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SCHEDULES

SCHEDULE 2

ACQUISITION OF LAND

PART 1

COMPULSORY ACQUISITION OF LAND

Modifications etc. (not altering text)

- C1** Sch. 2 Pt. 1 applied (with modifications) (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 207(7)(8), 240(1)(1)**
- C2** Sch. 2 Pt. 1 applied (with modifications) by 1999 c. 29, s. 333ZA(6)(7) (as inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 187(3), 240(2)**; S.I. 2012/57, **art. 4(1)(w)** (with **arts. 6, 7, 9-11**))

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.

Commencement Information

- I1** Sch. 2 para. 1 in force at 1.12.2008 by [S.I. 2008/3068](#), **art. 2(1)(d)** (with **arts. 6-13**)

- 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.

Commencement Information

- I2** Sch. 2 para. 2 in force at 1.12.2008 by [S.I. 2008/3068](#), **art. 2(1)(d)** (with **arts. 6-13**)

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,

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(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.

Commencement Information

I3 Sch. 2 para. 3 in force at 1.12.2008 by [S.I. 2008/3068](#), [art. 2\(1\)\(d\)](#) (with [arts. 6-13](#))

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.

Commencement Information

I4 Sch. 2 para. 4 in force at 1.12.2008 by [S.I. 2008/3068](#), [art. 2\(1\)\(d\)](#) (with [arts. 6-13](#))

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.

Commencement Information

I5 Sch. 2 para. 5 in force at 1.12.2008 by [S.I. 2008/3068](#), [art. 2\(1\)\(d\)](#) (with [arts. 6-13](#))

6 (1) Paragraph 3(2) does not apply to—

(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”).

Commencement Information

I6 Sch. 2 para. 6 in force at 1.12.2008 by [S.I. 2008/3068](#), [art. 2\(1\)\(d\)](#) (with [arts. 6-13](#))

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).

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Commencement Information

I7 Sch. 2 para. 7 in force at 1.12.2008 by S.I. 2008/3068, **art. 2(1)(d)** (with arts. 6-13)

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.

Commencement Information

I8 Sch. 2 para. 8 in force at 1.12.2008 by S.I. 2008/3068, **art. 2(1)(d)** (with arts. 6-13)

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.

Commencement Information

I9 Sch. 2 para. 9 in force at 1.12.2008 by S.I. 2008/3068, **art. 2(1)(d)** (with arts. 6-13)

- 10 Section 7 (measure of compensation) of the Act of 1965 is to be read as if for that section there were substituted—
- “7 (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
 - (b) for “acquired or taken from him” there shall be substituted “ over which the right is exercisable ”.”

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Commencement Information

I10 Sch. 2 para. 10 in force at 1.12.2008 by S.I. 2008/3068, art. 2(1)(d) (with arts. 6-13)

[^{F1}11 Section 8(1) of the Compulsory Purchase Act 1965 has effect as if references to acquiring land were to acquiring a right in the land, and Schedule 2A to that Act is to be read as if, for that Schedule, there were substituted—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

- 1 (1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory.
- (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 In this Schedule “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

- 3 A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.
- 4 A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

- 5 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.
- 6 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”).
- 7 If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.
- 8 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.
- 9 If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

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Determination by Upper Tribunal

- 10** On a referral under paragraph 7 the Upper Tribunal must determine whether the acquisition of the right 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.
- 11** In making its determination, the Upper Tribunal must take into account—
- (a) the effect of the acquisition of the right,
 - (b) the proposed use of the right, and
 - (c) if 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 of the other land.
- 12** If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10 it must determine how much of the house, building or factory the authority ought to be required to take.
- 13** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.
- 14** (1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.
- (2) 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.
- (3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”]

Textual Amendments

- F1** Sch. 2 para. 11 substituted (3.2.2017) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), Sch. 17 paras. 6, 7; [S.I. 2017/75](#), reg. 3(g) (with reg. 5)

- 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

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(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.

Commencement Information

I11 Sch. 2 para. 12 in force at 1.12.2008 by [S.I. 2008/3068](#), [art. 2\(1\)\(d\)](#) (with [arts. 6-13](#))

- 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.

Commencement Information

I12 Sch. 2 para. 13 in force at 1.12.2008 by [S.I. 2008/3068](#), [art. 2\(1\)\(d\)](#) (with [arts. 6-13](#))

- 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.

Commencement Information

I13 Sch. 2 para. 14 in force at 1.12.2008 by [S.I. 2008/3068](#), [art. 2\(1\)\(d\)](#) (with [arts. 6-13](#))

- 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.

Commencement Information

I14 Sch. 2 para. 15 in force at 1.12.2008 by [S.I. 2008/3068](#), [art. 2\(1\)\(d\)](#) (with [arts. 6-13](#))

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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.

Commencement Information

I15 Sch. 2 para. 16 in force at 1.12.2008 by [S.I. 2008/3068](#), [art. 2\(1\)\(d\)](#) (with arts. 6-13)

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