

*Changes to legislation: There are currently no known outstanding effects for the Land Powers (Defence) Act 1958, Part I. (See end of Document for details)*

## SCHEDULES

### SECOND SCHEDULE

#### PROVISIONS WITH RESPECT TO CERTAIN ORDERS

#### PART I

##### PROCEDURE FOR MAKING CERTAIN ORDERS

- 1 The provisions of this Part of this Schedule shall have effect for the purpose of the making by any Minister of an order under section six, ten, eleven, thirteen, fourteen . . . <sup>F1</sup> of this Act.

#### Textual Amendments

**F1** Words repealed by [Post Office Act 1969 \(c. 48\)](#), [Sch. 8 Pt. II](#)

- 2 (1) [<sup>F2</sup>Before making the order the Minister shall prepare a draft thereof, describing by reference to a map the land to which the draft order applies, and serve on every owner, lessee or occupier of any of that land (except tenants for a month or any period less than a month) notice that he proposes to make the order; and]  
[<sup>F2</sup>Before making the order the Minister shall—
- (a) prepare a draft order describing, by reference to a map, the land to which the draft order applies; and
  - (b) serve on every person—
    - (i) who is an owner, lessee, tenant (whatever the tenancy period) or occupier of any of that land;
    - (ii) to whom the Minister would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat; or
    - (iii) who the Minister thinks is likely to be entitled to make a claim for compensation under section 10 of that Act if the order is confirmed and the compulsory purchase takes place, so far as he is known to the Minister after making diligent inquiry,
- notice that he proposes to make the order.]
- [<sup>F3</sup>(1A)] any such notice—
- (a) except where it is accompanied by a copy of the draft order, shall state the effect thereof and name a place where a copy may be inspected during reasonable hours, being a place reasonably near to and accessible from the land in question;
  - (b) except where it is accompanied by a copy of the said map, shall name a place where a copy of that map may be inspected during reasonable hours, being such a place as aforesaid;

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- (c) shall specify the time (not being less than twenty-one days from the service of the notice) within which, and the manner in which, objections to the order may be made.
- (2) Where a notice is required to be served under this paragraph on the owner of any land which is ecclesiastical property, a like notice shall be served on the [F<sup>4</sup>Church Commissioners [F<sup>4</sup>Diocesan Board of Finance for the diocese in which the land is situated]].

In this sub-paragraph the expression “ecclesiastical property” means land [F<sup>5</sup>(not being land in Scotland, Northern Ireland, Wales or Monmouthshire)] belonging to any ecclesiastical benefice [F<sup>6</sup>of the Church of England], or being or forming part of a church subject to the jurisdiction of a bishop of any diocese [F<sup>6</sup>of the Church of England] or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

#### Textual Amendments

- F2** Words in Sch. 2 para. 2(1) substituted (E.W.) (24.5.2007) by [Planning and Compulsory Purchase Act 2004 \(Corresponding Amendments\) Order 2007 \(S.I. 2007/1519\)](#), art. 1(1), **Sch. para. 3(a)** (with art. 1(3))
- F3** Words in Sch. 2 para. 2 renumbered as para. 2(1A) (E.W.) (24.5.2007) by [Planning and Compulsory Purchase Act 2004 \(Corresponding Amendments\) Order 2007 \(S.I. 2007/1519\)](#), art. 1(1), **Sch. para. 3(b)** (with art. 1(3))
- F4** Words in Sch. 2 para. 2(2) substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), **Sch. 5 para. 5(a)**; 2006 No. 2, Instrument made by Archbishops
- F5** Words in Sch. 2 para. 2(2) omitted (E.) (1.10.2006) by virtue of [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), **Sch. 5 para. 5(a)**; 2006 No. 2, Instrument made by Archbishops
- F6** Words in Sch. 2 para. 2(2) inserted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), **Sch. 5 para. 5(a)**; 2006 No. 2, Instrument made by Archbishops

- 3 If no objection is duly made by [F<sup>7</sup>any such owner, lessee or occupier as aforesaid][F<sup>7</sup>any such person as is mentioned in paragraph 2(1)(b)] or if all objections so made are withdrawn, the Minister may make the order either in the form of the draft or, subject to paragraph 6 of this Schedule, with modifications.

#### Textual Amendments

- F7** Words in Sch. 2 para. 3 substituted (E.W.) (24.5.2007) by [Planning and Compulsory Purchase Act 2004 \(Corresponding Amendments\) Order 2007 \(S.I. 2007/1519\)](#), art. 1(1), **Sch. para. 3(c)** (with art. 1(3))

- 4 (1) If any objection duly made as aforesaid is not withdrawn, the Minister shall afford to the person by whom that objection was made an opportunity to appear before, and be heard by, a person appointed [F<sup>8</sup>in accordance with sub-paragraph (1A)] to hold an inquiry into the proposal to make the order:  
 Provided that the Minister shall not be required to afford any person an opportunity to appear and be heard as aforesaid otherwise than in private.

[F<sup>9</sup>(1A) A person to hold an inquiry for the purposes of sub-paragraph (1) is to be appointed as follows—

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- (a) if the inquiry relates to land in England and Wales, the person is to be appointed by the Lord Chief Justice of England and Wales after consulting the Lord Chancellor;
  - (b) if the inquiry relates to land in Scotland, the person is to be appointed by the Lord President of the Court of Session;
  - (c) if the inquiry relates to land in Northern Ireland, the person is to be appointed by the Lord Chief Justice of Northern Ireland after consulting Lord Chancellor.]
- (2) The person holding an inquiry under the foregoing sub-paragraph shall report thereon to the Minister who, after considering the report and the objection, may make the order either in the form of the draft or, subject to paragraph 6 of this Schedule, with modifications.
- (3) [<sup>F10</sup>Rules of procedure shall be made by statutory instrument in accordance with sub-paragraph (3A)] for the purposes of inquiries held under this paragraph, including rules—
  - (a) as to the information with respect to the Minister's reasons for proposing to make the order, the findings and recommendations of the person holding the inquiry, the Minister's decision on those findings and recommendations, and the Minister's reasons for any departure from those recommendations, to be furnished by the Minister to persons afforded such an opportunity as aforesaid as being owners, lessees or occupiers of any land;
  - (b) as to the furnishing by the Minister to the person holding the inquiry of explanations of the Minister's reasons for proposing to make the order and of evidence in support thereof.
- [<sup>F11</sup>(3A) Rules under sub-paragraph (3) are to be made as follows—
  - (a) if the rules are for the purposes of inquiries held in relation to land in England and Wales, they are to be made by the Lord Chancellor;
  - (b) if the rules are for the purposes of inquiries held in relation to land in Scotland, they are to be made by the Secretary of State after consultation with the Lord President of the Court of Session;
  - (c) if the rules are for the purposes of inquiries held in relation to land in Northern Ireland, they are to be made by the Lord Chancellor after consultation with the Lord Chief Justice of Northern Ireland.]
- (4) The person appointed to hold an inquiry under this paragraph shall be paid by the Minister such remuneration and allowances [<sup>F12</sup>as may be determined, with the approval of the Treasury—
  - (a) by the Lord Chancellor, or
  - (b) in a case where the Lord President of the Court of Session appointed the person, by the Secretary of State.]
- [<sup>F13</sup>(5) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this paragraph.
- (6) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this paragraph.

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- (7) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this paragraph—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

#### Textual Amendments

- F8** Words in Sch. 2 para. 4(1) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 4 para. 46(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)
- F9** Sch. 2 para. 4(1A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 4 para. 46(3); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)
- F10** Words in Sch. 2 para. 4(3) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 4 para. 46(4); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)
- F11** Sch. 2 para. 4(3A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 4 para. 46(5); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)
- F12** Words in Sch. 2 para. 4(4) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 4 para. 46(6); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)
- F13** Sch. 2 para. 4(5)-(7) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 4 para. 46(7); S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)

- 5 The Minister may require any person who has made an objection to state in writing the grounds thereof, and any such objection which the Minister is satisfied relates exclusively to matters of compensation may be disregarded for the purposes of the two last foregoing paragraphs.
- 6 The order shall not be made with any modification from the draft unless either—
- (a) every person who is an owner, lessee or occupier of any land to which the order applies which is affected by that modification, other than a tenant for a month or any period less than a month, has been served with notice of the proposal to make the modification and either has consented thereto or has not before the expiration of fourteen days from the service of the notice notified the Minister in writing that he objects thereto; or
  - (b) the modification arises from representations made at an inquiry into the proposal to make the order held under paragraph 4 of this Schedule or from the findings or recommendations of the person holding that inquiry, and every person such as is mentioned in the foregoing sub-paragraph was served with such a notice of that proposal as is mentioned in paragraph 2 of this Schedule and afforded an opportunity to appear and be heard at the inquiry.
- 7 If the order is made, the Minister shall serve on every person who is an owner, lessee or occupier of any land to which the order applies, and on any other person upon whom such a notice of the proposal to make the order as is mentioned in paragraph 2 of this Schedule was served, a copy of the order and either a copy of the map referred to in the order or a notice naming a place where that map may be inspected during reasonable hours, being a place reasonably near to and accessible from the land to which the order applies.
- 8 <sup>[F14(1)]</sup> If, where the order is made, any person aggrieved thereby, being a person required to be served with a copy of the order under the last foregoing paragraph, desires to question the validity thereof or of any provision contained therein on the ground that the making of the order or the inclusion of that provision was not authorised by this

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Act or on the ground that any requirement of this Act or of any rules made under subparagraph (3) of paragraph 4 of this Schedule has not been complied with in relation to the order, he may, not later than the expiration of six weeks from the date on which he is served as aforesaid, make an application to the [<sup>F15</sup>appropriate court], and on any such application the court—

- (a) may by interim order suspend the operation of the order or any provision contained therein, either generally or in so far as it affects any property of the applicant or a part of any such property, until the final determination of the proceedings;
- (b) if satisfied that the making of the order or the inclusion of any provision therein was not authorised by this Act or that the interests of the applicant have been substantially prejudiced by failure to comply with any requirement of this Act or of any such rules as aforesaid in relation to the order, may quash the order or any provision contained therein, either generally or in so far as it affects any property of the applicant or a part of any such property.

[<sup>F16</sup>(2) In this paragraph “appropriate court” means—

- (a) if the order relates to land in England and Wales, the High Court in England and Wales;
- (b) if the order relates to land in Scotland, the Court of Session;
- (c) if the order relates to land in Northern Ireland, the High Court in Northern Ireland.]

#### Textual Amendments

- F14** Sch. 2 para. 8(1): Sch. 2 para. 8 renumbered as Sch. 2 para. 8(1) (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 47(2)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)
- F15** Words in Sch. 2 para. 8(1) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 47(3)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)
- F16** Sch. 2 para. 8(2) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 47(4)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(e)

9 Subject to the provisions of the last foregoing paragraph, the order shall not, either before or after it has been made, be questioned in any legal proceedings whatsoever, and shall become operative as soon as it is made.

<sup>F17</sup>10 .....

#### Textual Amendments

- F17** Sch. 2 para. 10 repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 4 para. 48, **Sch. 18 Pt. 2**; S.I. 2006/1014, art. 2(a), Sch. 1 paras. 11(e), 30(b)

<sup>F18</sup>11 .....

#### Textual Amendments

- F18** Sch. 2 para. 11 repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 4 para. 48, **Sch. 18 Pt. 2**; S.I. 2006/1014, art. 2(a), Sch. 1 paras. 11(e), 30(b)

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