

## SCHEDULES

### SCHEDULE 14

Section 11

#### AMENDMENTS CONSEQUENTIAL ON THE HOUSING AND PLANNING ACT 2016

- 1 Omit section 6.
- 2 In section 7(2) (acquisition of airspace), for paragraphs (a) and (b) substitute—
  - “(a) Schedule 2A to the Compulsory Purchase Act 1965 (counter-notice requiring purchase of land not in notice to treat);
  - (b) Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 (corresponding provision in case of general vesting declaration);
  - (c) section 153(4A) of the Town and Country Planning Act 1990 (blighted land: proposed acquisition of part interest; material detriment test).”
- 3 In section 8(2) (acquisition of subsoil or under-surface), for paragraphs (a) and (b) substitute—
  - “(a) Schedule 2A to the Compulsory Purchase Act 1965 (counter-notice requiring purchase of land not in notice to treat);
  - (b) Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 (corresponding provision in case of general vesting declaration);
  - (c) section 153(4A) of the Town and Country Planning Act 1990 (blighted land: proposed acquisition of part interest; material detriment test).”
- 4 In section 49 (compulsory acquisition of land for relocation)—
  - (a) omit subsection (4)(b), and
  - (b) in subsection (5), omit “237,”.
- 5 (1) Paragraph 2 of Schedule 6 (acquisition of land: application of Compulsory Purchase Act 1965) is amended as follows.
  - (2) For sub-paragraph (3) substitute—
    - “(3) In section 11(1B) (power to enter on and take possession of land the subject of a notice to treat after giving the specified notice)—
      - (a) in a case where the notice to treat relates only to one or more of the following—
        - (i) the acquisition of subsoil or under-surface of land, where the subsoil or under-surface lies more than 9 metres below the surface;
        - (ii) the acquisition of airspace over land;
        - (iii) an easement, restrictive covenant or other right over land,for “3 months” substitute “1 month”, and
      - (b) after “11A(4)” insert “or (6) and (7)”.

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(3) After that sub-paragraph insert—

“(3A) In section 11A (powers of entry: further notices of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”,
- (b) in subsection (2), after “land” insert “under that provision, to the extent that the newly identified person is the owner, lessee or occupier of the land”,
- (c) in subsection (4)(a), for “14 days” substitute “7 days”, and
- (d) at the end insert—

“(5) Subsections (6) and (7) apply for the purposes of determining the period to be specified in the notice of entry under section 11(1) served on the newly identified person in a case where subsection (4) does not apply.

(6) The period specified in the notice must be—

- (a) in a case where the notice to treat relates only to one or more of the following—
  - (i) the acquisition of subsoil or under-surface of land, where the subsoil or under-surface lies more than 9 metres below the surface;
  - (ii) the acquisition of airspace over land;
  - (iii) an easement, restrictive covenant or other right over land,

a period that ends no earlier than the end of the period of 7 days beginning with the day on which the notice of entry is served, and

- (b) in any other case, a period that ends no earlier than the end of the period of 28 days beginning with the day on which the notice of entry is served.

(7) The period specified in the notice must end no earlier than the end of the period specified in any previous notice of entry given by the acquiring authority in respect of the land.””

(4) After sub-paragraph (4) insert—

“(4A) In Schedule 2A (proposal to acquire part only of a house, building or factory)—

- (a) omit paragraphs 1(2) and 14(2), and
- (b) at the end insert—

#### “PART 4

##### INTERPRETATION

**30** In this Schedule, references to entering on and taking possession of land do not include doing so under

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Schedule 16 to the High Speed Rail (London - West Midlands) Act 2017 (temporary possession and use of land).””

(5) Omit sub-paragraph (5).

6 For paragraph 3 of Schedule 6 (acquisition of rights in land: application of Compulsory Purchase (Vesting Declarations) Act 1981) substitute—

“3 In its application by virtue of section 4(4), the Compulsory Purchase (Vesting Declarations) Act 1981 has effect as if—

- (a) before section 4 there were inserted section 3A (as set out in paragraph 7 of Schedule 14),
- (b) sections 5 and 5A (which respectively set out the earliest date, and the time limit, for the execution of a general vesting declaration) were omitted,
- (c) in section 6 (notices after execution of general vesting declaration), the reference to the invitation under section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981 were a reference to the invitation under section 3A(3) (as inserted by paragraphs 6 and 7 of Schedule 14),
- (d) in section 9 (minor tenancies and tenancies about to expire: power to enter on and take possession of land the subject of a notice to treat after giving the specified notice), for “3 months” there were substituted “14 days”,
- (e) in Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), paragraph 1(2) were omitted, and
- (f) references to the Compulsory Purchase Act 1965 were to that Act as applied by section 4(3) to the acquisition of land under section 4(1).”

7 This is the section referred to in paragraph 3(a) of Schedule 6 (as substituted by paragraph 6 above)—

### “3A Preliminary notices

- (1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—
  - (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession), and
  - (b) published in the London Gazette.
- (2) A notice under subsection (1) must be given before the service of any notice to treat in respect of the land with respect to which the declaration is to be made.
- (3) The notice must—
  - (a) contain a statement, in the form prescribed for the purposes of section 15(4)(e) of the Acquisition of Land Act 1981 (with any necessary modifications), about the effect of Parts 2 and 3 of this Act, and

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- (b) invite any person who would be entitled to claim compensation if a declaration were executed under section 4 to give the acquiring authority information about the person’s name, address and interest in land, using the form prescribed for the purposes of section 15(4)(f) of the Acquisition of Land Act 1981 (with any necessary modifications).
- (4) A notice complying with the preceding provisions of this section must be sent to the Chief Land Registrar and it shall be a local land charge.
- (5) For the purposes of this section, a person has a relevant interest in land if—
  - (a) the person is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion, or
  - (b) the person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”
- 8 (1) Paragraph 2 of Schedule 9 (acquisition of rights in land: application of Compulsory Purchase Act 1965) is amended as follows.
  - (2) Omit sub-paragraph (4).
  - (3) After sub-paragraph (8) insert—
    - “(8A) For Schedule 2A to CPA 1965 substitute—

“SCHEDULE  
2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

**Introduction**

- 1 This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory.
- 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,

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- (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.

#### **Determination by Upper Tribunal**

- 10 On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant 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 or the imposition of the covenant,
  - (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
  - (c) if 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 of the other land.
- 12 If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant 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.””

(4) After sub-paragraph (8A) (inserted by sub-paragraph (3) above) insert—

“(8B) In section 5A(5B) of the Land Compensation Act 1961 (relevant valuation date), for paragraphs (a) and (b) substitute—

- “(a) a right over, or restrictive covenant affecting, land is the subject of a general vesting declaration,
- (b) by virtue of paragraph 11(2) or 16(2) of Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981, the declaration has effect as if it included an interest in the land, and
- (c) the vesting date for the right or covenant is different from the vesting date for the interest in the land.””

(5) Omit sub-paragraph (10).

9 In paragraph 4 of Schedule 9 (acquisition of rights in land: application of Compulsory Purchase (Vesting Declarations) Act 1981), for sub-paragraph (7) substitute—

“(7) Schedule A1 to the 1981 Act (counter-notice requiring purchase of land not in general vesting declaration) has effect as if—

- (a) in paragraph 1(1), for “part only of” there were substituted “only the acquisition of a right over, or the imposition of a restrictive covenant affecting”,
- (b) paragraph 1(2) were omitted,
- (c) references to the land proposed to be acquired were (subject to paragraph (e) below) to the right proposed to be acquired or the restrictive covenant proposed to be imposed,
- (d) references to the additional land were to the house, building or factory over which the right or covenant is proposed to be exercisable or enforceable,
- (e) in paragraphs 14 and 15, references to the severance of the land proposed to be acquired were to the acquisition of the right or the imposition of the restrictive covenant, and
- (f) in paragraph 15, after “in addition to” there were substituted “or in substitution for”.”

10 Omit Schedule 10.