

SCHEDULES

SCHEDULE 9

Section 5(7)

ACQUISITION OF RIGHTS IN LAND: APPLICATION OF COMPULSORY PURCHASE LEGISLATION

Compulsory Purchase Act 1965 and compensation enactments

- 1 Part 1 of the Compulsory Purchase Act 1965 (referred to in this Schedule as “CPA 1965”), as applied by section 4(3) to the acquisition of land under section 4(1), and the enactments relating to compensation for the compulsory purchase of land, apply to a compulsory acquisition under section 4(1) by virtue of section 5—
 - (a) with the modifications specified in paragraph 2, and
 - (b) with such other modifications as may be necessary.
- 2 (1) The modifications referred to in paragraph 1(a) are as follows.
 - (2) References in CPA 1965 to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—
 - (a) the right acquired or to be acquired or (as the case may be) the restrictive covenant imposed or to be imposed, or
 - (b) the land over which the right is, or is to be, exercisable or (as the case may be) the restrictive covenant is, or is to be, enforceable.
 - (3) For section 7 of CPA 1965 substitute—

“7 Measure of compensation in case of purchase of new right or imposition of new restrictive covenant

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

- (4) In section 8 of CPA 1965 (provisions as to divided land), for subsection (1) substitute—
 - “(1) This subsection applies where—
 - (a) a notice to treat in respect of a right over, or restrictive covenant affecting, land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”) has been served on a person under section 5 of this Act,
 - (b) in consequence of the service of the notice, a question of disputed compensation in respect of the acquisition of the right or imposition

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of the covenant would, apart from this section, fall to be determined by the Upper Tribunal, and

- (c) before the Upper Tribunal has determined that question, the person on whom the notice has been served satisfies the Upper Tribunal that the relevant conditions are met.

(1A) The relevant conditions are—

- (a) that the person has an interest which the person is able and willing to sell in the whole of the relevant land,
- (b) where the relevant land consists of a house, building or manufactory, that it cannot be made subject to the right or covenant without material detriment to it, and
- (c) where the relevant land consists of a park or garden belonging to a house, that it cannot be made subject to the right or covenant without seriously affecting the amenity or convenience of the house.

(1B) Where subsection (1) above applies—

- (a) the compulsory purchase order shall, in relation to the person on whom the notice to treat has been served—
- (i) cease to authorise the acquisition of the right or imposition of the covenant to which the notice relates, and
- (ii) be deemed to authorise the acquisition of that person's interest in the whole of the relevant land including, where the land consists of a park or garden belonging to a house, the house, and
- (b) the notice to treat shall be deemed to have been served in respect of that interest on such date as the Upper Tribunal directs.

(1C) Any question as to the extent of the land in which the compulsory purchase order is deemed to authorise the purchase of an interest by virtue of subsection (1B)(a)(ii) of this section shall be determined by the Upper Tribunal.

(1D) Where the Upper Tribunal determines that the person on whom a notice to treat has been served has satisfied the Upper Tribunal as mentioned in subsection (1)(c) of this section, the acquiring authority may withdraw the notice at any time within the period of six weeks beginning with the date of the determination.

(1E) Subsection (1D) of this section is without prejudice to any other power of the acquiring authority to withdraw the notice to treat.”

- (5) The following provisions of CPA 1965 (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land)—

section 9(4) (failure of owners to convey),
 paragraph 10(3) of Schedule 1 (owners under incapacity),
 paragraph 2(3) of Schedule 2 (absent and untraced owners), and
 paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

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- (6) Section 11 of CPA 1965 (powers of entry) is modified so as to secure that, where the acquiring authority have served notice to treat in respect of any right or restrictive covenant as well as the notice required by subsection (1) of that section (as it applies to a compulsory acquisition under section 4(1)), they have power, exercisable in the same circumstances and subject to the same conditions, to enter for the purpose of exercising that right or enforcing that covenant; and sections 12 (penalty for unauthorised entry) and 13 (entry on enforcement officer's or sheriff's warrant in the event of obstruction) of that Act are modified accordingly.
- (7) Section 20 of CPA 1965 (compensation for short-term tenants) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of the land, but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right or enforcement of the restrictive covenant in question.
- (8) Section 22 of CPA 1965 (protection of acquiring authority's possession of land where interest accidentally omitted from purchase) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.
- (9) In the Land Compensation Act 1973, for section 44 substitute—

“44 Compensation for injurious affection

(1) Where—

- (a) a right over land is acquired from any person for the purpose of works which are to be situated partly on that land and partly elsewhere, or
- (b) a restrictive covenant over land is imposed on any person for the purpose of such works,

compensation for injurious affection of land retained by that person shall be assessed by reference to the whole of the works and not only the part situated on the land over which the right is exercisable or the covenant is enforceable.

(2) In this section, “compensation for injurious affection” means compensation for injurious affection under section 7 or 20 of the Compulsory Purchase Act 1965 as applied by paragraph 1 of Schedule 9 to the High Speed Rail (London - West Midlands) Act 2017.”

(10) For section 58 of that Act substitute—

“58 Determination of material detriment where right over part of house etc proposed for compulsory acquisition

(1) Subsection (2) applies where the Upper Tribunal is determining under section 8(1)(c) of the Compulsory Purchase Act 1965, as applied by paragraph 1 of Schedule 9 to the High Speed Rail (London - West Midlands) Act 2017 whether—

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- (a) a right over or restrictive covenant affecting part of a house, building or manufactory can be taken without material detriment to the house, building or manufactory, or
 - (b) a right over or restrictive covenant affecting part of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house.
- (2) The Tribunal shall take into account, not only the effect of the right or covenant on the whole of the house, building or manufactory or of the house and the park or garden, but also the use to be made of the right or covenant proposed to be acquired or imposed and, in a case where the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”

Compulsory Purchase (Vesting Declarations) Act 1981 and compensation enactments

- 3 (1) The Compulsory Purchase (Vesting Declarations) Act 1981 (“the 1981 Act”), as applied by section 4(4) to the acquisition of land under section 4(1), applies to a compulsory acquisition under section 4(1) by virtue of section 5—
- (a) with the modifications specified in paragraph 4, and
 - (b) with such other modifications as may be necessary.
- (2) The enactments relating to compensation for the compulsory purchase of land also apply to a compulsory acquisition under section 4(1) by virtue of section 5.
- 4 (1) The modifications referred to in paragraph 3(1)(a) are as follows.
- (2) References in the 1981 Act to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—
- (a) the right acquired or to be acquired or (as the case may be) the restrictive covenant imposed or to be imposed, or
 - (b) the land over which the right is, or is to be, exercisable or (as the case may be) the restrictive covenant is, or is to be, enforceable.
- (3) References in the 1981 Act to the Compulsory Purchase Act 1965 are to be read as references to that Act as it applies to a compulsory acquisition under section 4(1) by virtue of section 5.
- (4) Section 8(1) of the 1981 Act (vesting, and right to enter and take possession) is modified so as to secure—
- (a) that a general vesting declaration in respect of any right or restrictive covenant vests the right or the benefit of the covenant in the acquiring authority on the vesting date, and
 - (b) that, as from the vesting date, the acquiring authority have power, exercisable in the same circumstances and subject to the same conditions, to enter land for the purpose of exercising that right or enforcing that covenant as if the circumstances mentioned in section 8(1)(a) and (b) of the 1981 Act had arisen.
- (5) Section 9(2) of the 1981 Act (right of entry under section 8(1) not exercisable in respect of land subject to certain tenancies, unless notice has been served on occupiers of the land) is modified so as to require a notice served by the appropriate

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authority under that provision to refer to the authority's intention to enter land specified in the notice in order to exercise the right or enforce the restrictive covenant.

- (6) In section 10(1) of the 1981 Act (acquiring authority's liability on vesting of land), the reference to the acquiring authority's taking possession of the land under section 11(1) of CPA 1965 is to be read instead as a reference to the authority's exercising the power to enter the land under that provision as modified by paragraph 2(6) of this Schedule.
- (7) Part 1 of Schedule 1 to the 1981 Act (divided land: buildings and gardens, etc) has effect as if—
- (a) in paragraph 2(1) (notice of objection to severance of buildings, gardens etc), for “part only of” there were substituted “only the acquisition of a right over, or the imposition of a restrictive covenant affecting”;
 - (b) in paragraph 3(a), the reference to the interest in respect of which a notice of objection to severance is served were to the right or the benefit of the covenant mentioned in paragraph 2(1) (as modified by paragraph (a) of this sub-paragraph) (and subsequent references to that interest are to be construed accordingly),
 - (c) in paragraph 8(1), the reference to the part of the land proposed to be severed which is comprised in the general vesting declaration were to the right or covenant comprised in the declaration,
 - (d) for paragraph 8(2) there were substituted—
 - “(2) Sub-paragraph (3) applies where the Upper Tribunal is determining under this paragraph, as applied by paragraph 3 of Schedule 9 to the High Speed Rail (London - West Midlands) Act 2017, whether—
 - (a) a right over or restrictive covenant affecting part of a house, building or factory can be taken without material detriment, or
 - (b) a right over or restrictive covenant affecting part of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house.
 - (3) The Tribunal shall take into account, not only the effect of the right or covenant on the whole of the house, building or factory or of the house and the park or garden, but also the use to be made of the right or covenant proposed to be acquired or imposed and, in a case where the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”
 - (e) in paragraph 9(1), the reference to a part of the land which includes the part comprised in the general vesting declaration were to a part of the land which includes the land over which the right or covenant comprised in the declaration is proposed to be exercisable or enforceable, and
 - (f) any reference, in relation to the acquiring authority, to entering upon or taking possession of land were to entering upon land for the purpose of exercising the right acquired or enforcing the restrictive covenant imposed.