

## SCHEDULES

### SCHEDULE 2

Section 9(6)

#### ACQUISITION OF LAND

#### PART 1

#### COMPULSORY ACQUISITION OF LAND

##### *Application of Acquisition of Land Act 1981 (c. 67)*

- 1 (1) The Acquisition of Land Act 1981 applies to the compulsory acquisition of land under section 9 with the following modification.
  - (2) The reference in section 17(3) of that Act (local authority and statutory undertakers' land) to statutory undertakers includes a reference to the HCA.
- 2 (1) Schedule 3 to the Act of 1981 applies to the compulsory acquisition of new rights under section 9 with the following modification.
  - (2) The reference in paragraph 4(3) of that Schedule to statutory undertakers includes a reference to the HCA.

##### *Extinguishment of private rights of way etc.*

- 3 (1) Sub-paragraph (2) applies where the HCA completes the compulsory acquisition of land under this Part of this Act.
  - (2) On completion of the acquisition—
    - (a) all private rights of way on, under or over the land are extinguished,
    - (b) all rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land are extinguished, and
    - (c) any such apparatus vests in the HCA.
  - (3) Sub-paragraph (2) is subject to paragraphs 4 to 6.
- 4 The HCA may give a direction before the completion of the acquisition that paragraph 3(2) is not to apply to any right or apparatus specified in the direction.
- 5 Paragraph 3(2) is subject to any agreement which may be made (whether before or after the completion of the acquisition) between—
  - (a) the HCA, and
  - (b) the person—
    - (i) in whom the right or apparatus concerned is vested, or
    - (ii) to whom it belongs.
- 6 (1) Paragraph 3(2) does not apply to—

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- (a) any right vested in statutory undertakers for the purpose of carrying on their undertaking,
  - (b) any apparatus belonging to statutory undertakers for that purpose,
  - (c) any right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network, or
  - (d) any electronic communications apparatus kept installed for the purposes of any such network.
- (2) In sub-paragraph (1) “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990 (c. 8); and “statutory undertaking” is to be read in accordance with section 262 of that Act (meaning of “statutory undertakers”).
- 7 (1) Any person who suffers loss by the extinguishment of a right, or the vesting of any apparatus, under paragraph 3 is entitled to compensation from the HCA.
- (2) Any compensation payable under this paragraph is to be determined in accordance with the Land Compensation Act 1961 (c. 33).

*New rights: Compulsory Purchase Act 1965 (c. 56)*

- 8 (1) The Compulsory Purchase Act 1965 applies, with the necessary modifications, to the compulsory acquisition of new rights under section 9 as it applies to the compulsory purchase of land.
- (2) One result is that, in appropriate contexts, references in that Act to land are to be read as referring, or as including references, to—
- (a) the rights acquired or to be acquired, or
  - (b) land over which the rights are, or are to be, exercisable,
- according to the requirements of the particular context.

*New rights: specific adaptations of 1965 Act*

- 9 (1) Part 1 of the Act of 1965 applies to the compulsory acquisition of new rights under section 9 with the modifications specified in paragraphs 10 to 15.
- (2) Sub-paragraph (1) is without prejudice to the generality of paragraph 8.
- 10 Section 7 (measure of compensation) of the Act of 1965 is to be read as if for that section there were substituted—
- (1) 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 is depreciated by the acquisition but also to the damage (if any) to be sustained by the owner of the land by reason of injurious affection of other land of the owner by the exercise of the right.
  - (2) The modifications subject to which subsection (1) of section 44 of the Land Compensation Act 1973 (compensation for injurious affection) is to have effect, as applied by subsection (2) of that section to compensation for injurious affection under this section, are that—
    - (a) for “land is acquired or taken” there shall be substituted “a right over land is acquired”; and

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- (b) for “acquired or taken from him” there shall be substituted “over which the right is exercisable”.”
- 11 Section 8 of the Act of 1965 (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) is to be read as if for that section there were substituted—
- (1) Subsection (3) applies if—
- (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 in pursuance of section 5 of this Act; and
- (b) as a result—
- (i) a question of disputed compensation in respect of the purchase of the right would, apart from this section, fall to be determined by the Lands Tribunal (“the Tribunal”); and
- (ii) before the Tribunal has determined the question, the person satisfies the Tribunal as mentioned in subsection (2).
- (2) The person satisfies the Tribunal as mentioned in this subsection if the person satisfies the Tribunal that—
- (a) the person has an interest which the person is able and willing to sell in the whole of the relevant land; and
- (b) the right—
- (i) in the case of land consisting of a house, building or manufactory, cannot be purchased without material detriment to the land; or
- (ii) in the case of land consisting of a park or garden belonging to a house, cannot be purchased without seriously affecting the amenity or convenience of the house.
- (3) The compulsory purchase order to which the notice to treat relates, in relation to the person concerned—
- (a) ceases to authorise the purchase of the right; and
- (b) is deemed to authorise the purchase of the person’s interest in the whole of the relevant land (including, in the case of land consisting of a park or garden belonging to a house, the house);
- and the notice to treat is deemed to have been served in respect of that interest on such date as the Tribunal directs.
- (4) Any question as to the extent of the land in which a compulsory purchase order is deemed to authorise the purchase of an interest by virtue of subsection (3) is to be determined by the Tribunal.
- (5) Subsection (6) applies if, in consequence of a determination of the Tribunal that it is satisfied as mentioned in subsection (1)(b)(ii), a compulsory purchase order is deemed by virtue of subsection (3) to authorise the purchase of an interest in land.
- (6) The acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made.

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- (7) Nothing in subsection (6) prejudices any other power of the authority to withdraw the notice.
- (8) The modifications subject to which subsection (1) of section 58 of the Land Compensation Act 1973 (determination of material detriment) is to have effect, as applied by subsection (2) of that section to the duty of the Tribunal in determining whether it is satisfied as mentioned in subsection (1)(b)(ii) above, are set out in subsection (9).
- (9) They are that—
- (a) at the beginning of paragraphs (a) and (b) there shall be inserted “a right over”;
  - (b) for “severance” there shall be substituted “right on the whole of the house, building or manufactory or of the house and the park or garden”; and
  - (c) for “part proposed” and “part is” there shall be substituted respectively “right proposed” and “right is”.
- 12 (1) The provisions of the Act of 1965 mentioned in sub-paragraph (2) (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land) are to be read as if they were modified in accordance with sub-paragraph (3).
- (2) The provisions are—
- (a) section 9(4) (failure of owners to convey),
  - (b) paragraph 10(3) of Schedule 1 (owners under incapacity),
  - (c) paragraph 2(3) of Schedule 2 (absent and untraced owners), and
  - (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land).
- (3) The provisions are to be read as if they were modified so 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 is vested absolutely in the acquiring authority.
- 13 (1) Section 11 of the Act of 1965 (powers of entry) is to be read as if it were modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, the acquiring authority has power to enter for the purpose of exercising that right.
- (2) For the purposes of sub-paragraph (1)—
- (a) the power to enter is to be exercisable in the same circumstances, and subject to the same conditions, as already contained in that section, and
  - (b) the right is deemed to have been created on the date of service of the notice.
- (3) Sections 12 (penalty for unauthorised entry) and 13 (entry on sheriff’s warrant in the event of obstruction) of the Act of 1965 are to be read as if modified correspondingly.
- 14 Section 20 of the Act of 1965 (compensation for short-term tenants) is to be read as if it were modified so as to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory purchase of the interests 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 concerned.

- 15 Section 22 of the Act of 1965 (protection of acquiring authority’s possession of land where by inadvertence an interest in the land has not been purchased) is to be read as if it were modified so 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 concerned, subject to compliance with that section as respects compensation.

*New rights: compensation*

- 16 (1) The enactments relating to compensation for the compulsory purchase of land apply, with the necessary modifications, in relation to the acquisition of new rights under section 9 as they apply to compensation for the compulsory purchase of land.
- (2) Sub-paragraph (1) is without prejudice to the generality of paragraph 8.

**PART 2**

ACQUISITION BY AGREEMENT

- 17 (1) The provisions of Part 1 of the Compulsory Purchase Act 1965 (c. 56) (other than section 31) apply, so far as applicable, to the acquisition by the HCA of land by agreement.
- (2) In that Part as so applied “land” has the same meaning as in this Part of this Act.