

SCHEDULE 1

Article 8

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

Application of the 1965 Act

2. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act and the enactments relating to compensation for the compulsory purchase of land apply to a compulsory acquisition of new rights under article 8(1)—

- (a) with the modifications specified in paragraph 3, and
- (b) with such other modifications as may be necessary.

3.—(1) The modifications referred to in paragraph 2(a) are as follows.

(2) References in the 1965 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
- (b) the land over which the right is, or is to be exercisable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. Measure of compensation in case of purchase of new right

In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right 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.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by 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),

are 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 compulsorily acquired is vested absolutely in the acquiring authority.

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(5) Section 11 (powers of entry)(1) of the 1965 Act is 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, as well as the notice of entry required by subsection (1) of that section, it has power, exercisable in the same circumstances and subject to the same conditions, to enter for the purpose of exercising that right; and sections 11A(2) (powers of entry: further notices of entry), 11B(3) (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry)(4) and 13(5) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(6) (protection of interests of tenants at will etc.) of the 1965 Act 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 under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act is 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 acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over 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,
 - (b) accept the notice to treat, or
 - (c) refer the counter-notice to the Upper Tribunal.

(1) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(2) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(3) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).

(4) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(5) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(6) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

6. The acquiring authority must serve notice of its 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 decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves 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 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 use to be made of the right proposed to be acquired, 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 acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring 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 acquiring 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, it 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.”

(9) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “If” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 3(5) of Schedule 1 to the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017),
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 8 of Schedule 1 to the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017) to acquire an interest in the land, and

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(c) the acquiring authority enters on and takes possession of that land, the authority is deemed for the purposes of subsection 3(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

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

- “(a) a right over 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 is different from the vesting date for the interest in the land.”.

(11) In the Land Compensation Act 1973, for section 44 (compensation for injurious affection) substitute—

“44. Compensation for injurious affection

(1) Where 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, 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.

(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 2 of Schedule 1 to the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017.”.

Compulsory Purchase (Vesting Declarations) Act 1981 and compensation enactments

4.—(1) The 1981 Act applies to a compulsory acquisition of a new right under article 8(1)—

- (a) with the modifications specified in paragraph 5; 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 of a right under article 8(1).

5.—(1) The modifications referred to in paragraph 4(1)(a) are as follows.

(2) References in the 1981 Act to the 1965 Act 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
- (b) the land over which the right is, or is to be, exercisable.

(3) References in the 1981 Act to the 1965 Act are to be read as references to that Act as it applies to the compulsory acquisition of a right under article 8.

(4) Section 8(1) (vesting, and right to enter and take possession) of the 1981 Act is modified so as to secure—

- (a) that a general vesting declaration in respect of any right vests the right in the acquiring authority on the vesting date; and
- (b) that, as from the vesting date, the acquiring authority has power, exercisable in the same circumstances and subject to the same conditions, to enter land for the purpose of exercising that right as if the circumstances mentioned in section 8(1)(a) and (b) of the 1981 Act had arisen.

(5) Section 9(2) (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) of the 1981 Act 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.

(6) In section 10(1) (acquiring authority's liability on vesting of the land) of the 1981 Act, the reference to the acquiring authority's taking possession of the land under section 11(1) of the 1965 Act 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 3(5) of this Schedule.

(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”;
- (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;
- (d) references to the additional land were to the house, building or factory over which the right is proposed to be exercisable;
- (e) in paragraphs 14 and 15, references to the severance of land proposed to be acquired were to the acquisition of the right; and
- (f) in paragraph 15, after “in addition to” there were inserted “or in substitution for”.