

Status: Point in time view as at 13/04/2011.

Changes to legislation: Housing Act 1988, SCHEDULE 10 is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 10

Section 78.

HOUSING ACTION TRUSTS: LAND

PART I

MODIFICATIONS OF ACQUISITION OF LAND ACT 1981

- 1 The ^{M1}Acquisition of Land Act 1981 (in this Part referred to as “the 1981 Act”) shall apply in relation to the compulsory acquisition of land under section 77 of this Act with the modifications made by this Part of this Schedule.

Marginal Citations

M1 1981 c. 67.

- 2 ^{F1}

Textual Amendments

F1 Sch. 10 para. 2 repealed (31.10.2004) by Planning and Compulsory Purchase Act 2004 (c. 5), ss. 118, 120, 121, Sch. 7 para. 15, **Sch. 9** (with s. 111 and Sch. 7 para. 15(2)); S.I. 2004/2593, art. 2(d)(e)(v)

- 3 The reference in section 17(3) of the 1981 Act to statutory undertakers includes a reference to a housing action trust.

PART II

LAND: SUPPLEMENTARY

Extinguishment of rights over land

- 4 (1) Subject to this paragraph, on an order under section 76 of this Act coming into force or the completion by a housing action trust of a compulsory acquisition of land under Part III of this Act, all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land shall be extinguished, and any such apparatus shall vest in the trust.
- (2) Sub-paragraph (1) above does not apply—
- (a) to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of carrying on their undertaking; or
 - (b) to any right conferred by or in accordance with [^{F2}the electronic communications code] on the operator of [^{F3}an electronic communications

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code network] system or to any [^{F4}electronic communications apparatus] kept installed for the purposes of any [^{F5}such network] .

- (3) In respect of any right or apparatus not falling within sub-paragraph (2) above, sub-paragraph (1) above shall have effect subject—
- (a) to any direction given by the Secretary of State before the coming into force of the order (or, as the case may be, by the trust before the completion of the acquisition) that sub-paragraph (1) above shall not apply to any right or apparatus specified in the direction, and
 - (b) to any agreement which may be made (whether before or after the coming into force of the order or completion of the acquisition) between the Secretary of State (or trust) and the person in or to whom the right or apparatus in question is vested or belongs.
- (4) Any person who suffers loss by the extinguishment of a right or the vesting of any apparatus under this paragraph shall be entitled to compensation from the trust.
- (5) Any compensation payable under this paragraph shall be determined in accordance with the ^{M2}Land Compensation Act 1961.

Textual Amendments

- F2** Words in **Sch. 10 Pt. 2 para. 4** substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by **Communications Act 2003** (c. 21), ss. 406, 411, **Sch. 17 para. 94(2)(a)** (with transitional provisions in **Sch. 18**); S.I. 2003/1900, art. 1(2), **2(1)**, 3(1), **Sch. 1** (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F3** Words in **Sch. 10 Pt. 2 para. 4** substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by **Communications Act 2003** (c. 21), ss. 406, 411, **Sch. 17 para. 94(2)(b)** (with transitional provisions in **Sch. 18**); S.I. 2003/1900, art. 1(2), **2(1)**, 3(1), **Sch. 1** (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F4** Words in **Sch. 10 Pt. 2 para. 4** substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by **Communications Act 2003** (c. 21), ss. 406, 411, **Sch. 17 para. 94(2)(c)** (with transitional provisions in **Sch. 18**); S.I. 2003/1900, art. 1(2), **2(1)**, 3(1), **Sch. 1** (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F5** Words in **Sch. 10 Pt. 2 para. 4** substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by **Communications Act 2003** (c. 21), ss. 406, 411, **Sch. 17 para. 94(2)(d)** (with transitional provisions in **Sch. 18**); S.I. 2003/1900, art. 1(2), **2(1)**, 3(1), **Sch. 1** (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

Marginal Citations

- M2** 1961 c. 33.

Power to override easements

- 5 (1) The erection, construction or carrying out, or maintenance of any building or work on land which has been vested in or acquired by a housing action trust for the purposes of Part III of this Act, whether done by the trust or by any other person, is authorised by virtue of this paragraph if it is done in accordance with planning permission, notwithstanding that it involves interference with an interest or right to which this paragraph applies, or involves a breach of a restriction as to the user of land arising by virtue of a contract.

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- [^{F6}(1A) The use of any land in England which has been vested in or acquired by a housing action trust for the purposes of Part 3 of this Act, whether the use is by the trust or by any other person, is authorised by virtue of this paragraph if it is in accordance with planning permission even if the use involves—
- (a) interference with an interest or right to which this paragraph applies, or
 - (b) a breach of a restriction as to the user of land arising by virtue of a contract.]
- (2) Nothing in sub-paragraph (1) [^{F7}or (1A)] above shall authorise interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land, being a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking or a right conferred by or in accordance with [^{F8}the electronic communications code] on the operator of [^{F9}an electronic communications code network]
- (3) This paragraph applies to the following interests and rights, that is to say, any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.
- (4) In respect of any interference or breach in pursuance of sub-paragraph (1) [^{F10}or (1A)] above, compensation shall be payable under section 7 or section 10 of the ^{M3}Compulsory Purchase Act 1965, to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where the compensation is to be estimated in connection with a purchase by a housing action trust or the injury arises from the execution of works on [^{F11}, or use of,] land acquired by such a trust.
- (5) Where a person other than the housing action trust by or in whom the land in question was acquired or vested is liable to pay compensation by virtue of sub-paragraph (4) above and fails to discharge that liability, the liability shall (subject to sub-paragraph (6) below) be enforceable against the trust.
- (6) Nothing in sub-paragraph (5) above shall be construed as affecting any agreement between the trust and any other person for indemnifying the trust against any liability under that sub-paragraph.
- (7) Nothing in this paragraph shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in sub-paragraph (1) [^{F12}or (1A)] above.
- (8) Nothing in this paragraph shall be construed as authorising any act or omission on the part of a housing action trust, or of any body corporate, in contravention of any limitation imposed by law on its capacity by virtue of the constitution of the trust or body.

Textual Amendments

- F6** Sch. 10 para. 5(1A) inserted (6.4.2009) by Planning Act 2008 (c. 29), ss. 194, 241, Sch. 9 para. 3(2) (with s. 226); S.I. 2009/400, art. 3(h)
- F7** Words in Sch. 10 para. 5(2) inserted (6.4.2009) by Planning Act 2008 (c. 29), ss. 194, 241, Sch. 9 para. 3(3) (with s. 226); S.I. 2009/400, art. 3(h)
- F8** Words in Sch. 10 Pt. 2 para. 5 substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406, 411, Sch. 17 para. 94(2)(a) (with

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- transitional provisions in Sch. 18); S.I. 2003/1900, art. 1(2), **2(1)**, 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F9** Words in Sch. 10 Pt. 2 para. 5 substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 94(2)(b)** (with transitional provisions in Sch. 18); S.I. 2003/1900, art. 1(2), **2(1)**, 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F10** Words in Sch. 10 para. 5(4) inserted (6.4.2009) by Planning Act 2008 (c. 29), ss. 194, 241, **Sch. 9 para. 3(4)(a)** (with s. 226); S.I. 2009/400, **art. 3(h)**
- F11** Words in Sch. 10 para. 5(4) inserted (6.4.2009) by Planning Act 2008 (c. 29), ss. 194, 241, **Sch. 9 para. 3(4)(b)** (with s. 226); S.I. 2009/400, **art. 3(h)**
- F12** Words in Sch. 10 para. 5(7) inserted (6.4.2009) by Planning Act 2008 (c. 29), ss. 194, 241, **Sch. 9 para. 3(5)** (with s. 226); S.I. 2009/400, **art. 3(h)**

Marginal Citations

- M3** 1965 c. 56.

Consecrated land and burial grounds

- 6 (1) Any consecrated land, whether including a building or not, which has been vested in or acquired by a housing action trust for the purposes of Part III of this Act may (subject to the following provisions of this paragraph) be used by the trust, or by any other person, in any manner in accordance with planning permission, notwithstanding any obligation or restriction imposed under ecclesiastical law or otherwise in respect of consecrated land.
- (2) Sub-paragraph (1) above does not apply to land which consists or forms part of a burial ground.
- (3) Any use of consecrated land authorised by sub-paragraph (1) above, and the use of any land, not being consecrated land, vested or acquired as mentioned in that sub-paragraph which at the time of acquisition included a church or other building used or formerly used for religious worship or the site thereof, shall be subject to compliance with the prescribed requirements with respect to the removal and reinterment of any human remains, and the disposal of monuments and fixtures and furnishings; and, in the case of consecrated land, shall be subject to such provisions as may be prescribed for prohibiting or restricting the use of the land, either absolutely or until the prescribed consent has been obtained, so long as any church or other building used or formerly used for religious worship, or any part thereof, remains on the land.
- (4) Any regulations made for the purposes of sub-paragraph (3) above—
- (a) shall contain such provisions as appear to the Secretary of State to be requisite for securing that any use of land which is subject to compliance with the regulations shall, as nearly as may be, be subject to the like control as is imposed by law in the case of a similar use authorised by an enactment not contained in this Act or by a Measure, or as it would be proper to impose on a disposal of the land in question otherwise than in pursuance of an enactment or Measure;
 - (b) shall contain requirements relating to the disposal of any such land as is mentioned in sub-paragraph (3) above such as appear to the Secretary of State requisite for securing that the provisions of that sub-paragraph shall be complied with in relation to the use of the land; and

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- (c) may contain such incidental and consequential provisions (including provision as to the closing of registers) as appear to the Secretary of State to be expedient for the purposes of the regulations.
- (5) Any land consisting of a burial ground or part of a burial ground which has been vested in or acquired by a housing action trust for the purposes of Part III of this Act may be used by the trust in any manner in accordance with planning permission, notwithstanding anything in any enactment relating to burial grounds or any obligation or restriction imposed under ecclesiastical law or otherwise in respect of burial grounds.
 - (6) Sub-paragraph (5) above shall not have effect in respect of any land which has been used for the burial of the dead until the prescribed requirements with respect to the removal and reinterment of human remains and the disposal of monuments in or upon the land have been complied with.
 - (7) Provision shall be made by any regulations made for the purposes of sub-paragraphs (3) and (6) above—
 - (a) for requiring the persons in whom the land is vested to publish notice of their intention to carry out the removal and reinterment of any human remains or the disposal of any monuments; and
 - (b) for enabling the personal representatives or relatives of any deceased person themselves to undertake the removal and reinterment of the remains of the deceased and the disposal of any monument commemorating the deceased, and for requiring the persons in whom the land is vested to defray the expenses of such removal, reinterment and disposal, not exceeding such amount as may be prescribed; and
 - (c) for requiring compliance with such reasonable conditions (if any) as may be imposed, in the case of consecrated land, by the bishop of the diocese, with respect to the manner of removal and the place and manner of reinterment of any human remains and the disposal of any monuments; and
 - (d) for requiring compliance with any directions given in any case by the Secretary of State with respect to the removal and reinterment of any human remains.
 - (8) Subject to the provisions of any such regulations as are referred to in sub-paragraph (7) above, no faculty shall be required for the removal and reinterment in accordance with the regulations of any human remains or for the removal or disposal of any monuments, and the provisions of section 25 of the ^{M4}Burial Act 1857 (which prohibits the removal of human remains without the licence of the Secretary of State except in certain cases) shall not apply to a removal carried out in accordance with the regulations.
 - (9) Any power conferred by this paragraph to use land in a manner therein mentioned shall be construed as a power so to use the land, whether it involves the erection, construction or carrying out of any building or work, or the maintenance of any building or work, or not.
 - (10) Nothing in this paragraph shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in sub-paragraph (1) or sub-paragraph (5) above.

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- (11) Sub-paragraph (8) of paragraph 5 above shall apply in relation to this paragraph as it applies in relation to that.
- (12) In this paragraph “burial ground” includes any churchyard, cemetery or other ground, whether consecrated or not, which has at any time been set apart for the purposes of interment, and “monument” includes a tombstone or other memorial.
- (13) In this paragraph “prescribed” means prescribed by regulations made by the Secretary of State.
- (14) The power to make regulations under this paragraph shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Marginal Citations

M4 1857 c. 81.

Open spaces

- 7 (1) Any land being, or forming part of, a common, open space or fuel or field garden allotment, which has been vested in or acquired by a housing action trust for the purposes of Part III of this Act may be used by the trust, or by any other person, in any manner in accordance with planning permission, notwithstanding anything in any enactment relating to land of that kind, or in any enactment by which the land is specially regulated.
- (2) Nothing in this paragraph shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such enactment as is mentioned in sub-paragraph (1) above.
- (3) Sub-paragraph (8) of paragraph 5 above shall apply in relation to this paragraph as it applies in relation to that.

Displacement of persons

- 8 If the Secretary of State certifies that possession of a house which has been vested in or acquired by a housing action trust for the purposes of Part III of this Act and is for the time being held by that trust for the purposes for which it was acquired, is immediately required for those purposes, nothing in the ^{M5}Rent (Agriculture) Act 1976 or the ^{M6}Rent Act 1977 or this Act shall prevent that trust from obtaining possession of the house.

Marginal Citations

M5 1976 c. 80.

M6 1977 c. 42.

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Extinguishment of public rights of way

- 9 (1) Where any land has been vested in or acquired by a housing action trust for the purposes of Part III of this Act and is for the time being held by that trust for those purposes, the Secretary of State may by order extinguish any public right of way over the land.
- (2) Where the Secretary of State proposes to make an order under this paragraph, he shall publish in such manner as appears to him to be requisite a notice—
- (a) stating the effect of the order, and
 - (b) specifying the time (not being less than 28 days from the publication of the notice) within which, and the manner in which, objections to the proposal may be made,
- and shall serve a like notice—
- (i) on the local planning authority in whose area the land is situated; and
 - (ii) on the relevant highway authority.
- (3) In sub-paragraph (2) above “the relevant highway authority” means any authority which is a highway authority in relation to the right of way proposed to be extinguished by the order under this paragraph.
- (4) Where an objection to a proposal to make an order under this paragraph is duly made and is not withdrawn, the provisions of paragraph 10 below shall have effect in relation to the proposal.
- (5) For the purposes of this paragraph an objection to such a proposal shall not be treated as duly made unless—
- (a) it is made within the time and in the manner specified in the notice required by this paragraph; and
 - (b) a statement in writing of the grounds of the objection is comprised in or submitted with the objection.
- (6) Where it is proposed to make an order under this paragraph extinguishing a public right of way over a road on land acquired for the purposes of this Act by a housing action trust and compensation in respect of restrictions imposed under section 1 or section 2 of the ^{M7}Restriction of Ribbon Development Act 1935 in respect of that road has been paid by the highway authority (or, in the case of a trunk road, by the authority which, when the compensation was paid, was the authority for the purposes of section 4 of the ^{M8}Trunk Roads Act 1936), the order may provide for the payment by the housing action trust to that authority, in respect of the compensation so paid, of such sums as the Secretary of State, with the consent of the Treasury, may determine.
- (7) Where the Secretary of State makes an order under this paragraph on the application of a housing action trust, he shall send a copy of it to [the universal service provider (within the meaning of the Postal Services Act 2000) who provides a universal postal service (within the meaning of that Act) for the area in which the land is situated].

Modifications etc. (not altering text)

C1 Words in [Sch. 10 para. 9\(7\)](#) substituted (26.3.2001) by [S.I. 2001/1149](#), art. 3(1), [Sch. 1 para. 75\(3\)](#)

Marginal Citations

M7 1935 c. 47.

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M8 1936 c. 5 (1 Edw. 8 & Geo. 6.)

- 10 (1) In this paragraph any reference to making a final decision, in relation to an order, is a reference to deciding whether to make the order or what modification, if any, ought to be made.
- (2) Unless the Secretary of State decides apart from the objection not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, the Secretary of State shall, before making a final decision, consider the grounds of the objection as set out in the statement comprised in or submitted with the objection, and may, if he thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates.
- (3) In so far as the Secretary of State, after considering the grounds of the objection as set out in the original statement and in any such further statement, is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation, the Secretary of State may treat the objection as irrelevant for the purpose of making a final decision.
- (4) If, after considering the grounds of the objection as set out in the original statement and in any such further statement, the Secretary of State is satisfied that, for the purpose of making a final decision, he is sufficiently informed as to the matters to which the objection relates, or if, where a further statement has been required, it is not submitted within the specified period, the Secretary of State may make a final decision without further investigation as to those matters.
- (5) Subject to sub-paragraphs (3) and (4) above, the Secretary of State, before making a final decision, shall afford to the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the Secretary of State; and if the objector avails himself of that opportunity, the Secretary of State shall afford an opportunity of appearing and being heard on the same occasion to the housing action trust on whose representation the order is proposed to be made, and to any other persons to whom it appears to the Secretary of State to be expedient to afford such an opportunity.
- (6) Notwithstanding anything in the preceding provisions of this paragraph, if it appears to the Secretary of State that the matters to which the objection relates are such as to require investigation by public local inquiry before he makes a final decision, he shall cause such an inquiry to be held; and where he determines to cause such an inquiry to be held, any of the requirements of those provisions to which effect has not been given at the time of that determination shall be dispensed with.

Telegraphic lines

- 11 (1) Where an order under paragraph 9 above extinguishing a public right of way is made on the application of a housing action trust and at the time of the publication of the notice required by sub-paragraph (2) of that paragraph any [^{F13}electronic communications apparatus] was kept installed for the purposes of [^{F14}an electronic communications code network] under, in, on, over, along or across the land over which the right of way subsisted—
- (a) the power of the operator of [^{F15}the network] to remove the apparatus shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of three months from the date on which the right

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- of way is extinguished and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of [^{F15}the network] has given notice to the trust of his intention to remove the apparatus or that part of it, as the case may be;
- (b) the operator of [^{F15}the network] may by notice given in that behalf to the trust not later than the end of the said period of three months abandon the [^{F16}electronic communications apparatus] or any part of it;
 - (c) subject to paragraph (b) above, the operator of [^{F16}the network] shall be deemed at the end of that period to have abandoned any part of the apparatus which he has then neither removed nor given notice of his intention to remove;
 - (d) the operator of [^{F17}the network] shall be entitled to recover from the trust the expense of providing, in substitution for the apparatus and any other [^{F17}electronic communications apparatus] connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any telecommunication apparatus in such other place as the operator may require; and
 - (e) where under the preceding provisions of this sub-paragraph the operator of [^{F17}the network] has abandoned the whole or any part of any [^{F17}electronic communications apparatus] , that apparatus or that part of it shall vest in the trust and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of [^{F18}an electronic communications code network]
- (2) As soon as practicable after the making of an order under paragraph 9 above extinguishing a public right of way in circumstances in which sub-paragraph (1) above applies in relation to the operator of [^{F18}an electronic communications code network] , the Secretary of State shall give notice to the operator of the making of the order.

Textual Amendments

- F13** Words in [Sch. 10 Pt. 2 para. 11](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, **Sch. 17 para. 94\(2\)**](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), **2\(1\)**, 3\(1\), Sch. 1](#) (with art. 3(2) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, **art. 3\(2\)**](#) (with art. 11)
- F14** Words in [Sch. 10 Pt. 2 para. 11](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, **Sch. 17 para. 94\(2\)**](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), **2\(1\)**, 3\(1\), Sch. 1](#) (with art. 3(2) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, **art. 3\(2\)**](#) (with art. 11)
- F15** Words in [Sch. 10 Pt. 2 para. 11](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, **Sch. 17 para. 94\(2\)**](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), **2\(1\)**, 3\(1\), Sch. 1](#) (with art. 3(2) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, **art. 3\(2\)**](#) (with art. 11)
- F16** Words in [Sch. 10 Pt. 2 para. 11](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, **Sch. 17 para. 94\(2\)**](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), **2\(1\)**, 3\(1\), Sch. 1](#) (with art. 3(2) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, **art. 3\(2\)**](#) (with art. 11)
- F17** Words in [Sch. 10 Pt. 2 para. 11](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, **Sch. 17 para. 94\(2\)**](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), **2\(1\)**, 3\(1\), Sch. 1](#) (with art. 3(2) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, **art. 3\(2\)**](#) (with art. 11)

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F18 Words in [Sch. 10 Pt. 2 para. 11](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, Sch. 17 para. 94\(2\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), 2\(1\), 3\(1\), Sch. 1](#) (with [art. 3\(2\)](#) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))

Statutory undertakers

- 12 (1) Where any land has been acquired by a housing action trust under section 77 of this Act and—
- (a) there subsists over that land a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, being a right of way or a right of laying down, erecting, continuing or maintaining apparatus on, under or over that land, or
 - (b) there is on, under or over the land apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, the trust, if satisfied that the extinguishment of the right or, as the case may be, the removal of the apparatus, is necessary for the purpose of carrying out any development, may serve on the statutory undertakers a notice stating that, at the end of the period of 28 days from the date of service of the notice or such longer period as may be specified therein, the right will be extinguished or requiring that, before the end of that period, the apparatus shall be removed.
- (2) The statutory undertakers on whom a notice is served under sub-paragraph (1) above may, before the end of the period of 28 days from the service of the notice, serve a counter-notice on the trust stating that they object to all or any provisions of the notice and specifying the grounds of their objection.
- (3) If no counter-notice is served under sub-paragraph (2) above—
- (a) any right to which the notice relates shall be extinguished at the end of the period specified in that behalf in the notice; and
 - (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the notice as to the removal of the apparatus has not been complied with, the trust may remove the apparatus and dispose of it in any way it may think fit.
- (4) If a counter-notice is served under sub-paragraph (2) above on a trust, the trust may either withdraw the notice (without prejudice to the service of a further notice) or may apply to the Secretary of State and the appropriate Minister for an order under this paragraph embodying the provisions of the notice with or without modification.
- (5) Where by virtue of this paragraph any right vested in or belonging to statutory undertakers is extinguished, or any requirement is imposed on statutory undertakers, those undertakers shall be entitled to compensation from the trust.
- (6) [F19Sections 280 and 282 of the Town and Country Planning Act 1990] (measure of compensation to statutory undertakers) shall apply to compensation under sub-paragraph (5) above as they apply to compensation under [F19section 279(2)] of that Act.
- (7) Except in a case in which paragraph 11 above has effect—
- (a) the reference in paragraph (a) of sub-paragraph (1) above to a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to a right conferred by or in

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- accordance with [^{F20}the electronic communications code] on the operator of [^{F21}an electronic communications code network] ; and
- (b) the reference in paragraph (b) of that sub-paragraph to apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to [^{F22}electronic communications apparatus] kept installed for the purposes of any [^{F23}such network] .
- (8) Where paragraph (a) or paragraph (b) of sub-paragraph (1) above has effect as mentioned in sub-paragraph (7) above, in the rest of this paragraph and in paragraph 13 below,—
- (a) any reference to statutory undertakers shall have effect as a reference to the operator of any [^{F24}such network] as is referred to in sub-paragraph (7) above; and
- (b) any reference to the appropriate Minister shall have effect as a reference to the Secretary of State for Trade and Industry.

Textual Amendments

- F19** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123: 1, 2\), s. 4, Sch. 2 para. 79\(6\)\(a\)](#)
- F20** Words in [Sch. 10 Pt. 2 para. 12](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, Sch. 17 para. 94\(2\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), 2\(1\), 3\(1\), Sch. 1](#) (with [art. 3\(2\)](#) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F21** Words in [Sch. 10 Pt. 2 para. 12](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, Sch. 17 para. 94\(2\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), 2\(1\), 3\(1\), Sch. 1](#) (with [art. 3\(2\)](#) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F22** Words in [Sch. 10 Pt. 2 para. 12](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, Sch. 17 para. 94\(2\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), 2\(1\), 3\(1\), Sch. 1](#) (with [art. 3\(2\)](#) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F23** Words in [Sch. 10 Pt. 2 para. 12](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, Sch. 17 para. 94\(2\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), 2\(1\), 3\(1\), Sch. 1](#) (with [art. 3\(2\)](#) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F24** Words in [Sch. 10 Pt. 2 para. 12](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, Sch. 17 para. 94\(2\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), 2\(1\), 3\(1\), Sch. 1](#) (with [art. 3\(2\)](#) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))

Modifications etc. (not altering text)

- C2** [Sch. 10 para. 12\(8\)\(b\)](#): transfer of functions (13.4.2011) by [Transfer of Functions \(Media and Telecommunications etc.\) Order 2011 \(S.I. 2011/741\), arts. 1\(2\), 3, Sch. 1](#) (with [art. 5](#))

- 13 (1) Before making an order under paragraph 12(4) above the Ministers proposing to make the order—
- (a) shall afford to the statutory undertakers on whom notice was served under paragraph 12(1) above an opportunity of objecting to the application for the order; and

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- (b) if any objection is made, shall consider the objection and afford to those statutory undertakers and to the trust on whom the counter-notice was served, an opportunity of appearing before and being heard by a person appointed by the Secretary of State and the appropriate Minister for the purpose; and the Ministers may then, if they think fit, make the order in accordance with the application either with or without modification.
- (2) Where an order is made under paragraph 12(4) above—
- (a) any right to which the order relates shall be extinguished at the end of the period specified in that behalf in the order; and
- (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the order as to the removal of the apparatus has not been complied with, the trust may remove the apparatus and dispose of it in any way it may think fit.
- 14 (1) Subject to this paragraph, where any land has been acquired by a housing action trust under section 77 of this Act and—
- (a) there is on, under or over the land apparatus vested in or belonging to statutory undertakers, and
- (b) the undertakers claim that development to be carried out on the land is such as to require, on technical or other grounds connected with the carrying on of their undertaking, the removal or re-siting of the apparatus affected by the development,
- the undertakers may serve on the trust a notice claiming the right to enter on the land and carry out such works for the removal or re-siting of the apparatus or any part of it as may be specified in the notice.
- (2) Where, after the land has been acquired as mentioned in sub-paragraph (1) above, development of the land is begun to be carried out, no notice under this paragraph shall be served later than 21 days after the beginning of the development.
- (3) Where a notice is served under this paragraph the trust on which it is served may, before the end of the period of 28 days from the date of service, serve on the statutory undertakers a counter-notice stating that it objects to all or any of the provisions of the notice and specifying the grounds of its objection.
- (4) If no counter-notice is served under sub-paragraph (3) above, the statutory undertakers shall, after the end of the said period of 28 days, have the rights claimed in their notice.
- (5) If a counter-notice is served under sub-paragraph (3) above, the statutory undertakers who served the notice under this paragraph may either withdraw it or may apply to the Secretary of State and the appropriate Minister for an order under this paragraph conferring on the undertakers the rights claimed in the notice or such modified rights as the Secretary of State and the appropriate Minister think it expedient to confer on them.
- (6) Where by virtue of this paragraph or an order of Ministers made under it, statutory undertakers have the right to execute works for the removal or re-siting of apparatus, they may arrange with the trust for the works to be carried out by the trust, under the superintendence of the undertakers, instead of by the undertakers themselves.
- (7) Where works are carried out for the removal or re-siting of statutory undertakers' apparatus, being works which the undertakers have the right to carry out by virtue

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of this paragraph or an order of Ministers made under it, the undertakers shall be entitled to compensation from the trust.

- (8) [^{F25}Sections 280 and 282 of the Town and Country Planning Act 1990] (measure of compensation to statutory undertakers) shall apply to compensation under sub-paragraph (7) above as they apply to compensation under [^{F25}section 279(4)] of that Act.
- (9) In sub-paragraph (1)(a) above, the reference to apparatus vested in or belonging to statutory undertakers shall include a reference to [^{F26}electronic communications apparatus] kept installed for the purposes of [^{F27}an electronic communications code network] .
- (10) Where sub-paragraph (1)(a) above has effect as mentioned in sub-paragraph (9) above, in the rest of this paragraph—
- (a) any reference to statutory undertakers shall have effect as a reference to the operator of any [^{F28}such network] as is referred to in sub-paragraph (9) above; and
 - (b) any reference to the appropriate Minister shall have effect as a reference to the Secretary of State for Trade and Industry.

Textual Amendments

- F25** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123: 1, 2\), s. 4, Sch. 2 para. 79\(6\)\(b\)](#)
- F26** Words in [Sch. 10 Pt. 2 para. 14](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, Sch. 17 para. 94\(2\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), 2\(1\), 3\(1\), Sch. 1](#) (with [art. 3\(2\)](#) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F27** Words in [Sch. 10 Pt. 2 para. 14](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, Sch. 17 para. 94\(2\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), 2\(1\), 3\(1\), Sch. 1](#) (with [art. 3\(2\)](#) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F28** Words in [Sch. 10 Pt. 2 para. 14](#) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), ss. 406, 411, Sch. 17 para. 94\(2\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, art. 1\(2\), 2\(1\), 3\(1\), Sch. 1](#) (with [art. 3\(2\)](#) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))

Modifications etc. (not altering text)

- C3** [Sch. 10 para. 14\(10\)\(b\)](#): transfer of functions (13.4.2011) by [Transfer of Functions \(Media and Telecommunications etc.\) Order 2011 \(S.I. 2011/741\), arts. 1\(2\), 3, Sch. 1](#) (with [art. 5](#))

- 15 (1) The powers conferred by this paragraph shall be exercisable where, on a representation made by statutory undertakers, it appears to the Secretary of State and the appropriate Minister to be expedient that the powers and duties of those undertakers should be extended or modified, in order—
- (a) to secure the provision for a designated area of services which would not otherwise be provided, or which would not otherwise be satisfactorily provided; or
 - (b) to facilitate an adjustment of the carrying on of the undertaking necessitated by any of the acts and events mentioned in sub-paragraph (2) below.

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- (2) The said acts and events are—
- (a) the acquisition under Part III of this Act of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers in question; and
 - (b) the extinguishment of a right or the imposition of any requirements by virtue of paragraph 12 above.
- (3) The powers conferred by this paragraph shall also be exercisable where, on a representation made by a housing action trust, it appears to the Secretary of State and the appropriate Minister to be expedient that the powers and duties of statutory undertakers should be extended or modified, in order to secure the provision of new services, or the extension of existing services, for the purposes of a designated area under Part III of this Act.
- (4) Where the powers conferred by this paragraph are exercisable, the Secretary of State and the appropriate Minister may, if they think fit, by order provide for such extension or modification of the powers and duties of the statutory undertakers as appears to them to be requisite in order to secure the provision of the services in question, as mentioned in sub-paragraph (1)(a) or sub-paragraph (3) above, or to secure the adjustment in question, as mentioned in sub-paragraph (1)(b) above, as the case may be.
- (5) Without prejudice to the generality of sub-paragraph (4) above, an order under this paragraph may make provision—
- (a) for empowering the statutory undertakers to acquire (whether compulsorily or by agreement) any land specified in the order, and to erect or construct any buildings or works so specified;
 - (b) for applying, in relation to the acquisition of any such land or the construction of any such works, enactments relating to the acquisition of land and the construction of works;
 - (c) where it has been represented that the making of the order is expedient for the purposes mentioned in sub-paragraph (1)(a) or sub-paragraph (3) above, for giving effect to such financial arrangements between the housing action trust and the statutory undertakers as they may agree, or as, in default of agreement, may be determined to be equitable in such manner and by such tribunal as may be specified in the order; and
 - (d) for such incidental and supplemental matters as appear to the Secretary of State and the appropriate Minister to be expedient for the purposes of the order.
- 16 (1) As soon as may be after making such a representation as is mentioned in sub-paragraph (1) or sub-paragraph (3) of paragraph 15 above—
- (a) the statutory undertakers, in a case falling within sub-paragraph (1), or
 - (b) the housing action trust, in a case falling within sub-paragraph (3),
- shall publish, in such form and manner as may be directed by the Secretary of State and the appropriate Minister, a notice giving such particulars as may be so directed of the matters to which representation relates, and specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made, and shall also, if it is so directed by the Secretary of State and the appropriate Minister, serve a like notice on such persons, or persons of such classes, as may be so directed.

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- (2) Orders under paragraph 15 above shall be subject to special parliamentary procedure.
- 17 (1) Where, on a representation made by statutory undertakers, the appropriate Minister is satisfied that the fulfilment of any obligations incurred by those undertakers in connection with the carrying on of their undertaking has been rendered impracticable by an act or event to which this sub-paragraph applies, the appropriate Minister may, if he thinks fit, by order direct that the statutory undertakers shall be relieved of the fulfilment of that obligation, either absolutely or to such extent as may be specified in the order.
- (2) Sub-paragraph (1) above applies to the following acts and events—
- (a) the compulsory acquisition under this Part of this Act of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers; and
 - (b) the extinguishment of a right or the imposition of any requirement by virtue of paragraph 12 above.
- (3) As soon as may be after making a representation to the appropriate Minister under sub-paragraph (1) above, the appropriate statutory undertakers shall, as may be directed by the appropriate Minister, either publish (in such form and manner as may be so directed) a notice giving such particulars as may be so directed of the matters to which the representation relates, and specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made, or serve such a notice on such persons, or persons of such classes, as may be so directed, or both publish and serve such notices.
- (4) If any objection to the making of an order under this paragraph is duly made and is not withdrawn before the order is made, the order shall be subject to special parliamentary procedure.
- (5) Immediately after an order is made under this paragraph by the appropriate Minister, he shall publish a notice stating that the order has been made and naming a place where a copy of it may be seen at all reasonable hours, and shall serve a like notice—
- (a) on any person who duly made an objection to the order and has sent to the appropriate Minister a request in writing to serve him with the notice required by this sub-paragraph, specifying an address for service; and
 - (b) on such other persons (if any) as the appropriate Minister thinks fit.
- (6) Subject to the following provisions of this paragraph, an order under this paragraph shall become operative on the date on which the notice required by sub-paragraph (5) above is first published.
- (7) Where in accordance with sub-paragraph (4) above the order is subject to special parliamentary procedure, sub-paragraph (6) above shall not apply.
- (8) If any person aggrieved by an order under this paragraph wishes to question the validity of the order on the ground that it is not within the powers conferred by this paragraph, or that any requirement of this paragraph has not been complied with in relation to the order, he may, within six weeks from the date on which the notice required by sub-paragraph (5) above is first published, make an application to the High Court under this paragraph.
- (9) On any application under sub-paragraph (8) above the High Court—

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- (a) may by interim order wholly or in part suspend the operation of the order, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and
 - (b) if satisfied that the order is wholly or to any extent outside the powers conferred by this paragraph, or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of this paragraph, may wholly or in part quash the order, either generally or in so far as it affects any property of the applicant.
- (10) Subject to sub-paragraph (8) above, the validity of an order under this paragraph shall not be questioned in any legal proceedings whatsoever, either before or after the order has been made.
- 18 (1) For the purposes of paragraphs 15 and 17 above, an objection to the making of an order thereunder shall not be treated as duly made unless—
- (a) the objection is made within the time and in the manner specified in the notice required by paragraph 16 or (as the case may be) paragraph 17 above; and
 - (b) a statement in writing of the grounds of the objection is comprised in or submitted with the objection.
- (2) Where an objection to the making of such an order is duly made in accordance with sub-paragraph (1) above and is not withdrawn, the following provisions of this paragraph shall have effect in relation thereto; but, in the application of those provisions to an order under paragraph 15 above, any reference to the appropriate Minister shall be construed as a reference to the Secretary of State and the appropriate Minister.
- (3) Unless the appropriate Minister decides apart from the objection not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, the appropriate Minister, before making a final decision, shall consider the grounds of the objection as set out in the statement, and may, if he thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates.
- (4) In so far as the appropriate Minister after considering the grounds of the objection as set out in the original statement and in any such further statement, is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation, the appropriate Minister may treat the objection as irrelevant for the purpose of making a final decision.
- (5) If, after considering the grounds of the objection as set out in the original statement and in any such further statement, the appropriate Minister is satisfied that, for the purpose of making a final decision, he is sufficiently informed as to the matters to which the objection relates, or if, where a further statement has been required it is not submitted within the specified period, the appropriate Minister may make a final decision without further investigation as to those matters.
- (6) Subject to sub-paragraphs (4) and (5) above, the appropriate Minister, before making a final decision, shall afford to the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the appropriate Minister; and if the objector avails himself of that opportunity, the appropriate Minister shall afford an opportunity of appearing and being heard on the same occasion to the statutory undertakers, local authority or Minister on whose representation the order is proposed

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to be made, and to any other persons to whom it appears to the appropriate Minister to be expedient to afford such an opportunity.

- (7) Notwithstanding anything in the preceding provisions of this paragraph, if it appears to the appropriate Minister that the matters to which the objection relates are such as to require investigation by public local inquiry before he makes a final decision, he shall cause such an inquiry to be held; and where he determines to cause such an inquiry to be held, any of the requirements of those provisions to which effect has not been given at the time of that determination shall be dispensed with.
- (8) In this paragraph any reference to making a final decision, in relation to an order, is a reference to deciding whether to make the order or what modification (if any) ought to be made.

Interpretation

19 F29

Textual Amendments

F29 Sch. 10 Pt. 2 para. 19 repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406, 411, Sch. 19(1) (with transitional provisions in Sch. 18); S.I. 2003/1900, art. 1(2), 2(1), 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, art. 3(2) (with art. 11)

PART III

ACQUISITION OF RIGHTS

- 20 (1) The ^{M9}Compulsory Purchase Act 1965 (in this Part of the Schedule referred to as “the 1965 Act”) shall have effect with the modifications necessary to make it apply to the compulsory purchase of rights by virtue of section 77(5) of this Act as it applies to the compulsory purchase of land so that, in appropriate contexts, references in the 1965 Act to land are read as referring, or as including references, to the rights or to land over which the rights are or are to be exercisable, according to the requirements of the particular context.
- (2) Without prejudice to the generality of sub-paragraph (1) above, in relation to the purchase of rights in pursuance of section 77(5) of this Act—
- (a) Part I of the 1965 Act (which relates to compulsory purchases under the ^{M10}Acquisition of Land Act 1981) shall have effect with the modifications specified in paragraphs 21 to 23 below; and
 - (b) the enactments relating to compensation for the compulsory purchase of land shall apply with the necessary modifications as they apply to such compensation.

Marginal Citations

M9 1965 c. 56.
M10 1981 c. 58.

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- 21 (1) For section 7 of the 1965 Act (which relates to compensation) there shall be substituted the following—
- “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 purchased is depreciated by the purchase 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 is to have effect, as applied by subsection (2) of that section to compensation for injurious affection under this section, are that for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased” and for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.”
- 22 For section 8 of the 1965 Act (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following—
- “8 (1) Where in consequence of the service on a person in pursuance of section 5 of this Act 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 (hereafter in this subsection referred to as “the relevant land”)—
- (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 [^{F30}Upper Tribunal](hereafter in this section referred to as “the Tribunal”); and
- (b) before the Tribunal has determined that question the 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 compulsory purchase order to which the notice to treat relates 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 a compulsory purchase order is deemed to authorise the purchase of an interest by virtue of the preceding subsection 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) of this section a compulsory purchase 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

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weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.

- (4) The modifications subject to which subsection (1) of section 58 of the Land Compensation Act 1973 is to have effect, as applied by subsection (2) of that section to the duty of the Tribunal in determining whether it is satisfied as mentioned in subsection (1) of this section, are that at the beginning of paragraphs (a) and (b) there shall be inserted the words “a right over”, for the word “severance” there shall be substituted the words “right on the whole of the house, building or manufactory or of the house and the park or garden” and for the words “part proposed” and “part is” there shall be substituted respectively the words “right proposed” and “right is”.

Textual Amendments

F30 Words in [Sch. 10 para. 22](#) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 5(1)(2), [Sch. 1 para. 189](#)

- 23 (1) 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), namely—
- 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),
- shall be 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 purchased compulsorily is vested absolutely in the acquiring authority.
- (2) Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on ^{F31}enforcement officer's or sheriff's warrant] in the event of obstruction) of the Act shall be modified correspondingly.
- (3) Section 20 of the 1965 Act (compensation for short-term tenants) shall apply with the modifications necessary 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 acquisition 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 in question.
- (4) Section 22 of the 1965 Act (protection of acquiring authority's possession of land where by inadvertence an interest in the land has not been purchased) shall be 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 in question, subject to compliance with that section as respects compensation.

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Textual Amendments

F31 Words in [Sch. 10 para. 23\(2\)](#) substituted (1.4.2008) by [Tribunals, Courts and Enforcement Act 2007](#) (c. 15), ss. 139, 148, [Sch. 22 para. 6](#); S.I. 2007/2709, [art. 5](#)

Status:

Point in time view as at 13/04/2011.

Changes to legislation:

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