



# Town and Country Planning Act 1990

## 1990 CHAPTER 8

### PART VI **E+W**

#### RIGHTS OF OWNERS ETC. TO REQUIRE PURCHASE OF INTERESTS

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

- C1** Part VI (ss. 137-171): power to modify conferred (10.11.1993) by 1993 c. 28, s. 171(3)(b); S.I. 1993/2762, art. 3  
Pt. VI (ss. 137-171) modified (1.4.1996) by 1994 c. 19, s. 20(3), Sch. 5 paras. 15(1), 20 (with ss. 54(5) (7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/3198, art. 4, Sch. 2

### CHAPTER I **E+W**

#### INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS

##### *Service of purchase notices*

#### **137** Circumstances in which purchase notices may be served. **E+W**

- (1) This section applies where—
- (a) on an application for planning permission to develop any land, permission is refused or is granted subject to conditions; or
  - (b) by an order under section 97 planning permission in respect of any land is revoked, or is modified by the imposition of conditions; or
  - (c) an order is made under section 102 or paragraph 1 of Schedule 9 in respect of any land.
- (2) If—

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- (a) in the case mentioned in subsection (1)(a) or (b), any owner of the land claims that the conditions mentioned in subsection (3) are satisfied with respect to it, or
  - (b) in the case mentioned in subsection (1)(c), any person entitled to an interest in land in respect of which the order is made claims that the conditions mentioned in subsection (4) are satisfied with respect to it,
- he may, within the prescribed time and in the prescribed manner, serve on the council of the district [<sup>F1</sup>, Welsh county, county borough] or London borough in which the land is situated a notice (in this Act referred to as “a purchase notice”) requiring that council to purchase his interest in the land in accordance with this Chapter.
- (3) The conditions mentioned in subsection (2)(a) are—
    - (a) that the land has become incapable of reasonably beneficial use in its existing state; and
    - (b) in a case where planning permission was granted subject to conditions or was modified by the imposition of conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions; and
    - (c) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been granted or for which the local planning authority or the Secretary of State has undertaken to grant planning permission.
  - (4) The conditions mentioned in subsection (2)(b) are—
    - (a) that by reason of the order the land is incapable of reasonably beneficial use in its existing state; and
    - (b) that it cannot be rendered capable of reasonably beneficial use by the carrying out of any development for which planning permission has been granted, whether by that order or otherwise.
  - (5) For the purposes of subsection (1)(a) and any claim arising in the circumstances mentioned in that subsection, the conditions referred to in sections 91 and 92 shall be disregarded.
  - (6) A person on whom a <sup>M1</sup>repairs notice has been served under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 shall not be entitled to serve a notice under this section in the circumstances mentioned in subsection (1)(a) in respect of the building in question—
    - (a) until the expiration of three months beginning with the date of the service of the repairs notice; and
    - (b) if during that period the compulsory acquisition of the building is begun in the exercise of powers under section 47 of that Act, unless and until the compulsory acquisition is discontinued.
  - (7) For the purposes of subsection (6) a compulsory acquisition—
    - (a) is started when the the notice required by section 12 of the <sup>M2</sup>Acquisition of Land Act 1981 or, as the case may be, paragraph 3 of Schedule 1 to that Act is served; and
    - (b) is discontinued—
      - (i) in the case of acquisition by the Secretary of State, when he decides not to make the compulsory purchase order; and

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(ii) in any other case, when the order is withdrawn or the Secretary of State decides not to confirm it.

(8) No purchase notice shall be served in respect of an interest in land while the land is incapable of reasonably beneficial use by reason only of such an order as is mentioned in subsection (1)(c), except by virtue of a claim under subsection (2)(b).

#### Textual Amendments

**F1** Words in s. 137(2) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(3)** (with ss. 54(5) (7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

#### Marginal Citations

**M1** 1990 c. 9

**M2** 1981 c. 67.

### [<sup>F2</sup>137A Purchase notices: Crown land **E+W**

- (1) A purchase notice may be served in respect of Crown land only as mentioned in this section.
- (2) The owner of a private interest in Crown land must not serve a purchase notice unless—
  - (a) he first offers to dispose of his interest to the appropriate authority on equivalent terms, and
  - (b) the offer is refused by the appropriate authority.
- (3) The appropriate authority may serve a purchase notice in relation to the following land—
  - (a) land belonging to Her Majesty in right of Her private estates;
  - (b) land belonging to Her Majesty in right of the Duchy of Lancaster;
  - (c) land belonging to the Duchy of Cornwall;
  - (d) land which forms part of the Crown Estate.
- (4) An offer is made on equivalent terms if the price payable for the interest is equal to (and, in default of agreement, determined in the same manner as) the compensation which would be payable in respect of it if it were acquired in pursuance of a purchase notice.
- (5) Expressions used in this section and in Part 13 must be construed in accordance with that Part.]

#### Textual Amendments

**F2** S. 137A inserted (7.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), ss. 79, 121, **Sch. 3 para. 1** (with s. 111); S.I. 2004/1281, **art. 2**

### 138 Circumstances in which land incapable of reasonably beneficial use. **E+W**

- (1) Where, for the purpose of determining whether the conditions specified in section 137(3) or (4) are satisfied in relation to any land, any question arises as to what

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is or would in any particular circumstances be a reasonably beneficial use of that land, then, in determining that question for that purpose, no account shall be taken of any unauthorised prospective use of that land.

- (2) A prospective use of land shall be regarded as unauthorised for the purposes of subsection (1)—
- (a) if it would involve the carrying out of [<sup>F3</sup>development other than any development specified in paragraph 1 or 2 of Schedule 3;]or
  - (b) in the case of a purchase notice served in consequence of a refusal or conditional grant of planning permission, if it would contravene the condition set out in Schedule 10.

#### Textual Amendments

**F3** Words in s. 138(2)(a) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 31, [Sch. 6 para.18](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to [art. 4](#))

#### *Duties of authorities on service of purchase notice*

### 139 **Action by council on whom purchase notice is served.** E+W

- (1) The council on whom a purchase notice is served shall serve on the owner by whom the purchase notice was served a notice (a “response notice”) stating either—
  - (a) that the council are willing to comply with the purchase notice; or
  - (b) that another local authority or statutory undertakers specified in the response notice have agreed to comply with it in their place; or
  - (c) that for reasons so specified the council are not willing to comply with the purchase notice and have not found any other local authority or statutory undertakers who will agree to comply with it in their place, and that they have sent the Secretary of State a copy of the purchase notice and of the response notice.
- (2) A response notice must be served before the end of the period of three months beginning with the date of service of the purchase notice.
- (3) Where the council on whom a purchase notice is served by an owner have served a response notice on him in accordance with subsection (1)(a) or (b), the council or, as the case may be, the other local authority or statutory undertakers specified in the response notice shall be deemed—
  - (a) to be authorised to acquire the interest of the owner compulsorily in accordance with the relevant provisions, and
  - (b) to have served a notice to treat in respect of it on the date of service of the response notice.
- (4) Where the council propose to serve such a response notice as is mentioned in subsection (1)(c), they must first send the Secretary of State a copy—
  - (a) of the proposed response notice, and
  - (b) of the purchase notice.
- (5) A notice to treat which is deemed to have been served by virtue of subsection (3)(b) may not be withdrawn under section 31 of the <sup>M3</sup>Land Compensation Act 1961.

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

- C2** S. 139: power to apply (with modifications) conferred by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 123:1\)](#), s. 149(3), [Sch. 29 Pt. II para. 1](#) as substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, [Sch. 2 para. 44\(13\)](#)
- C3** S. 139 applied (with modifications) (7.6.2004) by [The Milton Keynes \(Urban Area and Planning Functions\) Order 2004 \(S.I. 2004/932\)](#), [art. 5](#), [Sch. para.1](#) (with arts. 6, 7)
- S. 139 applied (with modifications) (12.10.2005) by [The Thurrock Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2572\)](#), [art. 5](#) (with arts. 6, 7)
- S. 139 applied (with modifications) (31.10.2005) by [The London Thames Gateway Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2721\)](#), [art. 6](#)
- S. 139 applied (with modifications) (6.4.2006) by [The West Northamptonshire Development Corporation \(Planning Functions\) Order 2006 \(S.I. 2006/616\)](#), [art. 6](#)
- S. 139 applied (with modifications) (7.9.2006) by [The Olympic Delivery Authority \(Planning Functions\) Order 2006 \(S.I. 2006/2185\)](#), [art. 6](#)

#### Marginal Citations

- M3** 1961 c. 33.

### 140 Procedure on reference of purchase notice to Secretary of State. **E+W**

- (1) Where a copy of a purchase notice is sent to the Secretary of State under section 139(4), he shall consider whether to confirm the notice or to take other action under section 141 in respect of it.
- (2) Before confirming a purchase notice or taking such other action, the Secretary of State must give notice of his proposed action—
  - (a) to the person who served the purchase notice;
  - (b) to the council on whom it was served;
  - (c) [<sup>F4</sup>in England] outside Greater London—
    - (i) to the county planning authority and also, where that authority is a joint planning board, to the county council; and
    - (ii) if the district council on whom the purchase notice in question was served is a constituent member of a joint planning board, to that board;
  - [<sup>F5</sup>(cc) in Wales, to the local planning authority, where it is a joint planning board;] and
  - (d) if the Secretary of State proposes to substitute any other local authority or statutory undertakers for the council on whom the notice was served, to them.
- (3) A notice under subsection (2) shall specify the period (which must not be less than 28 days from its service) within which any of the persons on whom it is served may require the Secretary of State to give those persons an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) If within that period any of those persons so require, before the Secretary of State confirms the purchase notice or takes any other action under section 141 in respect of it he must give those persons such an opportunity.
- (5) If, after any of those persons have appeared before and been heard by the appointed person, it appears to the Secretary of State to be expedient to take action under section 141 otherwise than in accordance with the notice given by him, the Secretary of State may take that action accordingly.

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### Textual Amendments

- F4** Words in s. 140(2)(c) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(4)(a)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F5** S. 140(2)(cc) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(4)(b)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

### Modifications etc. (not altering text)

- C4** S. 140(2)(d): power to apply (with modifications) conferred by **Local Government, Planning and Land Act 1980 (c. 65, SIF 123:1)**, s. 149(3), **Sch. 29 Pt. II para. 2** as substituted by **Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2)**, s. 4, **Sch. 2 para. 44(13)**
- C5** S. 140(2)(d) applied (with modifications) (7.6.2004) by **The Milton Keynes (Urban Area and Planning Functions) Order 2004 (S.I. 2004/932)**, art. 5, **Sch. para. 2** (with arts. 6, 7)
- S. 140(2)(d) applied (with modifications) (12.10.2005) by **The Thurrock Development Corporation (Planning Functions) Order 2005 (S.I. 2005/2572)**, art. 5 (with arts. 6, 7)
- S. 140(2)(d) applied (with modifications) (31.10.2005) by **The London Thames Gateway Development Corporation (Planning Functions) Order 2005 (S.I. 2005/2721)**, art. 6
- S. 140(2)(d) applied (with modifications) (6.4.2006) by **The West Northamptonshire Development Corporation (Planning Functions) Order 2006 (S.I. 2006/616)**, art. 6
- S. 140(2)(d) applied (with modifications) (7.9.2006) by **The Olympic Delivery Authority (Planning Functions) Order 2006 (S.I. 2006/2185)**, art. 6

## 141 Action by Secretary of State in relation to purchase notice. **E+W**

- (1) Subject to the following provisions of this section and to section 142(3), if the Secretary of State is satisfied that the conditions specified in subsection (3) or, as the case may be, subsection (4) of section 137 are satisfied in relation to a purchase notice, he shall confirm the notice.
- (2) If it appears to the Secretary of State to be expedient to do so, he may, instead of confirming the purchase notice—
- (a) in the case of a notice served on account of the refusal of planning permission, grant planning permission for the development in question;
  - (b) in the case of a notice served on account of planning permission for development being granted subject to conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of that development;
  - (c) in the case of a notice served on account of the revocation of planning permission by an order under section 97, cancel the order;
  - (d) in the case of a notice served on account of the modification of planning permission by such an order by the imposition of conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of the development in respect of which the permission was granted; or
  - (e) in the case of a notice served on account of the making of an order under section 102 or paragraph 1 of Schedule 9, revoke the order or, as the case may be, amend the order so far as appears to him to be required in order to prevent the land from being rendered incapable of reasonably beneficial use by the order.

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- (3) If it appears to the Secretary of State that the land, or any part of the land, could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out of any other development for which planning permission ought to be granted, he may, instead of confirming the purchase notice, or, as the case may be, of confirming it so far as it relates to that part of the land, direct that, if an application for planning permission for that development is made, it must be granted.
- (4) If it appears to the Secretary of State, having regard to the probable ultimate use of the land, that it is expedient to do so, he may, if he confirms the notice, modify it, either in relation to the whole or any part of the land, by substituting another local authority or statutory undertakers for the council on whom the notice was served.
- (5) Any reference in section 140 to the taking of action by the Secretary of State under this section includes a reference to the taking by him of a decision not to confirm the purchase notice either on the grounds that any of the conditions referred to in subsection (1) are not satisfied or by virtue of section 142.

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

- C6** S. 141(4): power to apply (with modifications) conferred by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 123:1\)](#), s. 149(3), **Sch. 29 Pt. II para. 3** as substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2 para. 44(13)**
- C7** S. 141(4) applied (with modifications) (7.6.2004) by [The Milton Keynes \(Urban Area and Planning Functions\) Order 2004 \(S.I. 2004/932\)](#), art. 5, **Sch. para. 3** (with arts. 6, 7)
- S. 141(4) applied (with modifications) (12.10.2005) by [The Thurrock Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2572\)](#), **art. 5** (with arts. 6, 7)
- S. 141(4) applied (with modifications) (31.10.2005) by [The London Thames Gateway Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2721\)](#), **art. 6**
- S. 141(4) applied (with modifications) (6.4.2006) by [The West Northamptonshire Development Corporation \(Planning Functions\) Order 2006 \(S.I. 2006/616\)](#), **art. 6**
- S. 141(4) applied (with modifications) (7.9.2006) by [The Olympic Delivery Authority \(Planning Functions\) Order 2006 \(S.I. 2006/2185\)](#), **art. 6**

#### **142 Power to refuse to confirm purchase notice where land has restricted use by virtue of previous planning permission. E+W**

- (1) This section applies where a purchase notice is served in respect of land which consists in whole or in part of land which has a restricted use by virtue of an existing planning permission.
- (2) For the purposes of this section, land is to be treated as having a restricted use by virtue of an existing planning permission if it is part of a larger area in respect of which planning permission has previously been granted (and has not been revoked) and either—
  - (a) it remains a condition of the planning permission (however expressed) that that part shall remain undeveloped or be preserved or laid out in a particular way as amenity land in relation to the remainder; or
  - (b) the planning permission was granted on an application which contemplated (expressly or by necessary implication) that the part should not be comprised in the development for which planning permission was sought, or should be preserved or laid out as mentioned in paragraph (a).

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- (3) Where a copy of the purchase notice is sent to the Secretary of State under section 139(4), he need not confirm the notice under section 141(1) if it appears to him that the land having a restricted use by virtue of an existing planning permission ought, in accordance with that permission, to remain undeveloped or, as the case may be, remain or be preserved or laid out as amenity land in relation to the remainder of the large area for which that planning permission was granted.

### 143 Effect of Secretary of State's action in relation to purchase notice. **E+W**

- (1) Where the Secretary of State confirms a purchase notice—
- (a) the council on whom the purchase notice was served, or
  - (b) if under section 141(4) the Secretary of State modified the purchase notice by substituting another local authority or statutory undertakers for that council, that other authority or those undertakers,
- shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the relevant provisions, and to have served a notice to treat in respect of it on such date as the Secretary of State may direct.
- (2) If, before the end of the relevant period, the Secretary of State has neither—
- (a) confirmed the purchase notice, nor
  - (b) taken any such action in respect of it as is mentioned in section 141(2) or (3), nor
  - (c) notified the owner by whom the notice was served that he does not propose to confirm the notice,
- the notice shall be deemed to be confirmed at the end of that period, and the council on whom the notice was served shall be deemed to be authorised as mentioned in subsection (1) and to have served a notice to treat in respect of the owner's interest at the end of that period.
- (3) Subject to subsection (4), for the purposes of subsection (2) the relevant period is—
- (a) the period of nine months beginning with the date of service of the purchase notice; or
  - (b) if it ends earlier, the period of six months beginning with the date on which a copy of the purchase notice was sent to the Secretary of State.
- (4) The relevant period does not run if the Secretary of State has before him at the same time both—
- (a) a copy of the purchase notice sent to him under section 139(4); and
  - (b) a notice of appeal under section 78, 174 or 195 of this Act or under section 20 or 39 of the Planning <sup>M4</sup>(Listed Buildings and Conservation Areas) Act 1990 (appeals against refusal of listed building consent, etc. and appeals against listed building enforcement notices) or under section 21 <sup>M5</sup>of the Planning (Hazardous Substances) Act 1990 (appeals against decisions and failure to take decisions relating to hazardous substances) relating to any of the land to which the purchase notice relates.
- (5) Where—
- (a) the Secretary of State has notified the owner by whom a purchase notice has been served of a decision on his part to confirm, or not to confirm, the notice; and
  - (b) that decision is quashed under Part XII,



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the purchase notice shall be treated as cancelled, but the owner may serve a further purchase notice in its place.

- (6) The reference in subsection (5) to a decision to confirm, or not to confirm, the purchase notice includes—
- (a) any decision not to confirm the notice in respect of any part of the land to which it relates, and
  - (b) any decision to grant any permission, or give any direction, instead of confirming the notice, either wholly or in part.
- (7) For the purposes of determining whether a further purchase notice under subsection (5) was served within the period prescribed for the service of purchase notices, the planning decision in consequence of which the notice was served shall be treated as having been made on the date on which the decision of the Secretary of State was quashed.
- (8) A notice to treat which is deemed to have been served by virtue of subsection (1) or (2) may not be withdrawn under section 31 of the <sup>M6</sup>Land Compensation Act 1961.

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

- C8** S. 143(1)(b): power to apply (with modifications) conferred by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 123:1\)](#), s. 149(3), **Sch. 29 Pt. II para. 4** as substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2 para. 44(13)**
- C9** S. 143(1)(b) applied (with modifications) (7.6.2004) by [The Milton Keynes \(Urban Area and Planning Functions\) Order 2004 \(S.I. 2004/932\)](#), art. 5, **Sch. para. 4** (with arts. 6, 7)
- S. 143(1)(b) applied (with modifications) (12.10.2005) by [The Thurrock Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2572\)](#), **art. 5** (with arts. 6, 7)
- S. 143(1)(b) applied (with modifications) (31.10.2005) by [The London Thames Gateway Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2721\)](#), **art. 6**
- S. 143(1)(b) applied (with modifications) (6.4.2006) by [The West Northamptonshire Development Corporation \(Planning Functions\) Order 2006 \(S.I. 2006/616\)](#), **art. 6**
- S. 143(1)(b) applied (with modifications) (7.9.2006) by [The Olympic Delivery Authority \(Planning Functions\) Order 2006 \(S.I. 2006/2185\)](#), **art. 6**

#### Marginal Citations

- M4** 1990 c. 9.  
**M5** 1990 c. 10.  
**M6** 1961 c. 33.

### Compensation

#### 144 Special provisions as to compensation where purchase notice served. **E+W**

- (1) Where compensation is payable by virtue of section 107 in respect of expenditure incurred in carrying out any works on land, any compensation payable in respect of the acquisition of an interest in the land in pursuance of a purchase notice shall be reduced by an amount equal to the value of those works.
- (2) Where—

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- (a) the Secretary of State directs under section 141(3) that, if an application for it is made, planning permission must be granted for the development of any land, and
- (b) on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that the permitted development value of the interest in that land in respect of which the purchase notice was served is less than its [<sup>F6</sup>Schedule 3 value],
- that authority shall pay the person entitled to that interest compensation of an amount equal to the difference.
- (3) If the planning permission mentioned in subsection (2)(a) would be granted subject to conditions for regulating the design or external appearance, or the size or height of buildings, or for regulating the number of buildings to be erected on the land, the Secretary of State may direct that in assessing any compensation payable under subsection (2) those conditions must be disregarded, either altogether or to such extent as may be specified in the direction.
- (4) The Secretary of State may only give a direction under subsection (3) if it appears to him to be reasonable to do so having regard to the local circumstances.
- (5) Sections 117 and 118 shall have effect in relation to compensation under subsection (2) as they have effect in relation to compensation to which those sections apply.
- (6) In this section—
- [<sup>F7</sup>Schedule 3 value”, in relation to such an interest, means the value of that interest calculated on the assumption that planning permission would be granted—
- (a) subject to the condition in Schedule 10, for any development of a class specified in paragraph 1 of Schedule 3; and
- (b) for any development of a class specified in paragraph 2 of Schedule 3.]
- (a) that interest is acquired in accordance with this Chapter; or
- (b) compensation is payable in respect of that interest under subsection (2),
- no compensation shall be payable in respect of that order under section 115.

#### Textual Amendments

- F6** Words in s. 144(2)(b) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 31, [Sch. 6 para. 19\(a\)](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to [art. 4](#))
- F7** Definition in s. 144(6) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 31, [Sch. 6 para. 19\(b\)](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to [art. 4](#))

*Status: Point in time view as at 06/04/2009.*

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*Special provisions for requiring purchase of whole of partially affected agricultural unit*

**145 Counter-notice requiring purchase of remainder of agricultural unit. E+W**

- (1) This section applies where—
  - (a) an acquiring authority is deemed under this Chapter to have served notice to treat in respect of any agricultural land on a person (“the claimant”) who has a greater interest in the land than as tenant for a year or from year to year (whether or not he is in occupation of the land), and
  - (b) the claimant has such an interest in other agricultural land (“the unaffected area”) comprised in the same agricultural unit as that to which the notice relates.
- (2) Where this section applies the claimant may serve on the acquiring authority a counter-notice—
  - (a) claiming that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and
  - (b) requiring the acquiring authority to purchase his interest in the whole of the unaffected area.
- (3) Subject to subsection (4), “other relevant land” in subsection (2) means—
  - (a) land which is comprised in the same agricultural unit as the land to which the notice to treat relates and in which the claimant does not have such an interest as is mentioned in subsection (1); and
  - (b) land which is comprised in any other agricultural unit occupied by the claimant on the date on which the notice to treat is deemed to have been served and in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year.
- (4) Where a notice to treat has been served or is deemed under this Chapter or under Part III of the<sup>M7</sup>Compulsory Purchase (Vesting Declarations) Act 1981 to have been served in respect of any of the unaffected area or in respect of other relevant land as defined in subsection (3), then, unless and until the notice to treat is withdrawn, this section and section 146 shall have effect as if that land did not form part of the unaffected land or, as the case may be, did not constitute other relevant land.
- (5) Where a counter-notice is served under subsection (2) the claimant shall also serve a copy of it on any other person who has an interest in the unaffected area (but failure to comply with this subsection shall not invalidate the counter-notice).
- (6) A counter-notice under subsection (2) and any copy of that notice required to be served under subsection (5) must be served within the period of two months beginning with the date on which the notice to treat is deemed to have been served.
- (7) This section is without prejudice to the rights conferred by sections 93 and 94 of the<sup>M8</sup>Lands Clauses (Consolidation) Act 1845 or section 8(2) and (3) of the<sup>M9</sup>Compulsory Purchase Act 1965 (provisions as to divided land).

**Marginal Citations**

**M7** 1981 c. 66.

**M8** 1845 c. 18.

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**M9** 1965 c. 56.

**146 Effect of counter-notice under s. 145. E+W**

- (1) If the acquiring authority do not within the period of two months beginning with the date of service of a counter-notice under section 145 agree in writing to accept the counter-notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal.
- (2) On such a reference the Tribunal shall determine whether the claim in the counter-notice is justified and declare the counter-notice valid or invalid accordingly.
- (3) Where a counter-notice is accepted as valid under subsection (1) or declared to be valid under subsection (2), the acquiring authority shall be deemed—
  - (a) to be authorised to acquire compulsorily the interest of the claimant in the land to which the requirement in the counter-notice relates under the same provision of this Chapter as they are authorised to acquire the other land in the agricultural unit in question; and
  - (b) to have served a notice to treat in respect of it on the date on which notice to treat is deemed to have been served under that provision.
- (4) A claimant may withdraw a counter-notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the counter-notice has been determined by the Lands Tribunal or at any time before the end of six weeks beginning with the date on which it is determined.
- (5) Where a counter-notice is withdrawn by virtue of subsection (4) any notice to treat deemed to have been served in consequence of it shall be deemed to have been withdrawn.
- (6) Without prejudice to subsection (5), a notice to treat deemed to have been served by virtue of this section may not be withdrawn under section 31 of the <sup>M10</sup>Land Compensation Act 1961.
- (7) The compensation payable in respect of the acquisition of an interest in land in pursuance of a notice to treat deemed to have been served by virtue of this section shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) of the <sup>M11</sup>Land Compensation Act 1973.
- (8) Where by virtue of this section the acquiring authority become or will become entitled to a lease of any land but not to the interest of the lessor—
  - (a) the authority shall offer to surrender the lease to the lessor on such terms as the authority consider reasonable;
  - (b) the question of what is reasonable may be referred to the Lands Tribunal by the authority or the lessor and, if at the expiration of the period of three months after the date of the offer mentioned in paragraph (a) the authority and the lessor have not agreed on that question and that question has not been referred to the Tribunal by the lessor, it shall be so referred by the authority;
  - (c) if that question is referred to the Tribunal, the lessor shall be deemed—
    - (i) to have accepted the surrender of the lease at the expiry of one month after the date of the determination of the Tribunal or on such other date as the Tribunal may direct, and

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- (ii) to have agreed with the authority on the terms of surrender which the Tribunal has held to be reasonable.
- (9) For the purposes of subsection (8) any terms as to surrender contained in the lease shall be disregarded.
- (10) Where the lessor—
- (a) refuses to accept any sum payable to him by virtue of subsection (8), or
  - (b) refuses or fails to make out his title to the satisfaction of the acquiring authority,
- they may pay into court any such sum payable to the lessor and section 9(2) and (5) of the <sup>M12</sup>Compulsory Purchase Act 1965 (deposit of compensation in cases of refusal to convey etc.) shall apply to that sum with the necessary modifications.
- (11) Where an acquiring authority who become entitled to the lease of any land as mentioned in subsection (8) are a body incorporated by or under any enactment, the corporate powers of the authority shall, if they would not otherwise do so, include the power to farm that land.

#### Marginal Citations

**M10** 1961 c. 33.

**M11** 1973 c. 26.

**M12** 1965 c. 56

#### 147 Provisions supplemental to ss. 145 and 146. **E+W**

- (1) Sections 145 and 146 apply in relation to the acquisition of interests in land by government departments which possess compulsory purchase powers as they apply in relation to the acquisition of interests in land by authorities who are not government departments.
- (2) In sections 145, 146 and this section—
- “agricultural” and “agricultural land” have the meaning given in section 109 of the <sup>M13</sup>Agriculture Act 1947 and references to the farming of land include references to the carrying on in relation to the land of any agricultural activities;
  - “agricultural unit” has the meaning given in section 171(1);
  - “acquiring authority” has the same meaning as in the <sup>M14</sup>Land Compensation Act 1961 ; and
  - “government departments which possess compulsory purchase powers” means government departments being authorities possessing compulsory purchase powers within the meaning of that Act.

#### Marginal Citations

**M13** 1947 c. 48.

**M14** 1961 c. 33.

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### *Supplemental*

#### [<sup>F8</sup>147A Application of Chapter I to National Parks. **E+W**]

This Chapter shall have effect as if—

- (a) the bodies on whom a purchase notice may be served under section 137 included any National Park authority which is the local planning authority for the area in which the land is situated; and
- (b) a National Park authority were a local authority for the purposes of this Act and the National Park for which it is the local planning authority were its area; and the references in this Chapter and in section 288(10)(a) to a council and to a local authority shall be construed accordingly.]

#### **Textual Amendments**

**F8** S. 147A inserted (19.9.1995) by 1995 c. 25, ss. 67(5), 125(2) (with ss. 7(6), 115, 117, Sch. 8 para. 7)

#### 148 Interpretation of Chapter I. **E+W**

(1) In this Chapter—

“the relevant provisions” means—

- (a) the provisions of Part IX, or
- (b) in the case of statutory undertakers, any statutory provision (however expressed) under which they have power, or may be authorised, to purchase land compulsorily for the purposes of their undertaking; and

“statutory undertakers” includes [<sup>F9</sup>electronic communications code operators and former PTOs].

(2) In the case of a purchase notice served by such a person as is mentioned in subsection (2)(b) of section 137, references in this Chapter to the owner of the land include references to that person unless the context otherwise requires.

#### **Textual Amendments**

**F9** Words in s. 148(1) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 102** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)

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

**C10** S. 148: power to apply (with modifications) conferred by Local Government, Planning and Land Act 1980 (c. 65, SIF 123:1), s. 149(3), **Sch. 29 Pt. II para. 5** as substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 44(13)**

**C11** S. 148 applied (with modifications) (7.6.2004) by The Milton Keynes (Urban Area and Planning Functions) Order 2004 (S.I. 2004/932), art. 5, **Sch. para. 5** (with arts. 6, 7)

S. 148 applied (with modifications) (12.10.2005) by The Thurrock Development Corporation (Planning Functions) Order 2005 (S.I. 2005/2572), **art. 5** (with arts. 6, 7)

S. 148 applied (with modifications) (31.10.2005) by The London Thames Gateway Development Corporation (Planning Functions) Order 2005 (S.I. 2005/2721), **art. 6**

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S. 148 applied (with modifications) (6.4.2006) by [The West Northamptonshire Development Corporation \(Planning Functions\) Order 2006 \(S.I. 2006/616\)](#), [art. 6](#)

S. 148 applied (with modifications) (7.9.2006) by [The Olympic Delivery Authority \(Planning Functions\) Order 2006 \(S.I. 2006/2185\)](#), [art. 6](#)

## CHAPTER II **E+W**

### INTERESTS AFFECTED BY PLANNING PROPOSALS: BLIGHT

#### *Preliminary*

#### **149** **Scope of Chapter II.** **E+W**

- (1) This Chapter shall have effect in relation to land falling within any paragraph of Schedule 13 (land affected by planning proposals of public authorities etc.); and in this Chapter such land is referred to as “blighted land”.
- (2) Subject to the provisions of sections 161 and 162, an interest qualifies for protection under this Chapter if—
  - (a) it is an interest in a hereditament or part of a hereditament and on the relevant date it satisfies one of the conditions mentioned in subsection (3); or
  - (b) it is an interest in an agricultural unit or part of an agricultural unit and on the relevant date it is the interest of an owner-occupier of the unit;and in this Chapter such an interest is referred to as “a qualifying interest”.
- (3) The conditions mentioned in subsection (2)(a) are—
  - (a) that the annual value of the hereditament does not exceed such amount as may be prescribed for the purposes of this paragraph by an order made by the Secretary of State, and the interest is the interest of an owner-occupier of the hereditament; or
  - (b) that the interest is the interest of a resident owner-occupier of the hereditament.
- (4) In this section “the relevant date”, in relation to an interest, means the date of service of a notice under section 150 in respect of it.
- (5) In this Chapter “blight notice” means a notice served under section 150, 161 or 162.

#### *Blight notices*

#### **150** **Notices requiring purchase of blighted land.** **E+W**

- (1) Where the whole or part of a hereditament or agricultural unit is comprised in blighted land and a person claims that—
  - (a) he is entitled to a qualifying interest in that hereditament or unit;
  - (b) he has made reasonable endeavours to sell that interest; [<sup>F10</sup>or the land falls within paragraph 21 or paragraph 22 (disregarding the notes) of Schedule 13 and the powers of compulsory acquisition remain exercisable] and
  - (c) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell

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that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land,

he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, this Chapter.

- (2) Subject to subsection (3), subsection (1) shall apply in relation to an interest in part of a hereditament or unit as it applies in relation to an interest in the whole of a hereditament or unit.
- (3) Subsection (2) shall not enable any person—
  - (a) if he is entitled to an interest in the whole of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of his interest in part of a hereditament or unit; or
  - (b) if he is entitled to an interest only in part of a hereditament or agricultural unit, to make or serve any such claim or notice in respect of his interest in less than the whole of that part.
- (4) In this Chapter—
  - (a) subject to section 161(1), “the claimant”, in relation to a blight notice, means the person who served that notice, and
  - (b) any reference to the interest of the claimant, in relation to a blight notice, is a reference to the interest which the notice requires the appropriate authority to purchase as mentioned in subsection (1).

#### **Textual Amendments**

**F10** Words in s. 150(1)(b) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 70, [Sch. 15 para.13](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to [art. 4](#))

### **151 Counter-notices objecting to blight notices. E+W**

- (1) Where a blight notice has been served in respect of a hereditament or an agricultural unit, the appropriate authority may serve on the claimant a counter-notice in the prescribed form objecting to the notice.
- (2) A counter-notice under subsection (1) may be served at any time before the end of the period of two months beginning with the date of service of the blight notice.
- (3) Such a counter-notice shall specify the grounds on which the appropriate authority object to the blight notice (being one or more of the grounds specified in subsection (4) or, as relevant, in section 159(1), 161(5) or 162(5)).
- (4) Subject to the following provisions of this Act, the grounds on which objection may be made in a counter-notice to a notice served under section 150 are—
  - (a) that no part of the hereditament or agricultural unit to which the notice relates is comprised in blighted land;
  - (b) that the appropriate authority (unless compelled to do so by virtue of this Chapter) do not propose to acquire any part of the hereditament, or in the case of an agricultural unit any part of the affected area, in the exercise of any relevant powers;



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- (c) that the appropriate authority propose in the exercise of relevant powers to acquire a part of the hereditament or, in the case of an agricultural unit, a part of the affected area specified in the counter-notice, but (unless compelled to do so by virtue of this Chapter) do not propose to acquire any other part of that hereditament or area in the exercise of any such powers;
  - (d) in the case of land falling within paragraph 1, 3 or 13 but not 14, 15 or 16 of Schedule 13, that the appropriate authority (unless compelled to do so by virtue of this Chapter) do not propose to acquire in the exercise of any relevant powers any part of the hereditament or, in the case of an agricultural unit, any part of the affected area during the period of 15 years from the date of the counter-notice or such longer period from that date as may be specified in the counter-notice;
  - (e) that, on the date of service of the notice under section 150, the claimant was not entitled to an interest in any part of the hereditament or agricultural unit to which the notice relates;
  - (f) that (for reasons specified in the counter-notice) the interest of the claimant is not a qualifying interest;
  - (g) that the conditions specified in paragraphs (b) and (c) of section 150(1) are not fulfilled.
- (5) Where the appropriate enactment confers power to acquire rights over land, subsection (4) shall have effect as if—
- (a) in paragraph (b) after the word “acquire” there were inserted the words “ or to acquire any rights over ”;
  - (b) in paragraph (c) for the words “do not propose to acquire” there were substituted the words “ propose neither to acquire, nor to acquire any right over ”;
  - (c) in paragraph (d) after the words “affected area” there were inserted “ or to acquire any right over any part of it ”.
- (6) An objection may not be made on the grounds mentioned in paragraph (d) of subsection (4) if it may be made on the grounds mentioned in paragraph (b) of that subsection.
- (7) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of paragraph 19 of Schedule 13 shall not include those mentioned in subsection (4)(b) or (c).
- [<sup>F11</sup>(7A) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of paragraph 25 of Schedule 13 do not include those mentioned in subsection (4)(b).]
- (8) In this section “relevant powers”, in relation to blighted land falling within any paragraph of Schedule 13, means any powers under which the appropriate authority are or could be authorised—
- (a) to acquire that land or to acquire any rights over it compulsorily as being land falling within that paragraph; or
  - (b) to acquire that land or any rights over it compulsorily for any of the relevant purposes;
- and “the relevant purposes”, in relation to any such land, means the purposes for which, in accordance with the circumstances by virtue of which that land falls within the paragraph in question, it is liable to be acquired or is indicated as being proposed to be acquired.

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### Textual Amendments

**F11** S. 151(7A) inserted (6.4.2009 for certain purposes and otherwise 1.3.2010) by [Planning Act 2008](#) (c. 29), [ss. 175\(4\)](#), 241 (with s. 226); S.I. 2009/400, [art. 3](#); S.I. 2010/101, [art. 4\(f\)](#) (with [art. 6](#))

## 152 Further counter-notices where certain proposals have come into force. **E+W**

(1) Where—

- (a) an appropriate authority have served a counter-notice objecting to a blight notice in respect of any land falling within paragraph 1, 2, 3, 4 or 14 of Schedule 13 by virtue of Note (1) to that paragraph, and
- (b) the relevant plan or alterations or, as the case may be, the relevant order or scheme comes into force (whether in its original form or with modifications),

the appropriate authority may serve on the claimant, in substitution for the counter-notice already served, a further counter-notice specifying different grounds of objection.

(2) Such a further counter-notice shall not be served—

- (a) at any time after the end of the period of two months beginning with the date on which the relevant plan or alterations come into force; or
- (b) if the objection in the counter-notice already served has been withdrawn or the Lands Tribunal has already determined whether or not to uphold that objection.

## 153 Reference of objection to Lands Tribunal: general. **E+W**

(1) Where a counter-notice has been served under section 151 objecting to a blight notice, the claimant may require the objection to be referred to the Lands Tribunal.

(2) Such a reference may be required under subsection (1) at any time before the end of the period of two months beginning with the date of service of the counter-notice.

(3) On any such reference, if the objection is not withdrawn, the Lands Tribunal shall consider—

- (a) the matters set out in the notice served by the claimant, and
- (b) the grounds of the objection specified in the counter-notice;

and, subject to subsection (4), unless it is shown to the satisfaction of the Tribunal that the objection is not well-founded, the Tribunal shall uphold the objection.

(4) An objection on the grounds mentioned in section 151(4)(b), (c) or (d) shall not be upheld by the Tribunal unless it is shown to the satisfaction of the Tribunal that the objection is well-founded.

(5) If the Tribunal determines not to uphold the objection, the Tribunal shall declare that the notice to which the counter-notice relates is a valid notice.

(6) If the Tribunal upholds the objection, but only on the grounds mentioned in section 151(4)(c), the Tribunal shall declare that the notice is a valid notice in relation to the part of the hereditament, or in the case of an agricultural unit the part of the affected area, specified in the counter-notice as being the part which the appropriate authority propose to acquire as mentioned in that notice, but not in relation to any other part of the hereditament or affected area.

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- (7) In a case falling within subsection (5) or (6), the Tribunal shall give directions specifying the date on which notice to treat (as mentioned in section 154) is to be deemed to have been served.
- (8) This section shall have effect in relation to a further counter-notice served by virtue of section 152(1) as it has effect in relation to the counter-notice for which it is substituted.

#### **154 Effect of valid blight notice. E+W**

- (1) Subsection (2) applies where a blight notice has been served and either—
  - (a) no counter-notice objecting to that notice is served in accordance with this Chapter; or
  - (b) where such a counter-notice has been served, the objection is withdrawn or, on a reference to the Lands Tribunal, is not upheld by the Tribunal.
- (2) Where this subsection applies, the appropriate authority shall be deemed—
  - (a) to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in the hereditament, or in the case of an agricultural unit the interest of the claimant in so far as it subsists in the affected area, and
  - (b) to have served a notice to treat in respect of it on the date mentioned in subsection (3).
- (3) The date referred to in subsection (2)—
  - (a) in a case where, on a reference to the Lands Tribunal, the Tribunal determines not to uphold the objection, is the date specified in directions given by the Tribunal in accordance with section 153(7);
  - (b) in any other case, is the date on which the period of two months beginning with the date of service of the blight notice comes to an end.
- (4) Subsection (5) applies where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 151(4)(c) and either—
  - (a) the claimant, without referring that objection to the Lands Tribunal, and before the time for so referring it has expired—
    - (i) gives notice to the appropriate authority that he accepts the proposal of the authority to acquire the part of the hereditament or affected area specified in the counter-notice, and
    - (ii) withdraws his claim as to the remainder of that hereditament or area;  
or
  - (b) on a reference to the Lands Tribunal, the Tribunal makes a declaration in accordance with section 153(6) in respect of that part of the hereditament or affected area.
- (5) Where this subsection applies, the appropriate authority shall be deemed—
  - (a) to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the part of the hereditament or affected area specified in the counter-notice (but not in so far as it subsists in any other part of that hereditament or area), and
  - (b) to have served a notice to treat in respect of it on the date mentioned in subsection (6).
- (6) The date referred to in subsection (5)—

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- (a) in a case falling within paragraph (a) of subsection (4), is the date on which notice is given in accordance with that paragraph; and
- (b) in a case falling within paragraph (b) of that subsection, is the date specified in directions given by the Lands Tribunal in accordance with section 153(7).

**155 Effect on powers of compulsory acquisition of counter-notice disclaiming intention to acquire. E+W**

- (1) Subsection (2) shall have effect where the grounds of objection specified in a counter-notice served under section 151 consist of or include the grounds mentioned in paragraph (b) or (d) of subsection (4) 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) 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
- (b) the land in question falls within paragraph 21 of Schedule 13,

any power conferred by that order or, as the case may be, by special enactment for the compulsory acquisition of the interest of the claimant in the hereditament or agricultural unit or any part of it shall cease to have effect.

- (3) Subsection (4) shall have effect where the grounds of objection specified in a counter-notice under section 151 consist of or include the grounds mentioned in paragraph (c) of subsection (4) 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;

and in subsection (4) any reference to “the part of the hereditament or affected area not required” is a reference to the whole of that hereditament or area except the part specified in the counter-notice as being the part which the appropriate authority propose to acquire as mentioned in the counter-notice.

(4) If—

- (a) 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 hereditament or affected area not required, or
- (b) the land in question falls within paragraph 21 of Schedule 13,

any power conferred by that order or, as the case may be, by the special enactment for the compulsory acquisition of the interest of the claimant in any land comprised in the part of the hereditament or affected area not required shall cease to have effect.

**156 Withdrawal of blight notice. E+W**

- (1) Subject to subsection (3), the person by whom a blight notice has been served 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

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Tribunal or, if there has been such a determination, at any time before the end of the period of six weeks beginning with the date of the determination.

- (2) Where a blight notice is withdrawn by virtue of subsection (1) any notice to treat deemed to have been served in consequence of it shall be deemed to have been withdrawn.
- (3) A person shall not be entitled by virtue of subsection (1) to withdraw a notice after the appropriate authority have exercised a right of entering and taking possession of land in pursuance of a notice to treat deemed to have been served in consequence of that notice.
- (4) 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 subsection (2).

### *Compensation*

#### **157 Special provisions as to compensation for acquisitions in pursuance of blight notices. E+W**

- (1) Where—
  - (a) an interest in land is acquired in pursuance of a blight notice, and
  - (b) the interest is one in respect of which a compulsory purchase order is in force under section 1 of the <sup>M15</sup>Acquisition of Land Act 1981, as applied by section 47 of the <sup>M16</sup>Planning (Listed Buildings and Conservation Areas) Act 1990, containing a direction for minimum compensation under section 50 of that Act of 1990,  
the compensation payable for the acquisition shall be assessed in accordance with that direction and as if the notice to treat deemed to have been served in respect of the interest under section 154 had been served in pursuance of the compulsory purchase order.
- (2) Where—
  - (a) an interest in land is acquired in pursuance of a blight notice, and
  - (b) the interest is one in respect of which a compulsory purchase order is in force under section 290 of the <sup>M17</sup>Housing Act 1985 (acquisition of land for clearance);  
the compensation payable for the acquisition shall be assessed in accordance with that Act and as if the notice to treat deemed to have been served in respect of the interest under section 154 had been served in pursuance of the compulsory purchase order.
- (3) The compensation payable in respect of the acquisition by virtue of section 160 of an interest in land comprised in—
  - (a) the unaffected area of an agricultural unit; or
  - (b) if the appropriate authority have served a counter-notice objecting to the blight notice on the grounds mentioned in section 151(4)(c), so much of the affected area of the unit as is not specified in the counter-notice,  
shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) of the <sup>M18</sup>Land Compensation Act 1973.
- (4) In subsection (3) the reference to “the appropriate authority” shall be construed as if the unaffected area of an agricultural unit were part of the affected area.

*Status: Point in time view as at 06/04/2009.*

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#### **Marginal Citations**

**M15** 1981 c.67.

**M16** 1990 c. 9.

**M17** 1985 c.68.

**M18** 1973 c.26.

*Special provisions for requiring purchase of whole of partially affected agricultural unit*

### **158 Inclusion in blight notices of requirement to purchase parts of agricultural units unaffected by blight. E+W**

- (1) This section applies where—
  - (a) a blight notice is served in respect of an interest in the whole or part of an agricultural unit, and
  - (b) on the date of service that unit or part contains land (“the unaffected area”) which is not blighted land as well as land (“the affected area”) which is such land.
- (2) Where this section applies the claimant may include in the blight notice—
  - (a) a claim that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and
  - (b) a requirement that the appropriate authority shall purchase his interest in the whole of the unit or, as the case may be, in the whole of the part of it to which the notice relates.
- (3) Subject to section 159(4), “other relevant land” in subsection (2) means—
  - (a) if the blight notice is served only in respect of part of land comprised in the agricultural unit, the remainder of it; and
  - (b) land which is comprised in any other agricultural unit occupied by the claimant on the date of service and in respect of which he is then entitled to an owner’s interest as defined in section 168(4).

### **159 Objections to s. 158 notices. E+W**

- (1) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of section 158 shall include the ground that the claim made in the notice is not justified.
- (2) Objection shall not be made to a blight notice served by virtue of section 158 on the grounds mentioned in section 151(4)(c) unless it is also made on the grounds mentioned in subsection (1).
- (3) The Lands Tribunal shall not uphold an objection to a notice served by virtue of section 158 on the grounds mentioned in section 151(4)(c) unless it also upholds the objection on the grounds mentioned in subsection (1).
- (4) Where objection is made to a blight notice served by virtue of section 158 on the ground mentioned in subsection (1) and also on those mentioned in section 151(4)(c), the Lands Tribunal, in determining whether or not to uphold the objection, shall treat

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that part of the affected area which is not specified in the counter-notice as included in “other relevant land” as defined in section 158(3).

- (5) If the Lands Tribunal upholds an objection but only on the ground mentioned in subsection (1), the Tribunal shall declare that the blight notice is a valid notice in relation to the affected area but not in relation to the unaffected area.
- (6) If the Tribunal upholds an objection both on the ground mentioned in subsection (1) and on the grounds mentioned in section 151(4)(c) (but not on any other grounds) the Tribunal shall declare that the blight notice is a valid notice in relation to the part of the affected area specified in the counter-notice as being the part which the appropriate authority propose to acquire as mentioned in that notice but not in relation to any other part of the affected area or in relation to the unaffected area.
- (7) In a case falling within subsection (5) or (6), the Tribunal shall give directions specifying a date on which notice to treat (as mentioned in sections 154 and section 160) is to be deemed to have been served.
- (8) Section 153(6) shall not apply to any blight notice served by virtue of section 158.

## **160 Effect of notices served by virtue of s. 158. E+W**

- (1) In relation to a blight notice served by virtue of section 158—
  - (a) subsection (2) of section 154 shall have effect as if for the words “or in the case of an agricultural unit the interest of the claimant in so far as it subsists in the affected area” there were substituted the words “or agricultural unit”; and
  - (b) subsections (4) and (5) of that section shall not apply to any such blight notice.
- (2) Where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 159(1), then if either—
  - (a) the claimant, without referring that objection to the Lands Tribunal and before the time for so referring it has expired, gives notice to the appropriate authority that he withdraws his claim as to the unaffected area; or
  - (b) on a reference to the Tribunal, the Tribunal makes a declaration in accordance with section 159(5),the appropriate authority shall be deemed—
  - (i) to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the affected area (but not in so far as it subsists in the unaffected area), and
  - (ii) to have served a notice to treat in respect of it on the date mentioned in subsection (3).
- (3) The date referred to in subsection (2)—
  - (a) in a case falling within paragraph (a) of subsection (2), is the date on which notice is given in accordance with that paragraph; and
  - (b) in a case falling within paragraph (b) of that subsection, is the date specified in directions given by the Tribunal in accordance with section 159(7).
- (4) Where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 159(1) and also on the grounds mentioned in section 151(4)(c), then if either—
  - (a) the claimant, without referring that objection to the Lands Tribunal and before the time for so referring it has expired—

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- (i) gives notice to the appropriate authority that he accepts the proposal of the authority to acquire the part of the affected area specified in the counter-notice, and
  - (ii) withdraws his claim as to the remainder of that area and as to the unaffected area; or
  - (b) on a reference to the Tribunal, the Tribunal makes a declaration in accordance with section 159(6) in respect of that part of the affected area,
- the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the part of the affected area specified in the counter-notice (but not in so far as it subsists in any other part of that area or in the unaffected area) and to have served a notice to treat in respect of it on the date mentioned in subsection (5).
- (5) The date referred to in subsection (4)—
    - (a) in a case falling within paragraph (a) of that subsection, is the date on which notice is given in accordance with that paragraph; and
    - (b) in a case falling within paragraph (b) of that subsection, is the date specified in directions given by the Tribunal in accordance with section 159(7).
  - (6) In relation to a blight notice served by virtue of section 158 references to “the appropriate authority” and “the appropriate enactment” shall be construed as if the unaffected area of an agricultural unit were part of the affected area.

*Personal representatives, mortgagees and partnerships*

**161 Powers of personal representatives in respect of blight notice. E+W**

- (1) In relation to any time after the death of a person who has served a blight notice, sections 151(1), 152(1), 153(1), 154(4) and (5), 156(1) and 160(2) and (4) shall apply as if any reference in them to the claimant were a reference to the claimant’s personal representatives.
- (2) Where the whole or part of a hereditament or agricultural unit is comprised in blighted land and a person claims that—
  - (a) he is the personal representative of a person (“the deceased”) who at the date of his death was entitled to an interest in that hereditament or unit;
  - (b) the interest was one which would have been a qualifying interest if a notice under section 150 had been served in respect of it on that date;
  - (c) he has made reasonable endeavours to sell that interest [<sup>F12</sup>or the land falls within paragraph 21 or paragraph 22 (disregarding the notes) of Schedule 13 and the powers of compulsory acquisition remain exercisable];
  - (d) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land; and
  - (e) one or more individuals are (to the exclusion of any body corporate) beneficially entitled to that interest,

he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, this Chapter.



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- (3) Subject to subsection (4), subsection (2) shall apply in relation to an interest in part of a hereditament or agricultural unit as it applies in relation to an interest in the whole of a hereditament or agricultural unit.
- (4) Subsection (3) shall not enable any person—
- (a) if the deceased was entitled to an interest in the whole of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of the deceased's interest in part of the hereditament or unit; or
  - (b) if the deceased was entitled to an interest only in part of the hereditament or agricultural unit, to make or serve any such claim or notice in respect of the deceased's interest in less than the whole of that part.
- (5) Subject to sections 151(7) and 159(2) and (3), the grounds on which objection may be made in a counter-notice under section 151 to a notice under this section are those specified in paragraphs (a) to (c) of subsection (4) of that section and, in a case to which it applies, the grounds specified in paragraph (d) of that subsection and also the following grounds—
- (a) that the claimant is not the personal representative of the deceased or that, on the date of the deceased's death, the deceased was not entitled to an interest in any part of the hereditament or agricultural unit to which the notice relates;
  - (b) that (for reasons specified in the counter-notice) the interest of the deceased is not such as is specified in subsection (2)(b);
  - (c) that the conditions specified in subsection (2)(c), (d) or (e) are not satisfied.

#### Textual Amendments

**F12** Words in s. 161(2)(c) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 70, [Sch. 15 para.13](#) (with s. 84(5)); [S.I. 1991/2067, art.3](#) (subject to art. 4)

### 162 Power of mortgagees to serve blight notice. **E+W**

- (1) Where the whole or part of a hereditament or agricultural unit is comprised in blighted land and a person claims that—
- (a) he is entitled as mortgagee (by virtue of a power which has become exercisable) to sell an interest in the hereditament or unit, giving immediate vacant possession of the land;
  - (b) he has made reasonable endeavours to sell that interest <sup>[F13]</sup>or the land falls within paragraph 21 or paragraph 22 (disregarding the notes) of Schedule 13 and the powers of compulsory acquisition remain exercisable]; and
  - (c) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land,
- then, subject to the provisions of this section, he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, this Chapter.
- (2) Subject to subsection (3), subsection (1) shall apply in relation to an interest in part of a hereditament or unit as it applies in relation to an interest in the whole of a hereditament or unit.

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- (3) Subsection (2) shall not enable a person—
- (a) if his interest as mortgagee is in the whole of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of any interest in part of the hereditament or unit; or
  - (b) if his interest as mortgagee is only in part of a hereditament or agricultural unit, to make or serve any such notice or claim in respect of any interest in less than the whole of that part.
- (4) Notice under this section shall not be served unless the interest which the mortgagee claims he has the power to sell—
- (a) could be the subject of a notice under section 150 served by the person entitled to it on the date of service of the notice under this section; or
  - (b) could have been the subject of such a notice served by that person on a date not more than six months before the date of service of the notice under this section.
- (5) Subject to sections 151(7) and 159(2) and (3), the grounds on which objection may be made in a counter-notice under section 151 to a notice under this section are those specified in paragraphs (a) to (c) of subsection (4) of that section and, in a case to which it applies, the grounds specified in paragraph (d) of that subsection and also the following grounds—
- (a) that, on the date of service of the notice under this section, the claimant had no interest as mortgagee in any part of the hereditament or agricultural unit to which the notice relates;
  - (b) that (for reasons specified in the counter-notice) the claimant had not on that date the power referred to in subsection (1)(a);
  - (c) that the conditions specified in subsection (1)(b) and (c) are not fulfilled;
  - (d) that (for reasons specified in the counter-notice) neither of the conditions specified in subsection (4) was, on the date of service of the notice under this section, satisfied with regard to the interest referred to in that subsection.

#### Textual Amendments

**F13** Words in s. 162(1)(b) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 70, [Sch. 15 para.13](#) (with s. 84(5)); [S.I. 1991/2067](#), [art.3](#) (subject to art. 4)

### 163 **Prohibition on service of simultaneous notices under ss. 150, 161 and 162.** E

+W

- (1) No notice shall be served under section 150 or 161 in respect of a hereditament or agricultural unit, or any part of it, at a time when a notice already served under section 162 is outstanding with respect to it, and no notice shall be served under section 162 at a time when a notice already served under section 150 or 161 is outstanding with respect to the relevant hereditament, unit or part.
- (2) For the purposes of subsection (1), a notice shall be treated as outstanding with respect to a hereditament, unit or part—
  - (a) until it is withdrawn in relation to the hereditament, unit or part; or
  - (b) in a case where an objection to the notice has been made by a counter-notice under section 151, until either—

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- (i) the period of two months specified in section 153 elapses without the claimant having required the objection to be referred to the Lands Tribunal under that section; or
- (ii) the objection, having been so referred, is upheld by the Tribunal with respect to the hereditament, unit or part.

#### **164 Special provisions as to partnerships. E+W**

- (1) This section shall have effect for the purposes of the application of this Chapter to a hereditament or agricultural unit occupied for the purposes of a partnership firm.
- (2) 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 section 168(1) and (2) shall apply in relation to the firm accordingly.
- (3) If, after the service by the firm of a blight notice, 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.
- (4) Nothing in this Chapter shall be construed as indicating an intention to exclude the operation of the definition of “person” in Schedule 1 to the <sup>M19</sup> Interpretation Act 1978 (by which, unless the contrary intention appears, “person” includes any body of persons corporate or unincorporate) in relation to any provision of this Chapter.
- (5) Subsection (2) shall not affect the definition of “resident owner-occupier” in section 168(3).

#### **Marginal Citations**

**M19** 1978 c. 30.

#### *Miscellaneous and supplementary provisions*

#### **165 Power of Secretary of State to acquire land affected by orders relating to new towns etc. where blight notice served. E+W**

- (1) Where a blight notice has been served in respect of land falling within paragraph 7, 8 or 9 of Schedule 13, then until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation is established for the urban development area the Secretary of State shall have power to acquire compulsorily any interest in the land in pursuance of the blight notice served by virtue of that paragraph.
- (2) Where the Secretary of State acquires an interest under subsection (1), then—
  - (a) if the land is or becomes land within paragraph 8 or, as the case may be, paragraph 9(b) of Schedule 13, the interest shall be transferred by him to the development corporation established for the new town or, as the case may be, the urban development corporation established for the urban development area; and

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- (b) in any other case, the interest may be disposed of by him in such manner as he thinks fit.
- (3) The <sup>M20</sup>Land Compensation Act 1961 shall have effect in relation to the compensation payable in respect of the acquisition of an interest by the Secretary of State under subsection (1) as if—
- (a) the acquisition were by a development corporation under the <sup>M21</sup>New Towns Act 1981 or, as the case may be, by an urban development corporation under Part XVI of the <sup>M22</sup>Local Government, Planning and Land Act 1980;
  - (b) in the case of land within paragraph 7 of Schedule 13, the land formed part of an area designated as the site of a new town by an order which has come into operation under section 1 of the New Towns Act 1981; and
  - (c) in the case of land within paragraph 9(a) of Schedule 13, the land formed part of an area designated as an urban development area by an order under section 134 of the <sup>M23</sup>Local Government, Planning and Land Act 1980 which has come into operation.

#### Marginal Citations

- M20** 1961 c. 33.  
**M21** 1981 c. 64.  
**M22** 1980 c. 65.  
**M23** 1980 c. 65.

#### [<sup>F14</sup>165A Power of Secretary of State to acquire land identified in national policy statements where blight notice served **E+W**

Where a blight notice has been served in respect of land falling within paragraph 25 of Schedule 13, the Secretary of State has power to acquire compulsorily any interest in the land in pursuance of the blight notice served by virtue of that paragraph.]

#### Textual Amendments

- F14** S. 165A inserted (6.4.2009 for certain purposes and otherwise 1.3.2010) by [Planning Act 2008 \(c. 29\)](#), ss. 175(5), 241 (with s. 226); S.I. 2009/400, art. 3; S.I. 2010/101, art. 4(f) (with art. 6)

#### 166 Saving for claimant's right to sell whole hereditament, etc. **E+W**

- (1) The provisions of sections 151(4)(c), 153(6), 154(4) and (5) and 155(3) and (4) relating to hereditaments shall not affect—
- (a) the right of a claimant under section 92 of the <sup>M24</sup>Lands Clauses Consolidation Act 1845 to sell the whole of the hereditament or, in the case of an agricultural unit, the whole of the affected area, which he has required the authority to purchase; or
  - (b) the right of a claimant under section 8 of the <sup>M25</sup>Compulsory Purchase Act 1965 to sell (unless the Lands Tribunal otherwise determines) the whole of the hereditament or, as the case may be, affected area which he has required that authority to purchase.

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- (2) In accordance with subsection (1)(b), in determining whether or not to uphold an objection relating to a hereditament on the grounds mentioned in section 151(4)(c), the Lands Tribunal shall consider (in addition to the other matters which they are required to consider) whether—
- (a) in the case of a house, building or factory, the part proposed to be acquired can be taken without material detriment to the house, building or factory; or
  - (b) in the case of a park or garden belonging to a house, the part proposed to be acquired can be taken without seriously affecting the amenity or convenience of the house.

**Marginal Citations**

M24 1845 c. 18.

M25 1965 c. 56.

**167 No withdrawal of constructive notice to treat. E+W**

Without prejudice to the provisions of section 156(1) and (2), a notice to treat which is deemed to have been served by virtue of this Chapter may not be withdrawn under section 31 of the <sup>M26</sup>Land Compensation Act 1961.

**Marginal Citations**

M26 1961 c. 33.

**168 Meaning of “owner-occupier” and “resident owner-occupier”. E+W**

- (1) Subject to the following provisions of this section, in this Chapter “owner-occupier”, in relation to a hereditament, means—
- (a) a person who occupies the whole or a substantial part of the hereditament in right of an owner’s interest in it, and has so occupied the hereditament or that part of it during the whole of the period of six months ending with the date of service; or
  - (b) if the whole or a substantial part of the hereditament was unoccupied for a period of not more than 12 months ending with that date, a person who so occupied the hereditament or, as the case may be, that part of it during the whole of a period of six months ending immediately before the period when it was not occupied.
- (2) Subject to the following provisions of this section, in this Chapter “owner-occupier”, in relation to an agricultural unit, means a person who—
- (a) occupies the whole of that unit and has occupied it during the whole of the period of six months ending with the date of service; or
  - (b) occupied the whole of that unit during the whole of a period of six months ending not more than 12 months before the date of service,
- and, at all times material for the purposes of paragraph (a) or, as the case may be, paragraph (b) has been entitled to an owner’s interest in the whole or part of that unit.
- (3) In this Chapter “resident owner-occupier”, in relation to a hereditament, means—

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- (a) an individual who occupies the whole or a substantial part of the hereditament as a private dwelling in right of an owner's interest in it, and has so occupied the hereditament or, as the case may be, that part during the whole of the period of six months ending with the date of service; or
  - (b) if the whole or a substantial part of the hereditament was unoccupied for a period of not more than 12 months ending with that date, an individual who so occupied the hereditament or, as the case may be, that part during the whole of a period of six months ending immediately before the period when it was not occupied.
- (4) In this section—
- “owner's interest”, in relation to a hereditament or agricultural unit, means a freehold interest in it or a tenancy of it granted or extended for a term of years certain not less than three years of which remain unexpired on the date of service; and
  - “date of service”, in relation to a hereditament or agricultural unit, means the date of service of a notice in respect of it under section 150.

## 169 “Appropriate authority” for purposes of Chapter II. E+W

- (1) Subject to the following provisions of this section, in this Chapter “the appropriate authority”, in relation to any land, means the government department, local authority [<sup>F15</sup>National Park authority] or other body or person by whom, in accordance with the circumstances by virtue of which the land falls within any paragraph of Schedule 13, the land is liable to be acquired or is indicated as being proposed to be acquired or, as the case may be, any right over the land is proposed to be acquired.
- (2) If any question arises—
- (a) whether the appropriate authority in relation to any land for the purposes of this Chapter is the Secretary of State 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; or
  - (c) which of two or more local authorities is the appropriate authority in relation to any land for those purposes,
- that question shall be referred to the Secretary of State, whose decision shall be final.
- (3) If any question arises which authority is the appropriate authority for the purposes of this Chapter—
- (a) section 151(2) shall have effect as if the reference to the date of service of the blight notice were a reference to that date or, if it is later, the date on which that question is determined;
  - (b) section 162(4)(b) shall apply with the substitution for the period of six months of a reference to that period extended by so long as it takes to obtain a determination of the question; and
  - (c) section 168(1)(b), (2)(b) and (3)(b) shall apply with the substitution for the reference to 12 months before the date of service of a reference to that period extended by so long as it takes to obtain a determination of the question.
- (4) In relation to land falling within paragraph 7, 8 or 9 of Schedule 13, until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation is established for the urban development area, this Chapter shall have effect as if “the appropriate authority” were the Secretary of State.

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- (5) In relation to land falling within paragraph 19 of Schedule 13, “the appropriate authority” shall be the highway authority for the highway in relation to which the order mentioned in that paragraph was made.
- [<sup>F16</sup>(6) In relation to land falling within paragraph 25 of Schedule 13, “the appropriate authority” is—
- (a) if the national policy statement identifies a statutory undertaker as an appropriate person to carry out the specified description of development in the location, the statutory undertaker;
  - (b) in any other case, the Secretary of State.
- (7) If any question arises by virtue of subsection (6)—
- (a) whether the appropriate authority in relation to any land for the purposes of this Chapter is the Secretary of State or a statutory undertaker; or
  - (b) which of two or more statutory undertakers is the appropriate authority in relation to any land for those purposes,
- that question shall be referred to the Secretary of State, whose decision shall be final.
- (8) In subsections (6) and (7) “statutory undertaker” means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 11.]

#### Textual Amendments

**F15** Words in s. 169(1) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 32(5)** (with ss. 7(6), 115, 117, Sch. 8 para. 3); S.I. 1995/2950, **art. 2(1)**

**F16** S. 169(6)-(8) inserted (6.4.2009 for certain purposes and otherwise 1.3.2010) by **Planning Act 2008** (c. 29), **ss. 175(6)**, 241 (with s. 226); S.I. 2009/400, **art. 3**; S.I. 2010/101, **art. 4(f)** (with art. 6)

#### 170 “Appropriate enactment” for purposes of Chapter II. **E+W**

- (1) Subject to the following provisions of this section, in this Chapter “the appropriate enactment”, in relation to land falling within any paragraph of Schedule 13, means the enactment which provides for the compulsory acquisition of land as being land falling within that paragraph or, as respects paragraph 22(b), the enactment under which the compulsory purchase order referred to in that paragraph was made.
- (2) In relation to land falling within paragraph 2, 3 or 4 of that Schedule, an enactment shall for the purposes of subsection (1) be taken to be an enactment which provides for the compulsory acquisition of land as being land falling within that paragraph 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 [<sup>F17</sup>National Park authority] or other body for the purposes of whose functions the land is allocated or is defined as the site of proposed development.
- (3) In relation to land falling within paragraph 2, 3 or 4 of that Schedule by virtue of Note (1) to that paragraph, “the appropriate enactment” shall be determined in accordance with subsection (2) as if references in that subsection to the development

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- plan were references to any such plan, proposal or modifications as are mentioned in paragraph (a), (b) or (c) of that Note.
- (4) In relation to land falling within paragraph 5 or 6 of that Schedule, “the appropriate enactment” shall be determined in accordance with subsection (2) as if references in that subsection to the development plan were references to the resolution or direction in question.
  - (5) In relation to land falling within paragraph 7, 8 or 9 of that Schedule, until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation is established for the urban development area, this Chapter shall have effect as if “the appropriate enactment” were section 165(1).
  - (6) In relation to land falling within paragraph 10 or 11 of that Schedule, “the appropriate enactment” shall be section 290 of the <sup>M27</sup>Housing Act 1985.
  - (7) In relation to land falling within paragraph 19 of that Schedule, “the appropriate enactment” shall be section 239(6) of the <sup>M28</sup>Highways Act 1980.
  - (8) In relation to land falling within paragraph 22 of that Schedule by virtue of Note (1) to that paragraph, “the appropriate enactment” shall be the enactment which would provide for the compulsory acquisition of the land or of the rights over the land if the relevant compulsory purchase order were confirmed or made.
  - [<sup>F18</sup>(8A) In relation to land falling within paragraph 24(a) or (b) of that Schedule, “the appropriate enactment” is the order granting development consent.
  - (8B) In relation to land falling within paragraph 24(c) of that Schedule, “the appropriate enactment” is an order in the terms of the order applied for.
  - (8C) In relation to land falling within paragraph 25 of that Schedule, “the appropriate enactment” is section 165A.]
  - (9) Where, in accordance with the circumstances by virtue of which any land falls within any paragraph of that Schedule, 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 subsection (1), be taken to be an enactment providing for the compulsory acquisition of that land as being land falling within that paragraph.
  - (10) In subsection (9) 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—
    - (a) the coming into operation of any requisite order or scheme made, or having effect as if made, under the provisions of Part II of the Highways Act 1980;
    - (b) the coming into operation of any requisite scheme made, or having effect as if made, under section 106(3) of that Act;
    - (c) the making or approval of any requisite plans.
  - (11) If, apart from this subsection, two or more enactments would be the appropriate enactment in relation to any land for the purposes of this Chapter, 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 this Chapter) the land would have been acquired by the appropriate authority.



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- (12) If any question arises as to which enactment is the appropriate enactment in relation to any land for the purposes of this Chapter, that question shall be referred—
- (a) where the appropriate authority are a government department, to the Minister in charge of that department;
  - (b) where the appropriate authority are statutory undertakers, to the appropriate Minister; and
  - (c) in any other case, to the Secretary of State,
- and the decision of the Minister or, as the case may be, the Secretary of State shall be final.

#### Textual Amendments

**F17** Words in s. 170(2) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 32(5)** (with ss. 7(6), 115, 117); S.I. 1995/2950, **art. 2(1)**

**F18** S. 170(8A)-(8C) inserted (6.4.2009 for certain purposes and otherwise 1.3.2010) by **Planning Act 2008** (c. 29), **ss. 175(7)**, 241 (with s. 226); S.I. 2009/400, **art. 3**; S.I. 2010/101, **art. 4(f)** (with art. 6)

#### Marginal Citations

**M27** 1985 c. 68.

**M28** 1980 c. 66.

## 171 General interpretation of Chapter II. **E+W**

- (1) Subject to the following provisions of this section, in this Chapter—
- “the affected area”, in relation to an agricultural unit, means so much of that unit as, on the date of service, consists of land falling within any paragraph of Schedule 13;
- “agricultural” has the same meaning as in section 109 of the <sup>M29</sup>Agriculture Act 1947 and references to the farming of land include references to the carrying on in relation to the land of agricultural activities;
- “agricultural unit” means land which is occupied as a unit for agricultural purposes, including any dwellinghouse or other building occupied by the same person for the purpose of farming the land;
- “annual value” means—
- (a) in the case of a hereditament which is shown in a local non-domestic rating list and none of which consists of domestic property or property exempt from local non-domestic rating, the value shown in that list as the rateable value of that hereditament on the date of service;
  - (b) in the case of a hereditament which is shown in a local non-domestic rating list and which includes domestic property or property exempt from local non-domestic rating, the sum of—
    - (i) the value shown in that list as the rateable value of that hereditament on the date of service; and
    - (ii) the value attributable to the non-rateable part of that hereditament in accordance with subsections (2) and (3);
  - (c) in the case of any other hereditament, the value attributable to that hereditament in accordance with subsections (2) and (3);
- “blight notice” has the meaning given in section 149(5);

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“the claimant” has the meaning given in section 150(4);

“hereditament” means a relevant hereditament within the meaning of section 64(4)(a) to (c) of the <sup>M30</sup>Local Government Finance Act 1988;

[<sup>F19</sup>“national policy statement” has the meaning given by section 5(2) of the Planning Act 2008;]

“special enactment” means a local enactment, or a provision contained in an Act other than a local or private Act, which is a local enactment or provision authorising the compulsory acquisition of land specifically identified in it; and in this definition “local enactment” means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure.

(2) The value attributable to a hereditament, or the non-rateable part of it, in respect of domestic property shall be the value certified by the relevant valuation officer as being 5 per cent. of the compensation which would be payable in respect of the value of that property if it were purchased compulsorily under statute with vacant possession and the compensation payable were calculated in accordance with Part II of the <sup>M31</sup>Land Compensation Act 1961 by reference to the relevant date.

(3) The value attributable to a hereditament, or the non-rateable part of it, in respect of property exempt from local non-domestic rating shall be the value certified by the relevant valuation officer as being the value which would have been shown as the rateable value of that property on the date of service if it were a relevant non-domestic hereditament consisting entirely of non-domestic property, none of which was exempt from local non-domestic rating.

(4) Land which (apart from this subsection) would comprise separate hereditaments solely by reason of being divided by a boundary between rating areas shall be treated for the purposes of the definition of “hereditament” in subsection (1) as if it were not so divided.

(5) In this section—

“date of service” has the same meaning as in section 168;

“relevant valuation officer” means the valuation officer who would have determined the rateable value in respect of the hereditament for the purposes of Part III of the <sup>M32</sup>Local Government Finance Act 1988 if the hereditament had fulfilled the conditions set out in section 42(1)(b) to (d) of that Act;

“relevant date” is the date by reference to which that determination would have been made;

and expressions used in the definition of “annual value” in subsection (1) or in subsection (2) or (3) which are also used in Part III of that Act have the same meaning as in that Part.

#### Textual Amendments

**F19** S. 171(1): definition of “national policy statement” inserted (6.4.2009 for certain purposes and otherwise 1.3.2010) by [Planning Act 2008 \(c. 29\)](#), **ss. 175(8)**, 241 (with s. 226); [S.I. 2009/400](#), **art. 3**; [S.I. 2010/101](#), **art. 4(f)** (with art. 6)

#### Marginal Citations

**M29** 1947 c.48.

**M30** 1988 c. 41.

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**M31** 1961 c. 33.

**M32** 1988 c.41.

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