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## SCHEDULES

### [<sup>F1</sup>SCHEDULE 2A

Section 8

#### COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

##### Textual Amendments

- F1** Sch. 2A inserted (3.2.2017) by [Housing and Planning Act 2016 \(c. 22\), s. 216\(3\), Sch. 17 para. 3; S.I. 2017/75, reg. 3\(g\)](#) (with reg. 5)

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

- C1** Sch. 2A excluded by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\), ss. 7\(2\), 8\(2\)](#) (as amended (24.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\), s. 70\(2\), Sch. 14 para. 3; S.I. 2017/209, reg. 2](#))
- C2** Sch. 2A modified (8.8.2017) by [The Wrexham Gas Fired Generating Station Order 2017 \(S.I. 2017/766\), arts. 1, 23\(4\), Sch. 7 para. 9](#)
- C3** Sch. 2A excluded (19.12.2017) by [The Network Rail \(Buxton Sidings Extension\) Order 2017 \(S.I. 2017/1150\), arts. 1, 22\(3\)](#) (with arts. 22(4), 32(2))
- C4** Sch. 2A excluded (22.12.2017) by [The M20 Junction 10a Development Consent Order 2017 \(S.I. 2017/1202\), arts. 1, 29\(3\)\(a\)](#) (with arts. 4, 29(4), 37)
- C5** Sch. 2A excluded (4.1.2018) by [The Blackpool Tramway \(Blackpool North Extension\) Order 2017 \(S.I. 2017/1214\), arts. 1, 30\(3\)\(a\)](#) (with arts. 30(4), 58, 59)
- C6** Sch. 2A excluded (18.4.2018) by [The Network Rail \(Hope Valley Capacity\) Order 2018 \(S.I. 2018/446\), arts. 1, 21\(4\)\(a\)](#) (with arts. 24(8), 33(2))
- C7** Sch. 2A excluded (31.5.2018) by [The Silvertown Tunnel Order 2018 \(S.I. 2018/574\), arts. 1\(2\), 27\(4\)\(a\)](#) (with art. 27(5))
- C8** Sch. 2A excluded (24.8.2018) by [The Network Rail \(Werrington Grade Separation\) Order 2018 \(S.I. 2018/923\), arts. 1, 22\(3\)\(a\)](#) (with arts. 22(4), 31(2))
- C9** Sch. 2A excluded (3.10.2018) by [The A19/A184 Testo's Junction Alteration Development Consent Order 2018 \(S.I. 2018/994\), arts. 1, 27](#) (with arts. 3(3), 5)
- C10** Sch. 2A excluded (13.3.2019) by [The Port of Tilbury \(Expansion\) Order 2019 \(S.I. 2019/359\), arts. 1, 26\(3\)\(a\)\(4\)](#) (with arts. 55, 56)
- C11** Sch. 2A excluded (3.4.2019) by [The Millbrook Gas Fired Generating Station Order 2019 \(S.I. 2019/578\), arts. 1, 24\(3\)\(a\)](#) (with art. 24(4))
- C12** Sch. 2A excluded (10.10.2019) by [The Abergelli Power Gas Fired Generating Station Order 2019 \(S.I. 2019/1268\), arts. 1, 25\(3\)\(a\)](#) (with art. 25(4))
- C13** Sch. 2A excluded (25.10.2019) by [The Drax Power \(Generating Stations\) Order 2019 \(S.I. 2019/1315\), arts. 1, 25\(3\)\(a\)](#) (with art. 25(4))
- C14** Sch. 2A excluded (27.2.2020) by [The A30 Chiverton to Carland Cross Development Consent Order 2020 \(S.I. 2020/121\), arts. 1, 31\(3\)\(a\)](#) (with arts. 3(1), 31(4))
- C15** Sch. 2A excluded (14.4.2020) by [The Reinforcement to the North Shropshire Electricity Distribution Network Order 2020 \(S.I. 2020/325\), arts. 1, 23\(3\)\(a\)](#) (with arts. 7, 23(4))
- C16** Sch. 2A excluded (30.4.2020) by [The A585 Windy Harbour to Skippool Highway Development Consent Order 2020 \(S.I. 2020/402\), arts. 1, 27\(3\)\(a\)](#) (with arts. 5, 27(4), 44)
- C17** Sch. 2A excluded (1.5.2020) by [The Riverside Energy Park Order 2020 \(S.I. 2020/419\), arts. 1, 25\(3\)\(a\)](#) (with arts. 7, 25(4))

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- C18 Sch. 2A excluded (21.5.2020) by [The Lake Lothing \(Lowestoft\) Third Crossing Order 2020 \(S.I. 2020/474\)](#), arts. 1, **27(4)(a)** (with arts. 51, 57)
- C19 Sch. 2A excluded (11.6.2020) by [The M42 Junction 6 Development Consent Order 2020 \(S.I. 2020/528\)](#), arts. 1, **31(3)(a)** (with arts. 31(4), 37)
- C20 Sch. 2A excluded (18.6.2020) by [The A63 \(Castle Street Improvement, Hull\) Development Consent Order 2020 \(S.I. 2020/556\)](#), arts. 1, **27(3)(a)** (with arts. 5, 27(4), 44)
- C21 Sch. 2A excluded (19.6.2020) by [The Cleve Hill Solar Park Order 2020 \(S.I. 2020/547\)](#), arts. 1, **21(3)(a)** (with arts. 21(4), 37)
- C22 Sch. 2A modified (22.7.2020) by [The Norfolk Vanguard Offshore Wind Farm Order 2020 \(S.I. 2020/706\)](#), art. 1, **Sch. 7 para. 5** (with arts. 41, 42, Sch. 16 para. 66)
- C23 Sch. 2A excluded (6.8.2020) by [The A19 Downhill Lane Junction Development Consent Order 2020 \(S.I. 2020/746\)](#), arts. 1, **27(3)(a)** (with arts. 5, 27(4))
- C24 Sch. 2A excluded (1.9.2020) by [The Immingham Open Cycle Gas Turbine Order 2020 \(S.I. 2020/847\)](#), arts. 1, **24(3)(a)** (with art. 24(4), Sch. 9 para. 144)
- C25 Sch. 2A excluded (15.10.2020) by [The Great Yarmouth Third River Crossing Development Consent Order 2020 \(S.I. 2020/1075\)](#), arts. 1, **33(4)(a)** (with art. 33(5))
- C26 Sch. 2A excluded (29.10.2020) by [The Southampton to London Pipeline Development Consent Order 2020 \(S.I. 2020/1099\)](#), arts. 1, **28(3)(a)** (with arts. 28(4), 32, Sch. 9 para. 36)
- C27 Sch. 2A excluded (22.1.2021) by [The Hornsea Three Offshore Wind Farm Order 2020 \(S.I. 2020/1656\)](#), arts. 1, **23(3)** (with arts. 23(4), 40, 41, Sch. 9 Pt. 5 para. 18)
- C28 Sch. 2A applied (9.2.2021) by [The A1 Birtley to Coal House Development Consent Order 2021 \(S.I. 2021/74\)](#), arts. 1, **26(4)** (with art. 5, Sch. 27 para. 36)
- C29 Sch. 2A excluded (9.2.2021) by [The A1 Birtley to Coal House Development Consent Order 2021 \(S.I. 2021/74\)](#), arts. 1, **30(3)(a)** (with arts. 5, 30(4), Sch. 27 para. 36)
- C30 Sch. 2A excluded (11.2.2021) by [High Speed Rail \(West Midlands - Crewe\) Act 2021 \(c. 2\)](#), **ss. 6(2)(a), 7(2)(a), 64(1)** (with s. 7(3))
- C31 Sch. 2A excluded (19.2.2021) by [The A303 Sparkford to Ilchester Dualling Development Consent Order 2021 \(S.I. 2021/125\)](#), arts. 1, **31(3)(a)** (with arts. 4, 31(4), 47)
- C32 Sch. 2A excluded (22.12.2021) by [The Morlais Demonstration Zone Order 2021 \(S.I. 2021/1478\)](#), arts. 1, **26(3)(a)** (with arts. 15, 50, Sch. 11 para. 29)
- C33 Sch. 2A excluded (1.1.2022) by [The Norfolk Boreas Offshore Wind Farm Order 2021 \(S.I. 2021/1414\)](#), arts. 1, **24(3)(a)** (with arts. 41, 42, Sch. 17 para. 66)
- C34 Sch. 2A excluded (5.3.2022) by [The Norfolk Vanguard Offshore Wind Farm Order 2022 \(S.I. 2022/138\)](#), arts. 1, **24(3)(a)** (with arts. 24(4), 41, 42, Sch. 16)
- C35 Sch. 2A excluded (10.3.2022) by [The Thurrock Flexible Generation Plant Development Consent Order 2022 \(S.I. 2022/157\)](#), arts. 1, **25(a)** (with Sch. 8 Pt. 6 para. 19)
- C36 Sch. 2A excluded (25.3.2022) by [The Bridgwater Tidal Barrier Order 2022 \(S.I. 2022/299\)](#), arts. 1, **35** (with art. 55)
- C37 Sch. 2A excluded (22.4.2022) by [The East Anglia ONE North Offshore Wind Farm Order 2022 \(S.I. 2022/432\)](#), arts. 1(2), **24(3)(a)** (with arts. 24(4), 40, 41)
- C38 Sch. 2A excluded (22.4.2022) by [The East Anglia TWO Offshore Wind Farm Order 2022 \(S.I. 2022/433\)](#), arts. 1(2), **24(3)(a)** (with arts. 24(4), 40, 41)

## PART 1

### COUNTER-NOTICE WHERE ACQUIRING AUTHORITY HAS NOT TAKEN POSSESSION

#### *Introduction*

- 1 (1) This Part applies where an acquiring authority—
- (a) serve a notice to treat in respect of part only of a house, building or factory,

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- (b) have not entered on and taken possession of the land to which the notice to treat relates, and
  - (c) have not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in respect of the land to which the notice to treat relates.
- (2) But see section 2A of the Acquisition of Land Act 1981 (under which a compulsory purchase order can exclude from this Schedule land that is 9 metres or more below the surface).
- 2 This Part does not apply by virtue of a notice to treat that is deemed to have been served in respect of part only of a house, building or factory under section 154(5) of the Town and Country Planning Act 1990 (deemed notice to treat in relation to blighted land).
- 3 In this Part—
- “additional land” means the part of the house, building, or factory not specified in the notice to treat;
  - “house” includes any park or garden belonging to a house;
  - “land proposed to be acquired” means the part of the house, building or factory specified in the notice to treat;
  - “whole of the land” means the land proposed to be acquired and the additional land.

*Counter-notice requiring authority to purchase whole of land*

- 4 A person who is able to sell the whole of the land (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the whole of the land.
- 5 A counter-notice under this Part must be served within—
- (a) the period of 28 days beginning with the day on which the notice to treat was served, or
  - (b) if it would end earlier, the period specified in a repeat notice of entry served in accordance with section 11A.

*Effect of counter-notice on notice of entry*

- 6 If the owner serves a counter-notice—
- (a) any notice of entry under section 11(1) that has already been served on the owner in respect of the land proposed to be acquired ceases to have effect, and
  - (b) the acquiring authority may not serve a notice of entry (or a further notice of entry) on the owner under section 11(1) in respect of that land unless they are permitted to do so by paragraph 11 or 12.

*Acquiring authority must respond to counter-notice within three months*

- 7 On receiving a counter-notice the acquiring authority must decide whether to—
- (a) withdraw the notice to treat,
  - (b) accept the counter-notice, or
  - (c) refer the counter-notice to the Upper Tribunal.

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- 8 The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).
- 9 If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.
- 10 If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

*Effects of accepting counter-notice or referring it to the Upper Tribunal*

- 11 If the acquiring authority serve notice of a decision to accept the counter-notice—
- (a) the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the whole of the land, and
  - (b) the authority may serve a notice of entry under section 11(1) in relation to the whole of the land.
- 12 If the acquiring authority serve notice of a decision to refer the counter-notice to the Upper Tribunal, the acquiring authority may serve a notice of entry under section 11(1) on the owner in relation to the land proposed to be acquired.
- 13 If the authority have already served one or more notices of entry under section 11(1) in respect of the land proposed to be acquired the period specified in any new notice of entry in relation to that land must be a period that ends no earlier than the end of the period in the most recent notice of entry.

## PART 2

### COUNTER-NOTICE WHERE AUTHORITY HAS TAKEN POSSESSION

#### *Introduction*

- 14 (1) This Part applies where an acquiring authority—
- (a) have entered on and taken possession of part only of a house, building or factory,
  - (b) did not enter on and take possession of the land in accordance with section 11(1), whether because they had not served a notice to treat or otherwise, and
  - (c) have not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in respect of the land which they have entered on and taken possession of.
- (2) But see section 2A of the Acquisition of Land Act 1981 (under which a compulsory purchase order can exclude from this Schedule land that is 9 metres or more below the surface).
- 15 This Part does not apply if the acquiring authority are deemed to have served a notice to treat in respect of the land proposed to be acquired under section 154(5) of the Town and Country Planning Act 1990 (deemed notice to treat in relation to blighted land).
- 16 In this Part—

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“additional land” means the part of the house, building, or factory that the authority have not entered on and taken possession of;

“house” includes any park or garden belonging to a house;

“land proposed to be acquired” means the part of the house, building or factory that the authority entered on and took possession of otherwise than in accordance with section 11(1);

“whole of the land” means the land proposed to be acquired and the additional land.

*Counter-notice requiring authority to purchase additional land*

17 A person who is able to sell the whole of the land (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the whole of the land.

18 A counter-notice under this Part must be served within the period of 28 days beginning with the day on which—

- (a) the owner first had knowledge that the acquiring authority had entered on and taken possession of the land, or
- (b) if later, the owner receives any notice to treat.

*Acquiring authority must respond to counter-notice within 3 months*

19 On receiving a counter-notice the acquiring authority must decide whether to—

- (a) accept the counter-notice, or
- (b) refer the counter-notice to the Upper Tribunal.

20 The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

21 If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

22 If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to accept the counter-notice at the end of that period.

*Effects of accepting counter-notice*

23 (1) This paragraph applies where the acquiring authority serve notice of a decision to accept the counter-notice.

(2) The compulsory purchase order has effect as if it included the owner’s interest in the additional land.

(3) If the acquiring authority have already served a notice to treat in relation to the land proposed to be acquired, the notice has effect as if it also included the owner’s interest in the additional land.

(4) If the acquiring authority have not served a notice to treat, they must serve a notice to treat in relation to the owner’s interest in the whole of the land.

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### PART 3

#### DETERMINATION BY THE UPPER TRIBUNAL

##### *Introduction*

24 This Part applies where, in accordance with paragraph 9 or 21, the acquiring authority refer a counter-notice to the Upper Tribunal.

25 In this Part “land proposed to be acquired” and “additional land” have the meanings given by paragraph 3 or 16 as the case may be.

##### *Role of the Upper Tribunal*

26 (1) The Upper Tribunal must determine whether the severance of the land proposed to be acquired would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

(2) In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the severance,
- (b) the proposed use of the land proposed to be acquired, and
- (c) if that land is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

27 If the Upper Tribunal determines that the severance of the land proposed to be acquired would have either of the consequences described in paragraph 26(1) it must determine how much of the additional land the acquiring authority ought to be required to take in addition to the land proposed to be acquired.

##### *Effect of determination that more land should be acquired*

28 (1) This paragraph applies where the Upper Tribunal determines that the acquiring authority ought to be required to take the whole or part of the additional land.

(2) The compulsory purchase order has effect as if it included the owner's interest in the additional land.

(3) If the acquiring authority have already served a notice to treat in relation to the land proposed to be acquired, the notice has effect as if it also included the owner's interest in the additional land.

(4) If the acquiring authority have not served a notice to treat, they must serve a notice to treat in relation to the owner's interest in the land proposed to be acquired and the additional land.

(5) If the acquiring authority have already entered on and taken possession of the land proposed to be acquired, the power to award compensation under section 7 includes power to award compensation for any loss suffered by the owner by reason of the temporary severance of the land from the additional land.

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- (6) Where the Upper Tribunal determines that the acquiring authority ought to be required to take part only of the additional land, a reference in sub-paragraph (2) to (5) to “the additional land” is to that part.

*Withdrawal of notice to treat following determination*

- 29 (1) This paragraph applies where—
- (a) the acquiring authority have served a notice to treat in respect of the land proposed to be acquired,
  - (b) the Upper Tribunal has determined that the authority ought to be required to take the whole or part of the additional land, and
  - (c) the authority have not yet entered on and taken possession of any of the land proposed to be acquired or the additional land.
- (2) The acquiring authority may withdraw the notice to treat in respect of the whole of the land at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal made its determination.
- (3) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.
- (4) Any dispute as to the compensation is to be determined by the Upper Tribunal.]

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