

Status: Point in time view as at 01/06/2009.

Changes to legislation: There are currently no known outstanding effects for the Channel Tunnel Rail Link Act 1996, Cross Heading: Acquisition of new rights. (See end of Document for details)

SCHEDULES

SCHEDULE 4

ACQUISITION OF LAND WITHIN LIMITS SHOWN ON DEPOSITED PLANS

PART III

SUPPLEMENTARY PROVISIONS

Acquisition of new rights

- 8 (1) The power conferred by section 4(1)(a) or (b) above shall include, in relation to any land to which the power relates, power to create and acquire such easements or other rights over land as may be required as mentioned in that provision instead of acquiring the land itself.
- (2) Part I of the Compulsory Purchase Act 1965, as applied to the acquisition of land under section 4(1) above, and the enactments relating to compensation for the compulsory purchase of land, shall apply to a compulsory acquisition by virtue of sub-paragraph (1) above—
- (a) with the modifications specified in paragraph 9 below, and
- (b) with such other modifications as may be necessary.
- 9 (1) The modifications referred to in paragraph 8(2)(a) above are as follows.
- (2) For section 7 of the ^{M1}Compulsory Purchase Act 1965 there shall be substituted—

“7 Measure of compensation in case of purchase of new right.

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 purchased is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

- (3) In section 8 of that Act (provisions as to divided land) for subsection (1) there shall be substituted—
- “(1) This subsection applies where—
- (a) a notice to treat in respect of a right over 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 purchase of the right would, apart

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- from this section, fall to be determined by the [^{F1}Upper Tribunal],
 and
- (c) before the [^{F2}Upper Tribunal has] determined that question, the person on whom the notice has been served satisfies [^{F3}the Upper Tribunal] that the relevant conditions are met.
- (1A) The relevant conditions are—
- (a) that he has an interest which he 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 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 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 purchase of the right to which the notice relates, and
- (ii) be deemed to authorise the purchase 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 [^{F4}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 [^{F5}Upper Tribunal].
- (1D) Where the [^{F6}Upper Tribunal determines] that the person on whom a notice to treat has been served has satisfied [^{F7}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.”
- (4) The following provisions of that Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land) namely—
- 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),

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

- (5) Section 11 of that Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on [^{F8}enforcement officer's or sheriff's warrant] in the event of obstruction) of that Act shall be modified correspondingly.
- (6) Section 20 of that Act (compensation for short term tenants) shall apply 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 in question.
- (7) Section 22 of that Act (protection of acquiring authority's possession of land where interest accidentally omitted from purchase) shall be 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, subject to compliance with that section as respects compensation.
- (8) References in that 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
 - (b) the land over which the right is, or is to be, exercisable.
- (9) In the ^{M2}Land Compensation Act 1973, for section 44 there shall be substituted—

“44 Compensation for injurious affection.

- (1) Where a right over land is purchased from any person for the purpose of works which are to be situated partly on that land and partly elsewhere, 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.
 - (2) In this section “compensation for injurious affection” means compensation for injurious affection under section 7 or 20 of the ^{M3}Compulsory Purchase Act 1965 as applied by paragraph 8(2) of Schedule 4 to the Channel Tunnel Rail Link Act 1996.”
- (10) For section 58 of that Act there shall be substituted—

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

In determining under section 8(1)(c) of the Compulsory Purchase Act 1965 as applied by paragraph 8(2) of Schedule 4 to the Channel Tunnel Rail Link Act 1996 whether—

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- (a) a right over part of a house, building or manufactory can be taken without material detriment to the house, building or manufactory, or
- (b) a right over part of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the [^{F9}Upper Tribunal] shall take into account not only the effect of the right 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 rights proposed to be acquired and, in a case where the right 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 to be made of the other land.”

Textual Amendments

- F1** Words in Sch. 4 para. 9(3) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 262(2)(a)(i)** (with Sch. 5)
- F2** Words in Sch. 4 para. 9(3) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, Sch. 1 para. 262(2)(a)(ii), **(aa)** (with Sch. 5)
- F3** Words in Sch. 4 para. 9(3) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, Sch. 1 para. 262(2)(a)(ii), **(bb)** (with Sch. 5)
- F4** Words in Sch. 4 para. 9(3) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 262(2)(b)** (with Sch. 5)
- F5** Words in Sch. 4 para. 9(3) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 262(2)(c)** (with Sch. 5)
- F6** Words in Sch. 4 para. 9(3) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 262(2)(d)(i)** (with Sch. 5)
- F7** Words in Sch. 4 para. 9(3) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 262(2)(d)(ii)** (with Sch. 5)
- F8** Words in Sch. 4 para. 9(5) substituted (1.4.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, **Sch. 22 para. 9**; S.I. 2007/2709, art. 5(b)
- F9** Words in Sch. 4 para. 9(10) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 262(3)** (with Sch. 5)

Marginal Citations

- M1** 1965 c. 56.
- M2** 1973 c. 26.
- M3** 1965 c. 56.

- 10 (1) The Secretary of State may by order provide, in relation to land to which this paragraph applies, that section 4(1) above, so far as relating to acquisition by virtue of paragraph 8(1) above, shall be treated as also authorising acquisition by such person as may be specified in the order.
- (2) This paragraph applies to land within the limits of deviation for the scheduled works or within the limits of land to be acquired or used which is or will be required for use

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in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of any of the works authorised by this Part of this Act.

- (3) The power to make an order under sub-paragraph (1) above includes power to make an order varying or revoking any order previously made under that provision.

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