

**Changes to legislation:** There are currently no known outstanding effects for the High Speed Rail (London - West Midlands) Act 2017, SCHEDULE 9. (See end of Document for details)

## SCHEDULES

### SCHEDULE 9

Section 5(7)

#### ACQUISITION OF RIGHTS IN LAND: APPLICATION OF COMPULSORY PURCHASE LEGISLATION

##### *Compulsory Purchase Act 1965 and compensation enactments*

- 1 Part 1 of the Compulsory Purchase Act 1965 (referred to in this Schedule as “CPA 1965”), as applied by section 4(3) to the acquisition of land under section 4(1), and the enactments relating to compensation for the compulsory purchase of land, apply to a compulsory acquisition under section 4(1) by virtue of section 5—
- (a) with the modifications specified in paragraph 2, and
  - (b) with such other modifications as may be necessary.
- 2 (1) The modifications referred to in paragraph 1(a) are as follows.
- (2) References in CPA 1965 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 (as the case may be) the restrictive covenant imposed or to be imposed, or
  - (b) the land over which the right is, or is to be, exercisable or (as the case may be) the restrictive covenant is, or is to be, enforceable.
- (3) For section 7 of CPA 1965 substitute—

##### **“7 Measure of compensation in case of purchase of new right or imposition of new restrictive covenant**

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 or the restrictive covenant is imposed is depreciated by the acquisition of the right or the imposition of the covenant, 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 the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

<sup>F1</sup>(4) .....

- (5) The following provisions of CPA 1965 (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land)—
- 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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are 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 acquired compulsorily or the benefit of the covenant which is to be imposed is vested absolutely in the acquiring authority.

- (6) Section 11 of CPA 1965 (powers of entry) is modified so as to secure that, where the acquiring authority have served notice to treat in respect of any right or restrictive covenant as well as the notice required by subsection (1) of that section (as it applies to a compulsory acquisition under section 4(1)), they have power, exercisable in the same circumstances and subject to the same conditions, to enter for the purpose of exercising that right or enforcing that covenant; and sections 12 (penalty for unauthorised entry) and 13 (entry on enforcement officer's or sheriff's warrant in the event of obstruction) of that Act are modified accordingly.
- (7) Section 20 of CPA 1965 (compensation for short-term tenants) applies 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 or enforcement of the restrictive covenant in question.
- (8) Section 22 of CPA 1965 (protection of acquiring authority's possession of land where interest accidentally omitted from purchase) is 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 or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

[F<sup>2</sup>(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.

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*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.

*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

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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.”]

[<sup>F3</sup>(8B) In section 5A of the Land Compensation Act 1961 (relevant valuation date)—

- (a) for subsection (5A) substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right or enforcing a restrictive covenant in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965,
- (b) the authority is subsequently required by a determination under paragraph 13 of Schedule 2A to that Act (as substituted by paragraph 2(8A) of Schedule 9 to the High Speed Rail (London - West Midlands) Act 2017) to acquire an interest in the land, and
- (c) the authority enters on and takes possession of that land, the authority is deemed for the purposes of subsection (3)(a) to have entered on and taken possession of that land when it entered on it for the purpose of exercising the right or enforcing the covenant.”, and
- (b) in subsection (5B), 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.”.]

- (9) In the Land Compensation Act 1973, for section 44 substitute—

**“44 Compensation for injurious affection**

- (1) Where—

- (a) a right over land is acquired from any person for the purpose of works which are to be situated partly on that land and partly elsewhere, or
- (b) a restrictive covenant over land is imposed on any person for the purpose of such works,

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 or the covenant is enforceable.

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- (2) In this section, “compensation for injurious affection” means compensation for injurious affection under section 7 or 20 of the Compulsory Purchase Act 1965 as applied by paragraph 1 of Schedule 9 to the High Speed Rail (London - West Midlands) Act 2017.”

<sup>F4</sup>(10) .....

#### Textual Amendments

- F1** Sch. 9 para. 2(4) omitted (24.2.2017) by virtue of [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\), s. 70\(2\)](#), [Sch. 14 para. 8\(2\)](#); S.I. 2017/209, reg. 2
- F2** Sch. 9 para. 2(8A) inserted (24.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\), s. 70\(2\)](#), [Sch. 14 para. 8\(3\)](#); S.I. 2017/209, reg. 2
- F3** Sch. 9 para. 2(8B) substituted (11.2.2021) by [High Speed Rail \(West Midlands - Crewe\) Act 2021 \(c. 2\), s. 64\(1\)](#), [Sch. 9 para. 5](#)
- F4** Sch. 9 para. 2(10) omitted (24.2.2017) by virtue of [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\), s. 70\(2\)](#), [Sch. 14 para. 8\(5\)](#); S.I. 2017/209, reg. 2

#### *Compulsory Purchase (Vesting Declarations) Act 1981 and compensation enactments*

- 3 (1) The Compulsory Purchase (Vesting Declarations) Act 1981 (“the 1981 Act”), as applied by section 4(4) to the acquisition of land under section 4(1), applies to a compulsory acquisition under section 4(1) by virtue of section 5—
- (a) with the modifications specified in paragraph 4, and
- (b) with such other modifications as may be necessary.
- (2) The enactments relating to compensation for the compulsory purchase of land also apply to a compulsory acquisition under section 4(1) by virtue of section 5.
- 4 (1) The modifications referred to in paragraph 3(1)(a) are as follows.
- (2) References in the 1981 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 (as the case may be) the restrictive covenant imposed or to be imposed, or
- (b) the land over which the right is, or is to be, exercisable or (as the case may be) the restrictive covenant is, or is to be, enforceable.
- (3) References in the 1981 Act to the Compulsory Purchase Act 1965 are to be read as references to that Act as it applies to a compulsory acquisition under section 4(1) by virtue of section 5.
- (4) Section 8(1) of the 1981 Act (vesting, and right to enter and take possession) is modified so as to secure—
- (a) that a general vesting declaration in respect of any right or restrictive covenant vests the right or the benefit of the covenant in the acquiring authority on the vesting date, and
- (b) that, as from the vesting date, the acquiring authority have power, exercisable in the same circumstances and subject to the same conditions, to enter land for the purpose of exercising that right or enforcing that covenant as if the

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circumstances mentioned in section 8(1)(a) and (b) of the 1981 Act had arisen.

- (5) Section 9(2) of the 1981 Act (right of entry under section 8(1) not exercisable in respect of land subject to certain tenancies, unless notice has been served on occupiers of the land) is modified so as to require a notice served by the appropriate authority under that provision to refer to the authority's intention to enter land specified in the notice in order to exercise the right or enforce the restrictive covenant.
- (6) In section 10(1) of the 1981 Act (acquiring authority's liability on vesting of land), the reference to the acquiring authority's taking possession of the land under section 11(1) of CPA 1965 is to be read instead as a reference to the authority's exercising the power to enter the land under that provision as modified by paragraph 2(6) of this Schedule.
- [<sup>F5</sup>(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 ”.]

#### Textual Amendments

**F5** Sch. 9 para. 4(7) substituted (24.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(2), [Sch. 14 para. 9](#); S.I. 2017/209, reg. 2

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