public register⁵ on the Ofgem website.⁶

Background to SLC 15

Paragraphs 5 to 8 of SLC 15 details the activities that the licensee is enabled to carry out by the effect of the powers and rights conferred under Schedule 4⁷ of the Electricity Act 1989 and

³ Schedule 3 of the Electricity Act 1989 is set out in full in Appendix 1.

⁴ Paragraph 1 of SLC 14 sets out that where the Secretary of State provides by a scheme made under Schedule 7 to the Utilities Act 2000 for SLC 14 to have effect within a generation licence, the provisions contained in paragraphs 5 to 7 will apply to the licensee from the date the scheme takes effect until such date as may be specified in the scheme. The last day for the Secretary of State to exercise the scheme-making power was the day before section 30 of the Utilities Act 2000 came into force i.e. 30th September 2001.

⁵ <http://62.173.69.60/index.php?pk=folder97241>

⁶ www.ofgem.gov.uk

requires the licensee to obtain the consent of the Authority before exercising its rights of entry to land⁸ for the purpose of establishing whether or not the land is suitable for the construction or extension of a generating station.

Schedule 4 gives powers to licence holders, subject to the necessary consents and giving of notices, to execute certain kinds of work for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, specifically:

(a) the installation under, over, in, along, or across any street and from time to time inspecting, maintaining, adjusting, repairing, altering, replacing and removing:

- (i) any electric lines or electrical plant; and
- (ii) any structures for housing or covering such lines or plant;

(b) any works requisite for or incidental to the purposes of any works falling in (a) above including for those purposes:

- (i) opening or breaking up any street or sewers, drains or tunnels within or under any street;
- (ii) tunnelling or boring under any street; and
- (iii) removing or using all earth and materials in or under any street.

Paragraph 6 of Schedule 4 relates to the acquisition of wayleaves by the licensee. In particular, it enables the Secretary of State to grant the necessary wayleave, if this has not been done by the owner or occupier of the land.

Paragraphs 1 and 2 of SLC 15 specify how paragraphs 5 to 8 can be given effect. Paragraph 1 of SLC 15 relates to the provisions of paragraphs 5 to 8 being brought into effect by the Secretary of State.⁹ Paragraph 2 of SLC 15 sets out that the Authority may issue a direction that the provisions of paragraphs 5 to 8 of SLC 15 shall have effect for a period specified in the direction and that this period may be extended by a further direction of the Authority.

Details of those licences in which paragraphs 5 to 8 of SLC 15 have been given effect are available on the electronic public register on the Ofgem website.

GRE's request

GRE has submitted a request to the Authority seeking that the provisions of paragraphs 5 to 7 of SLC 14 and paragraphs 5 to 8 of SLC 15 be given effect in its electricity generation licence.

⁷ Schedule 4 of the Electricity Act 1989 is set out in full in Appendix 2.

⁸ Paragraph 10(1) of Schedule 4

⁹ Paragraph 1 of SLC 15 sets out that where the Secretary of State provides by a scheme made under Schedule 7 to the Utilities Act 2000 for SLC 15 to have effect within a generation licence, the provisions contained in paragraphs 5 to 8 shall apply to the licensee from the date the scheme takes effect until such date as may be specified in the scheme. The last day for the Secretary of State to exercise the scheme-making power was the day before section 30 of the Utilities Act 2000 came into force i.e. 30th September 2001.

GRE has stated in its request that it is developing a series of biomass power plants at various locations in the country, in respect of which it considers it essential to have available wayleaves, easements etc. for the installation and connection of associated pipes, pipelines, cables export of power off site, construction and laydown areas, access etc.

Ofgem's preliminary view

Request in relation to SLC 14

The preliminary view of the Authority is that it should make a direction to give effect to paragraphs 5 to 7 of SLC 14 of the electricity generation licence to be granted to GRE. It proposes that such direction should be for a period of five years.

This preliminary view is consistent with the Authority's decision in respect of the electricity generation licence of British Energy Generation Ltd.¹⁰ In that decision, Ofgem considered that it was appropriate, "subject to the outcome of any review Ofgem conducts in relation to the application of the powers, rights and obligations conferred on licensees in the electricity generation licence" to limit the duration for which paragraphs 5 to 7 of SLC 14 were given effect to five years.

Ofgem has not yet undertaken the wider electricity generation licence review referred to in the British Energy decision letter and considers that, in the absence of circumstances that distinguish this application from the application of British Energy Generation Ltd, it would be appropriate for the Authority to make the direction that GRE has sought. It should be noted that any wider review of the electricity generation licence provisions would consider both of the relevant standard licence conditions discussed in this consultation.

Request in relation to SLC 15

The preliminary view of the Authority is that it should also make a direction to give effect to paragraphs 5 to 8 of SLC 15 of the electricity generation licence to be granted to GRE. It proposes that such direction should be for a period of five years.

Ofgem considers that this preliminary view is consistent with the principal objective of the Authority to protect the interests of consumers,¹¹ wherever appropriate, by promoting effective competition between persons engaged in the generation of supply, and further that this preliminary view will assist in the meeting of all reasonable demands for electricity. Ofgem considers this to be the case as giving effect to paragraphs 5 to 8 of SLC 15 is intended to assist GRE in the construction of new generation facilities.

¹⁰ Decision in relation to the request of British Energy Plc for paragraphs 5 to 7 of Standard Licence Condition 14: "Compulsory Acquisition of Land etc" to be given effect in the electricity generation licence of British Energy Generation Ltd, February 2005.

¹¹ Ofgem's principal objective is defined in Section 3A of the Electricity Act 1989 (as amended).

Views invited

Ofgem would welcome the views of interested parties on the Authority's preliminary view that paragraphs 5 to 7 of SLC 14 and paragraphs 5 to 8 of SLC 15 should be given effect in the electricity generation licence of GRE, for five years in each case. Interested parties are requested to submit their views by 5pm on 18 October 2005. Responses should be addressed to:

Ben Woodside
Wholesale Markets
Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

Electronic responses may be sent to wholesale.markets@ofgem.gov.uk please mark your response 'GRE SLCs 14 & 15 application'.

Respondents are free to mark their replies as confidential although Ofgem would prefer, as far as possible, to be able to place responses to this paper in the Ofgem library. Unless clearly marked 'confidential', responses will be published by placing them in the Ofgem library and on the Ofgem website. Respondents should be aware that Ofgem may be required by law to disclose any reply.

If you have any queries in relation to the issues raised in this letter, please feel free to contact Ben Woodside on 020 7901 7471.

Consultation code of practice

If respondents have comments or complaints about the way this consultation has been conducted these should be sent to:

Michael Fews
Head of Licensing
Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

michael.fews@ofgem.gov.uk

Yours sincerely,



Sonia Brown
Director, Wholesale Markets

Appendix 1

SCHEDULE 3

Compulsory Acquisition of Land etc. by Licence Holders

Part I Powers of Acquisition

1.—(1) Subject to paragraph 2 below, the Secretary of State may authorise a licence holder to purchase compulsorily any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.

(2) In this paragraph and paragraph 2 below "land" includes any right over land (other than, in Scotland, a right to abstract, divert and use water); and the power of the Secretary of State under this paragraph includes power to authorise the acquisition of rights over land by creating new rights as well as acquiring existing ones.

2.—(1) No order shall be made under paragraph 1 above authorising the compulsory purchase of land belonging to another licence holder except with the consent of the Authority.

(2) The Authority shall not give his consent under this paragraph if—

(a) the land is being used by the licence holder to whom it belongs for the purposes of an installation necessary for the carrying on of the activities which he is authorised by his licence to carry on; or

(b) it appears to the Authority that the land will be so used and that the use will commence, or any necessary planning permission or consent under section 36 or 37 of this Act will be applied for, within the period of five years beginning with the date of the application for his consent.

(3) The Secretary of State may by order provide that sub-paragraph (2) above shall have effect as if for the period mentioned in paragraph (b) there were substituted such other period as may be specified in the order.

(4) A consent under this paragraph which is not acted on within the period of six months beginning with the day on which it is granted shall cease to have effect at the end of that period.

(5) In this paragraph—
"the Planning Act" means the [Town and Country Planning Act 1990]¹² or the [Town and Country Planning (Scotland) Act 1997] Town and Country Planning (Scotland) Act 1997]¹³;
"planning permission" means a planning permission granted under Part III of the Planning Act.

¹² Words in brackets and italics inserted by section 4, Para 83 (1) Schedule 2 Planning (Consequential Provisions) Act 1990

¹³ Words in brackets and italics inserted by section 4, Para 44 (1) Schedule 2 Planning (Consequential Provisions) (Scotland) Act 1997

3.—(1) This paragraph applies to land which—
(a) for the purposes of the Acquisition of Land Act 1981, is or forms part of a common, open space or a fuel or field garden allotment; or

(b) for the purposes of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, is or forms part of a common or open space.

(2) Where for any purpose a licence holder has acquired, or proposes to acquire, any land to which this paragraph applies, or any right over any such land, and other land is required for the purpose of being given in exchange for the land or right in question, the Secretary of State may authorise the licence holder to purchase that other land compulsorily, or he may acquire it by agreement.

4. Where a licence holder has acquired any land by virtue of paragraph 1 above, he shall not dispose of that land or of any interest in or right over it except with the consent of the Authority.

Part II Procedure, Compensation etc. (England and Wales)

Application of Acquisition of Land Act 1981 generally

5.—(1) Subject to sub-paragraph (2) below, the Acquisition of Land Act 1981 shall apply to a compulsory purchase by a licence holder of land or rights in England and Wales; and Schedule 3 to that Act shall apply in the case of a compulsory acquisition by a licence holder of a right by the creation of a new right.

(2) Section 16 of, and paragraph 3 of Schedule 3 to, the said Act of 1981 (statutory undertakers' land excluded from compulsory purchase) shall not apply where the land or rights in question belong to another licence holder.

New rights: general adaptation of Compulsory Purchase Act 1965

6. The Compulsory Purchase Act 1965 shall have effect with the modifications necessary to make it apply to a licence holder's compulsory acquisition of a right in England and Wales by the creation of a new right as it applies to the compulsory acquisition of land, so that, in appropriate contexts, references in that Act to land are to be read as referring, or as including references, to the right acquired or to be acquired, or to land over which the right is or is to be exercisable, according to the requirements of the particular context.

New rights: specific adaptations of Act of 1965

7. Without prejudice to the generality of paragraph 6 above, Part I of the Compulsory Purchase Act 1965 shall apply in relation to a licence holder's compulsory acquisition of a right in England and Wales by the creation of a new right with the modifications specified in paragraphs 8 to 13 below.

8. For section 7 of that Act (measure of compensation) there shall be substituted the following section—

"7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

9. For subsection (1) of section 8 of that Act (protection for vendor against severance of house, garden, etc.) there shall be substituted the following subsections—

"(1) No person shall be required to grant any right over part only—

(a) of any house, building or manufactory; or

(b) of a park or garden belonging to a house,

if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal determine that—

(i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory; or

(ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house;

and if the Lands Tribunal so determine, the Tribunal shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.

(1A) In considering the extent of any material detriment to a house, building or manufactory, or any extent to which the amenity or convenience of a house is affected, the Lands Tribunal shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase."

10. The following provisions of that Act (being provisions stating the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land)—

section 9(4) (refusal by owners to convey);

Schedule 1, paragraph 10(3) (owners under incapacity);

Schedule 2, paragraph 2(3) (absent and untraced owners); and

Schedule 4, paragraphs 2(3) and 7(2) (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

11. Section 11 of that Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on sheriff's warrant in the event of obstruction) shall be modified correspondingly.

12. Section 20 of that Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

13. Section 22 of that Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

New rights: compensation

14. The enactments in force in England and Wales with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a licence holder's compulsory acquisition of a right by the creation of a new right as they apply to compensation on the compulsory purchase of land and interests in land.

Part III Procedure, Compensation etc. (Scotland)

Application of Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 generally

15.—(1) Subject to sub-paragraph (2) below, the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to the compulsory purchase by a licence holder of land or rights in Scotland as if the licence holder were a local authority within the meaning of that Act, and as if this Act had been in force immediately before the commencement of that Act.

(2) Paragraph 10 of the First Schedule to that Act (statutory undertakers' land excluded from compulsory purchase) shall not apply where the land or rights in question belong to another licence holder.

New rights: general application of Act of 1947 and incorporated enactments

16. The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, and the enactments incorporated with this Act by virtue of paragraph 15 above and paragraph 1 of the Second Schedule to that Act shall have effect with the modifications necessary to make them apply to a licence holder's compulsory acquisition of a right in Scotland by the creation of a new right (other than a right to abstract, divert and use water) as they apply to the compulsory acquisition of land, so that, in appropriate contexts, references in those enactments and that Act to land are to be read as referring, or as including references, to the right acquired or to be acquired, or to land over which the right is or is to be exercisable, according to the requirements of the particular context.

New rights: specific adaptations of Act of 1947

17. Without prejudice to the generality of paragraph 16 above, Part III of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (requirement of special parliamentary procedure, and other special provisions, in the case of acquisition of certain descriptions of land) shall apply in relation to a licence holder's compulsory acquisition of a right in Scotland by the creation of a new right with the modifications specified in paragraphs 18 to 23 below.

18. In paragraph 9 of that Schedule (compulsory purchase affecting land of the National Trust for Scotland) for references to the compulsory purchase of land there shall be substituted references to the compulsory acquisition of rights over land.

19. In paragraph 10 of that Schedule (land of statutory undertakers)—

(a) for the words "land comprised in the order" there shall be substituted the words "land over which a right is to be acquired by virtue of the order";

(b) for the words "purchase of" there shall be substituted the words "acquisition of a right over";

(c) for the words "it can be purchased and not replaced" there shall be substituted the words "the right can be acquired"; and

(d) for sub-paragraph (ii) there shall be substituted the following sub-paragraph— "(ii) that any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to, or available for acquisition by, them" .

20. In paragraph 11 of that Schedule (common or open space), for sub-paragraph (1) there shall be substituted the following sub-paragraph—

"(1) In so far as a compulsory purchase order authorises the acquisition of a right over land forming part of a common or open space, it shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—

(a) that the land, when burdened with that right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before;

(b) that there has been or will be given in exchange for the right additional land which will as respects the persons in whom there is vested the land over which the right is to be acquired, the persons, if any, entitled to rights of common or other rights over that land, and the public, be adequate to compensate them for the disadvantages which result from the acquisition of the right, and that the additional land has been or will be vested in the persons in whom there is vested the land over which the right is to be acquired, and subject to the like rights, trusts and incidents as attach to that land apart from the compulsory purchase order; or

(c) that the land affected by the right to be acquired does not exceed 250 square yards in extent, and that the giving of other land in exchange for the right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public,

and certifies accordingly."

21.¹⁴

22. Paragraph 3(1) of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall be so modified as to secure that, as from the date on which the licence holder has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice).

23. For paragraph 4 of that Schedule (protection for owner against severance of property) there shall be substituted the following paragraphs—

"4. No person shall be required to grant any right over part only—

(a) of any house, building or manufactory; or

(b) of a park or garden belonging to a house,

¹⁴ This paragraph is deleted by Schedule 8 of the Utilities Act 2000 which was brought into force by SI 2001 No. 3266 on 1st October 2001.

if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal for Scotland determines that—

(i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory; or

(ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house;

and if it so determines, it shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.

4A. In considering, for the purposes of paragraph 4 above, the extent of any material detriment to a house, building or manufactory, or any extent to which the amenity or convenience of a house is affected, the Lands Tribunal for Scotland shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase."

New rights: specific adaptations of Lands Clauses Consolidation (Scotland) Act 1845

24. Without prejudice to the generality of paragraph 16 above, the Lands Clauses Consolidation (Scotland) Act 1845 shall apply in relation to a licence holder's compulsory acquisition of a right in Scotland by the creation of a new right with the modifications specified in paragraphs 25 to 28 below.

25. For section 61 of that Act (estimation of compensation) there shall be substituted the following section—

"61. In estimating the purchase money or compensation to be paid by the licence holder under the special Act, in any of the cases aforesaid, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right, but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

26. The following provisions of that Act (being provisions stating the effect of a notarial instrument or of a disposition executed in various circumstances where there is no conveyance by persons with interests in the land)—

section 74 (failure by owner to convey);

section 76 (refusal to convey or show title or owner cannot be found);

section 98 (vesting of common land),

shall be so modified as to secure that, as against persons with interests in the land over which the right is to be compulsorily acquired, such right is vested absolutely in the licence holder.

27. Sections 114 (compensation to be made to tenants for a year etc.) and 115 (compensation where greater interest than tenant for a year) of that Act shall apply with the modifications necessary to secure that persons with such interests as are mentioned in those sections are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

28. Sections 117 (protection of promoter of undertaking where by inadvertence an interest in land has not been purchased etc.) and 118 (provisions supplementary to section 117) of that Act shall be so modified as to enable the licence holder, in circumstances corresponding to those referred to in those sections, to continue entitled to exercise the right acquired, subject to compliance with those sections as respects compensation.

New rights: compensation

29. The enactments in force in Scotland with respect to compensation for the compulsory purchase of land shall apply as respects compensation in the case of a licence holder's compulsory acquisition of a right by the creation of a new right (other than a right to abstract, divert and use water) as they apply to compensation on the compulsory purchase of land and interests in land.

Appendix 2

SCHEDULE 4

Other Powers etc. of Licence Holders

Street works etc. in England and Wales

1.—(1) Subject to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—

(a) the following kinds of works, that is to say, installing under, over, in, on, along or across any street and from time to time inspecting, maintaining, adjusting, repairing, altering, replacing or removing—

(i) any electric lines or electrical plant; and

(ii) any structures for housing or covering any such lines or plant; and

(b) any works requisite for or incidental to the purposes of any works falling within paragraph (a) above, including for those purposes—

(i) opening or breaking up any street or any sewers, drains or tunnels within or under any street;

(ii) tunnelling or boring under any street; and

(iii) removing or using all earth and materials in or under any street;

but nothing in this sub-paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land not dedicated to the public use.

(2) The power of a licence holder under sub-paragraph (1) to place on or over a street any structure for housing any line or plant shall be exercisable only—

(a) in the case of a street which constitutes for the purposes of the [1980 c. 66.] Highways Act 1980 a highway or part of a highway maintainable at the public expense, with the consent of the highway authority;

(b) in the case of a street not falling within paragraph (a) above which is under the control or management of a railway or navigation authority, with the consent of that authority;

(c) in the case of a street not falling within paragraph (a) or (b) above which is repairable by any person, with the consent of that person;

but no such consent shall be unreasonably withheld.

(3) Any question under sub-paragraph (2) above as to whether or not a consent is unreasonably withheld shall be determined by a single arbitrator to be appointed by the parties or, in default of agreement, by the Director.

(4) Except in cases of emergency arising from faults in any electric lines or electrical plant, a street falling within paragraph (b) or (c) of sub-paragraph (2) above shall not be opened or broken up by virtue of sub-paragraph (1) above except with the consent of the person mentioned in that paragraph or the consent of the Secretary of State.

(5) The Secretary of State shall not entertain an application for his consent under sub-paragraph (4) above unless the licence holder has served notice of the application on the person whose consent would otherwise be required.

(6) A licence holder shall do as little damage as possible in the exercise of the powers conferred by sub-paragraph (1) above and shall make compensation for any damage done in the exercise of those powers.

(7) A licence holder shall exercise the powers conferred by sub-paragraph (1) above in such manner as will secure that nothing which he installs or keeps installed under, over, in, on, along or across any street becomes a source of danger to the public.

(8) The powers conferred by sub-paragraph (1) above shall be included among those to which section 20 of the [1980 c. 66.] Highways Act 1980 (restriction on laying of apparatus etc. in special roads) applies; and nothing in that sub-paragraph shall affect the application to any operation of sections 34 to 36 of the [1949 c. 74.] Coast Protection Act 1949.

(9) In this paragraph—

"highway authority", in relation to a street, means the highway authority having the control or management of the street;

"street" means any square, court, alley, highway, road, lane, thoroughfare, public passage or place and includes, unless the context otherwise requires, any bridge which carries a street.

(10) This paragraph extends to England and Wales only.

Road works etc. in Scotland

2.—(1) Subject to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—

(a) the following kinds of works, that is to say, installing under, over, in, on, along or across any road or bridge and from time to time inspecting, maintaining, adjusting, repairing, altering or removing—

(i) any electric lines or electrical plant; and

(ii) any structures for housing or covering any such lines or plant; and

(b) any works requisite for or incidental to the purposes of any works falling within paragraph (a) above, including for those purposes—

(i) opening or breaking up any road or bridge or any sewers, drains or tunnels within or under any road or bridge;

(ii) tunnelling or boring under any road; and

(iii) removing or using all earth and materials in or under any road;

but nothing in this sub-paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land over which there is no public right of passage.

(2) The power of a licence holder under sub-paragraph (1) above to place on or over a road or bridge any structure for housing any line or plant shall be exercisable only—

(a) in the case of a public road, with the consent of the roads authority;

(b) in the case of a road or bridge which is not a public road but is under the control or management of a railway or navigation authority, with the consent of that authority;

(c) in any other case, with the consent of the road managers or as the case may be of the bridge authority or managers;

but no such consent shall be unreasonably withheld.

(3) Any question under sub-paragraph (2) above as to whether or not a consent is unreasonably withheld shall be determined by a single arbiter to be appointed by the parties or, in default of agreement, by the Director.

(4) Except in cases of emergency arising from faults in any electric lines or electrical plant, a road or bridge falling within paragraph (b) or (c) of sub-paragraph (2) above shall not be opened or broken up by virtue of sub-paragraph (1) above except with the consent of the person mentioned in that paragraph or the consent of the Secretary of State.

(5) The Secretary of State shall not entertain an application for his consent under sub-paragraph (4) above unless the licence holder has served notice of the application in the prescribed form on the person whose consent would otherwise be required.

(6) A licence holder shall do as little damage as possible in the exercise of the powers conferred by sub-paragraph (1) above and shall make compensation for any damage done in the exercise of those powers.

(7) A licence holder shall exercise the powers conferred by sub-paragraph (1) above in such manner as will secure that nothing which he installs or keeps installed under, over, in, on, along or across any road or bridge becomes a source of danger to the public.

(8) The powers conferred by sub-paragraph (1) above shall be included among those to which section 133 of the [1984 c. 54.] Roads (Scotland) Act 1984 (restriction on laying of apparatus etc. in special roads) applies; and nothing in that sub-paragraph shall affect the application to any operation of sections 34 to 36 of the [1949 c. 74.] Coast Protection Act 1949.

(9) In this paragraph—

"bridge" means a bridge which carries a road;

"public road" has the same meaning as in the Roads (Scotland) Act 1984; and

"bridge authority or managers", "road", "roads authority" and "road managers" have the same meanings as in the [1950 c. 39.] Public Utilities Street Works Act 1950.

(10) This paragraph extends to Scotland only.

Alteration of works

3.—(1) A licence holder may execute works in pursuance of paragraph 1 or 2 above, notwithstanding that they involve a temporary or permanent alteration of any of the following, namely—

- (a) any electric line or electrical plant under the control of another licence holder;
- (b) any gas pipe under the control of a public gas supplier;
- (c) any relevant pipe (within the meaning of Schedule 19 to the [1989 c. 15.] Water Act 1989) under the control of the National Rivers Authority, a water undertaker or a sewerage undertaker or, in Scotland, any water pipe under the control of a person supplying water in the exercise of statutory powers;
- (d) any telecommunication apparatus used for the purposes of a telecommunication system which is operated by a person to whom the telecommunications code applies; or
- (e) any system apparatus (within the meaning of Part II of the [1989 c. 22.] Road Traffic (Driver Licensing and Information Systems) Act 1989) of an operator of a driver information system who is licensed under Part II of that Act.

(2) Where a licence holder is proposing to execute works in pursuance of paragraph 1 or 2 above which involve or are likely to involve any such alteration as is mentioned in sub-paragraph (1)(a), (b) or (c) above, the following provisions of this paragraph shall apply; and in those provisions "the relevant undertaker" means the other licence holder, the public gas supplier or the person supplying water in the exercise of statutory powers, as the case may be.

(3) The licence holder shall, not less than one month before the works are commenced, give the relevant undertaker a notice specifying the nature of the licence holder's works, the alteration or likely alteration involved and the time and place at which the works will be commenced.

(4) Sub-paragraph (3) above shall not apply in relation to any emergency works of which the licence holder gives the relevant undertaker notice as soon as practicable after commencing the works.

(5) Where a notice has been given under sub-paragraph (3) above by the licence holder to the relevant undertaker, the undertaker may within the period of seven days beginning with the giving of the notice give the licence holder a counter-notice which may state either—

- (a) that the undertaker intends himself to make any alteration made necessary or expedient by the licence holder's proposed works; or
- (b) that he requires the licence holder in making any such alteration to do so under the supervision and to the satisfaction of the undertaker.

(6) Where a counter-notice given under sub-paragraph (5) above states that the relevant undertaker intends himself to make any alteration—

- (a) the undertaker shall (subject to sub-paragraph (8) below) have the right, instead of the licence holder, to execute any works for the purpose of making that alteration; and

(b) any expenses incurred by the undertaker in or in connection with the execution of those works and the amount of any loss or damage sustained by the undertaker in consequence of the alteration shall be recoverable by the undertaker from the licence holder in any court of competent jurisdiction.

(7) Where a counter-notice given under sub-paragraph (5) above states that any alteration is to be made under the supervision and to the satisfaction of the relevant undertaker—

(a) the licence holder shall not make the alteration except as required by the notice or under sub-paragraph (8) below; and

(b) any expenses incurred by the undertaker in or in connection with the provision of that supervision and the amount of any loss or damage sustained by the undertaker in consequence of the alteration shall be recoverable by the undertaker from the licence holder in any court of competent jurisdiction.

(8) Where—

(a) no counter-notice is given under sub-paragraph (5) above; or

(b) the relevant undertaker, having given a counter-notice falling within that sub-paragraph, fails to make any alteration made necessary or expedient by the licence holder's proposed works within such period (being not less than 48 hours) as the licence holder may by notice specify or, as the case may be, unreasonably fails to provide the required supervision,

the licence holder may himself execute works for the purpose of making the alteration or, as the case may be, may execute such works without the supervision of the undertaker; but in either case the licence holder shall execute the works to the satisfaction of the undertaker.

(9) If the licence holder or any of his agents—

(a) executes any works without the notice required by sub-paragraph (3) above having been given; or

(b) unreasonably fails to comply with any reasonable requirement of the relevant undertaker under this paragraph,

he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

4.—(1) Any of the following who is authorised by or under any enactment to execute works corresponding to those authorised by paragraph 1 or 2 above, namely—

(a) any public gas supplier;

(b) the National Rivers Authority, any water undertaker or any sewerage undertaker or, in Scotland, any person supplying water in the exercise of statutory powers;

(c) any public telecommunications operator; and

(d) any operator of a driver information system who is licensed under Part II of the [\[1989 c. 22.\]](#) Road Traffic (Driver Licensing and Information Systems) Act 1989,

(in this paragraph referred to as a "relevant undertaker") may execute such works, notwithstanding that they involve a temporary or permanent alteration of any electric line or electrical plant under the control of a licence holder.

(2) Where a relevant undertaker is proposing to execute any such works as are mentioned in sub-paragraph (1) above which involve or are likely to involve any such alteration as is there mentioned, sub-paragraphs (3) to (9) of paragraph 3 above shall apply as if—

(a) any reference to the licence holder were a reference to the relevant undertaker; and

(b) any reference to the relevant undertaker were a reference to the licence holder.

Protection from interference

5.—(1) Subject to sub-paragraph (2) below, a licence holder who installs or alters, or changes the mode of operation of, any electric line or electrical plant shall take all reasonable precautions for securing that the operation of that line or plant does not interfere with the operation of any telecommunication apparatus which—

- (a) is under the control of a person to whom the telecommunications code applies; and
- (b) is not unusually sensitive to interference with its operation.

(2) In the case of any telecommunication apparatus which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (1) above shall not apply in relation to—

- (a) any momentary interference with its operation; or
- (b) where it is installed in unreasonably close proximity to the electric line or electrical plant, any other interference with its operation.

(3) Sub-paragraphs (1) and (2) above shall be read as also applying in the converse case of a person to whom the telecommunications code applies who installs or alters, or changes the mode of operation of, any telecommunication apparatus, and in such a case shall have effect as if—

- (a) any reference to the licence holder were a reference to that person;
- (b) any reference to an electric line or electrical plant were a reference to such apparatus; and
- (c) any reference to such apparatus under the control of a person to whom that code applies were a reference to such a line or such plant under the control of a licence holder.

(4) Any difference arising under this paragraph between a licence holder and a person to whom the telecommunications code applies shall be referred to arbitration by an arbitrator or, in Scotland, arbiter appointed, in default of agreement between the parties, by the President of the Chartered Institute of Arbitrators.

(5) In this paragraph "momentary interference" means any interference of momentary duration which is not a regular occurrence (whether caused by physical contact or otherwise).

Acquisition of wayleaves

6.—(1) This paragraph applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to instal and keep installed an electric line on, under or over any land; and
- (b) the owner or occupier of the land, having been given a notice requiring him to give the necessary wayleave within a period (not being less than 21 days) specified in the notice—

- (i) has failed to give the wayleave before the end of that period; or

(ii) has given the wayleave subject to terms and conditions to which the licence holder objects;

and in this paragraph as it so applies "the necessary wayleave" means consent for the licence holder to instal and keep installed the electric line on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line.

(2) This paragraph also applies where—

(a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to keep an electric line installed on, under or over any land; and

(b) the owner or occupier of the land has given notice to the licence holder under paragraph 8(2) below requiring him to remove the electric line;

and in this paragraph as it so applies "the necessary wayleave" means consent for the licence holder to keep the electric line installed on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line.

(3) Subject to sub-paragraphs (4) and (5) below, the Secretary of State may, on the application of the licence holder, himself grant the necessary wayleave subject to such terms and conditions as he thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(4) The Secretary of State shall not entertain an application under sub-paragraph (3) above in any case where—

(a) the land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and

(b) the line is to be installed on or over the land.

(5) Before granting the necessary wayleave, the Secretary of State shall afford—

(a) the occupier of the land; and

(b) where the occupier is not also the owner of the land, the owner,
an opportunity of being heard by a person appointed by the Secretary of State.

(6) A necessary wayleave granted under this paragraph—

(a) shall not be subject to the provisions of any enactment requiring the registration of interests in, charges over or other obligations affecting land; but

(b) shall bind any person who is at any time the owner or occupier of the land.

(7) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, he shall be deemed to have an interest in that land for the purposes of section 7 of the [1966 c. 4.] Mines (Working Facilities and Support) Act 1966.

(8) In this paragraph "dwelling" means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling or, in relation to

Scotland, a private house, and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part.

Provisions supplementary to paragraph 6

7.—(1) Where a wayleave is granted to a licence holder under paragraph 6 above—
(a) the occupier of the land; and
(b) where the occupier is not also the owner of the land, the owner,
may recover from the licence holder compensation in respect of the grant.

(2) Where in the exercise of any right conferred by such a wayleave any damage is caused to land or to moveables, any person interested in the land or moveables may recover from the licence holder compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any land or moveables he may recover from the licence holder compensation in respect of that disturbance.

(3) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

(4) Any question of disputed compensation under this paragraph shall be determined by the Tribunal; and sections 2 and 4 of the [1961 c. 33.] Land Compensation Act 1961 or sections 9 and 11 of the [1963 c. 51.] Land Compensation (Scotland) Act 1963 shall apply to any such determination.

Temporary continuation of wayleaves

8.—(1) This paragraph applies where at any time such a wayleave as is mentioned in paragraph 6 above (whether granted under that paragraph or by agreement between the parties)—

- (a) is determined by the expiration of a period specified in the wayleave;
- (b) is terminated by the owner or occupier of the land in accordance with a term contained in the wayleave; or
- (c) by reason of a change in the ownership or occupation of the land after the granting of the wayleave, ceases to be binding on the owner or occupier of the land.

(2) The owner or occupier of the land may—

- (a) in a case falling within paragraph (a) of sub-paragraph (1) above, at any time after or within three months before the end of the period specified in the wayleave;
- (b) in a case falling within paragraph (b) of that sub-paragraph, at any time after the wayleave has been terminated by him; or
- (c) in a case falling within paragraph (c) of that sub-paragraph, at any time after becoming the owner or occupier of the land by virtue of such a change in the ownership or occupation of the land as is mentioned in that paragraph,

give to the licence holder a notice requiring him to remove the electric line from the land; but the licence holder shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this paragraph.

(3) Where within the period of three months beginning with the date of the notice under sub-paragraph (2) above the licence holder makes neither—

- (a) an application for the grant of the necessary wayleave under paragraph 6 above; nor
- (b) an order authorising the compulsory purchase of the land made by virtue of paragraph 1 of Schedule 3 to this Act,

the licence holder shall comply with the notice at the end of that period.

(4) Where—

- (a) within the period mentioned in sub-paragraph (3) above the licence holder makes an application for the grant of the necessary wayleave under paragraph 6 above; and
- (b) that application is refused by the Secretary of State,

the licence holder shall comply with the notice under sub-paragraph (2) above at the end of the period of one month beginning with the date of the Secretary of State's decision or such longer period as the Secretary of State may specify.

(5) Where—

- (a) within the period mentioned in sub-paragraph (3) above the licence holder makes an order by virtue of paragraph 1 of Schedule 3 to this Act authorising the compulsory purchase of the land; and
- (b) that order is not confirmed by the Secretary of State,

the licence holder shall comply with the notice under sub-paragraph (2) above at the end of the period of one month beginning with the date of the Secretary of State's decision or such longer period as the Secretary of State may specify.

Felling and lopping of trees etc.

9.—(1) This paragraph applies where any tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by a licence holder as—

- (a) to obstruct or interfere with the installation, maintenance or working of the line or plant; or
- (b) to constitute an unacceptable source of danger (whether to children or to other persons);

and in this paragraph "the land" means the land on which the tree is growing.

(2) The licence holder may give notice to the occupier of the land requiring him to fell or lop the tree or cut back its roots so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above, subject to the payment to him by the licence holder of the expenses reasonably incurred by him in complying with the notice.

(3) Where the occupier is not also the owner of the land, a copy of any notice under sub-paragraph (2) above shall also be served on the owner.

(4) If within 21 days from the giving of a notice under sub-paragraph (2) above—

- (a) the requirements of the notice are not complied with; and
- (b) neither the owner nor occupier of the land gives a counter notice under sub-paragraph (5) below,

the licence holder may cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above.

(5) If, within 21 days from the giving of a notice under sub-paragraph (2) above, the owner or occupier of the land gives a counter notice to the licence holder objecting to the requirements of the notice, the matter shall, unless the counter notice is withdrawn, be referred to the Secretary of State.

(6) On a reference under sub-paragraph (5) above, the Secretary of State, after giving the parties an opportunity of being heard by a person appointed by him, may make such order as he thinks just, and any such order—

(a) may empower the licence holder (after giving such notice to any person by whom a counter notice was given of the commencement of the work as the order may direct) to cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above; and

(b) may determine any question as to what expenses (if any) are to be paid.

(7) Where the licence holder exercises any powers conferred under sub-paragraph (4) or (6) above, he shall—

(a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;

(b) cause felled trees, lopped boughs or root cuttings to be removed in accordance with the directions of the owner or occupier; and

(c) make good any damage done to the land.

(8) In this paragraph "tree" includes any shrub and references to felling or lopping, felled trees or lopped boughs shall be construed accordingly.

Entry on land for purposes of exploration

10.—(1) Subject to the following provisions of this paragraph and without prejudice to any other right of entry, a person authorised in writing by a licence holder may, at any reasonable time, enter upon and survey any land for the purpose of ascertaining whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on.

(2) A person authorised to enter upon any land under this section shall not demand to do so as of right unless—

(a) 14 days notice of the intended entry has been given to the occupier; and

(b) if required to do so, he has produced evidence of his authority.

(3) The powers conferred by this paragraph shall not be exercisable in relation to land which is covered by a building or will be so covered on the assumption that any planning permission which is in force is acted on.

(4) The power to survey land conferred by this paragraph includes power to search and bore for the purpose of ascertaining the nature of the subsoil; but works may not be carried out on the land for this purpose unless—

(a) notice of the proposed works is included in the notice given under sub-paragraph (2) above; and

(b) where land is held by statutory undertakers who object to the works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, the Secretary of State gives his consent.

(5) Where any person exercises any powers conferred by this paragraph, the licence holder by whom he was authorised shall make good any damage done to the land.

(6) In this paragraph "building" includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with a building.

Provisions supplementary to paragraphs 9 and 10

11.—(1) Any person who intentionally obstructs a person acting in the exercise of any power conferred by or under paragraph 9 or 10 above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where in the exercise of any power conferred by or under paragraph 9 or 10 above any damage is caused to land or to moveables, any person interested in the land or moveables may recover compensation in respect of that damage from the licence holder on whose behalf the power is exercised; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any land or moveables he may recover from that licence holder compensation in respect of that disturbance.

(3) Any question of disputed compensation under sub-paragraph (2) above shall be referred to and determined by the Tribunal; and sections 2 and 4 of the [1961 c. 33.] Land Compensation Act 1961 or sections 9 and 11 of the [1963 c. 51.] Land Compensation (Scotland) Act 1963 shall apply to any such determination.

Interpretation

12. In this Schedule—

"moveables" means chattels in relation to England and Wales and corporeal moveables in relation to Scotland;

"navigation authority" means any person or body of persons, whether incorporated or not, authorised by or under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

"the Planning Act" means the [1971 c. 78.] Town and Country Planning Act 1971 or the [1972 c. 52.] Town and Country Planning (Scotland) Act 1972;

"planning permission" means a planning permission granted under Part III of the Planning Act;

"public gas supplier" has the same meaning as in Part I of the [1986 c. 44.] Gas Act 1986;

"public telecommunications operator" has the same meanings as in the [1984 c. 12.] Telecommunications Act 1984;

"railway authority" means any person or body of persons, whether incorporated or not, authorised by any enactment to construct, work or carry on a railway;

"statutory undertakers" has the same meaning as in the Planning Act;
"telecommunication apparatus" and "telecommunication system" have the same meanings as in the Telecommunications Act 1984 and "the telecommunications code" means the code contained in Schedule 2 to that Act;
"the Tribunal" means the Lands Tribunal in relation to England and Wales and the Lands Tribunal for Scotland in relation to Scotland.