

SCHEDULE 7

Article 18(3) and (4)

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE
ENACTMENTS FOR CREATION OF NEW EASEMENTS AND RIGHTS

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply to a compulsory acquisition under this Order of an easement or other right created under article 18(1) with the modifications specified in paragraphs 2 to 5.

2.—(1) For the purposes of this Order, the Land Compensation Act 1973(1) shall have effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act—

- (a) for the words “Where land is acquired or taken” there shall be substituted the words “Where a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1)(2) (determination of material detriment where part of house etc proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 4—

- (a) for the word “part” in paragraphs (a) and (b), there shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right proposed”; and
- (d) for the words “part is proposed” there shall be substituted the words “right is proposed”.

3.—(1) Subject to the following provisions of this Schedule, the 1965 Act shall apply to the compulsory acquisition under this Order of a right created under article 18(1) of this Order, so that, in appropriate contexts, references in that Act to land, or to land subject to compulsory purchase, are 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.

(2) Without prejudice to the generality of sub-paragraph (1), for the purposes of this Order, Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right created under article 18(1) with the modifications specified in the following provisions of this Schedule.

4.—(1) For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following—

“8.—(1) Where, in consequence of the service on a person under section 5 of this Act (3) of 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”)—

(1) 1973 c. 26.

(2) Section 58(1) was amended by the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66) and by section 4 of and Schedule 2, paragraph 29(10) to the Planning (Consequential Provisions) Act 1990 (c. 11).

(3) Section 5(2A) – 2(e) were inserted by section 67 of the Planning and Compensation Act 1991 (c. 34).

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- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the tribunal, and
- (b) before the tribunal has determined that question that person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Leicestershire County Council (Ashby de la Zouch Canal Extension) Order 2005 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.”.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where, in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1)(b) of this section, the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, 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.

(4) Nothing in subsection (3) prejudices any other power of the authority to withdraw the notice.

5. Section 11(4) (powers of entry), section 12(5) (unauthorised entry) and section 13 (refusal to give possession to acquiring authority) of the 1965 Act shall apply so that, as from the date on which the undertaker has served notice to treat under this Order in respect of any right, it has the power to exercise that right (which shall be deemed for this purpose to have been created on the date of service of the notice), subject to the conditions contained in the 1965 Act.

(4) Section 11 was amended by the Acquisition of Land Act 1981, section 34(1) and Schedule 4 and the Housing (Consequential Provisions) Act 1985 (c. 71), section 3, and Schedule 1.

(5) Section 12 was amended by the Courts Act 1971 (c. 23), section 56(2) and Schedule 9.