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# Town and Country Planning Act 1990

## 1990 CHAPTER 8

### PART VI

#### RIGHTS OF OWNERS ETC. TO REQUIRE PURCHASE OF INTERESTS

### CHAPTER I

#### INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS

##### *Service of purchase notices*

#### **137 Circumstances in which purchase notices may be served.**

- (1) This section applies where—
- (a) on an application for planning permission to develop any land, permission is refused or is granted subject to conditions; or
  - (b) by an order under section 97 planning permission in respect of any land is revoked, or is modified by the imposition of conditions; or
  - (c) an order is made under section 102 or paragraph 1 of Schedule 9 in respect of any land.
- (2) If—
- (a) in the case mentioned in subsection (1)(a) or (b), any owner of the land claims that the conditions mentioned in subsection (3) are satisfied with respect to it, or
  - (b) in the case mentioned in subsection (1)(c), any person entitled to an interest in land in respect of which the order is made claims that the conditions mentioned in subsection (4) are satisfied with respect to it,

he may, within the prescribed time and in the prescribed manner, serve on the council of the district [<sup>F1</sup>, Welsh county, county borough] or London borough in which the land is situated a notice (in this Act referred to as “a purchase notice”) requiring that council to purchase his interest in the land in accordance with this Chapter.

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- (3) The conditions mentioned in subsection (2)(a) are—
- (a) that the land has become incapable of reasonably beneficial use in its existing state; and
  - (b) in a case where planning permission was granted subject to conditions or was modified by the imposition of conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions; and
  - (c) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been granted or for which the local planning authority or the Secretary of State has undertaken to grant planning permission.
- (4) The conditions mentioned in subsection (2)(b) are—
- (a) that by reason of the order the land is incapable of reasonably beneficial use in its existing state; and
  - (b) that it cannot be rendered capable of reasonably beneficial use by the carrying out of any development for which planning permission has been granted, whether by that order or otherwise.
- (5) For the purposes of subsection (1)(a) and any claim arising in the circumstances mentioned in that subsection, the conditions referred to in sections 91 and 92 shall be disregarded.
- (6) A person on whom a <sup>M1</sup>repairs notice has been served under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 shall not be entitled to serve a notice under this section in the circumstances mentioned in subsection (1)(a) in respect of the building in question—
- (a) until the expiration of three months beginning with the date of the service of the repairs notice; and
  - (b) if during that period the compulsory acquisition of the building is begun in the exercise of powers under section 47 of that Act, unless and until the compulsory acquisition is discontinued.
- (7) For the purposes of subsection (6) a compulsory acquisition—
- (a) is started when the the notice required by section 12 of the <sup>M2</sup>Acquisition of Land Act 1981 or, as the case may be, paragraph 3 of Schedule 1 to that Act is served; and
  - (b) is discontinued—
    - (i) in the case of acquisition by the Secretary of State, when he decides not to make the compulsory purchase order; and
    - (ii) in any other case, when the order is withdrawn or the Secretary of State decides not to confirm it.
- (8) No purchase notice shall be served in respect of an interest in land while the land is incapable of reasonably beneficial use by reason only of such an order as is mentioned in subsection (1)(c), except by virtue of a claim under subsection (2)(b).

#### Textual Amendments

- F1** Words in s. 137(2) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(3)** (with ss. 54(5) (7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

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#### Marginal Citations

- M1** 1990 c. 9  
**M2** 1981 c. 67.

VALID FROM 07/06/2006

#### [<sup>F2</sup>137A Purchase notices: Crown land

- (1) A purchase notice may be served in respect of Crown land only as mentioned in this section.
- (2) The owner of a private interest in Crown land must not serve a purchase notice unless—
  - (a) he first offers to dispose of his interest to the appropriate authority on equivalent terms, and
  - (b) the offer is refused by the appropriate authority.
- (3) The appropriate authority may serve a purchase notice in relation to the following land—
  - (a) land belonging to Her Majesty in right of Her private estates;
  - (b) land belonging to Her Majesty in right of the Duchy of Lancaster;
  - (c) land belonging to the Duchy of Cornwall;
  - (d) land which forms part of the Crown Estate.
- (4) An offer is made on equivalent terms if the price payable for the interest is equal to (and, in default of agreement, determined in the same manner as) the compensation which would be payable in respect of it if it were acquired in pursuance of a purchase notice.
- (5) Expressions used in this section and in Part 13 must be construed in accordance with that Part.]

#### Textual Amendments

- F2** S. 137A inserted (7.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), ss. 79, 121, Sch. 3 para. 1 (with s. 111); S.I. 2004/1281, art. 2

### 138 Circumstances in which land incapable of reasonably beneficial use.

- (1) Where, for the purpose of determining whether the conditions specified in section 137(3) or (4) are satisfied in relation to any land, any question arises as to what is or would in any particular circumstances be a reasonably beneficial use of that land, then, in determining that question for that purpose, no account shall be taken of any unauthorised prospective use of that land.
- (2) A prospective use of land shall be regarded as unauthorised for the purposes of subsection (1)—
  - (a) if it would involve the carrying out of [<sup>F3</sup>development other than any development specified in paragraph 1 or 2 of Schedule 3;]or

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- (b) in the case of a purchase notice served in consequence of a refusal or conditional grant of planning permission, if it would contravene the condition set out in Schedule 10.

#### Textual Amendments

- F3** Words in s. 138(2)(a) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 31, [Sch. 6 para.18](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to [art. 4](#))

#### *Duties of authorities on service of purchase notice*

### 139 Action by council on whom purchase notice is served.

- (1) The council on whom a purchase notice is served shall serve on the owner by whom the purchase notice was served a notice (a “response notice”) stating either—
- (a) that the council are willing to comply with the purchase notice; or
  - (b) that another local authority or statutory undertakers specified in the response notice have agreed to comply with it in their place; or
  - (c) that for reasons so specified the council are not willing to comply with the purchase notice and have not found any other local authority or statutory undertakers who will agree to comply with it in their place, and that they have sent the Secretary of State a copy of the purchase notice and of the response notice.
- (2) A response notice must be served before the end of the period of three months beginning with the date of service of the purchase notice.
- (3) Where the council on whom a purchase notice is served by an owner have served a response notice on him in accordance with subsection (1)(a) or (b), the council or, as the case may be, the other local authority or statutory undertakers specified in the response notice shall be deemed—
- (a) to be authorised to acquire the interest of the owner compulsorily in accordance with the relevant provisions, and
  - (b) to have served a notice to treat in respect of it on the date of service of the response notice.
- (4) Where the council propose to serve such a response notice as is mentioned in subsection (1)(c), they must first send the Secretary of State a copy—
- (a) of the proposed response notice, and
  - (b) of the purchase notice.
- (5) A notice to treat which is deemed to have been served by virtue of subsection (3)(b) may not be withdrawn under section 31 of the <sup>M3</sup>Land Compensation Act 1961.

#### Modifications etc. (not altering text)

- C1** S. 139: power to apply (with modifications) conferred by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 123:1\)](#), s. 149(3), [Sch. 29 Pt. II para. 1](#) as substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, [Sch. 2 para. 44\(13\)](#)
- C2** S. 139 applied (with modifications) (7.6.2004) by [The Milton Keynes \(Urban Area and Planning Functions\) Order 2004 \(S.I. 2004/932\)](#), art. 5, [Sch. para.1](#) (with arts. 6, 7)

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- S. 139 applied (with modifications) (12.10.2005) by [The Thurrock Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2572\)](#), [art. 5](#) (with arts. 6, 7)
- S. 139 applied (with modifications) (31.10.2005) by [The London Thames Gateway Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2721\)](#), [art. 6](#)
- S. 139 applied (with modifications) (6.4.2006) by [The West Northamptonshire Development Corporation \(Planning Functions\) Order 2006 \(S.I. 2006/616\)](#), [art. 6](#)
- S. 139 applied (with modifications) (7.9.2006) by [The Olympic Delivery Authority \(Planning Functions\) Order 2006 \(S.I. 2006/2185\)](#), [art. 6](#)

#### Marginal Citations

M3 1961 c. 33.

### 140 Procedure on reference of purchase notice to Secretary of State.

- (1) Where a copy of a purchase notice is sent to the Secretary of State under section 139(4), he shall consider whether to confirm the notice or to take other action under section 141 in respect of it.
- (2) Before confirming a purchase notice or taking such other action, the Secretary of State must give notice of his proposed action—
  - (a) to the person who served the purchase notice;
  - (b) to the council on whom it was served;
  - (c) [<sup>F4</sup>in England] outside Greater London—
    - (i) to the county planning authority and also, where that authority is a joint planning board, to the county council; and
    - (ii) if the district council on whom the purchase notice in question was served is a constituent member of a joint planning board, to that board;
  - [<sup>F5</sup>(cc) in Wales, to the local planning authority, where it is a joint planning board;] and
  - (d) if the Secretary of State proposes to substitute any other local authority or statutory undertakers for the council on whom the notice was served, to them.
- (3) A notice under subsection (2) shall specify the period (which must not be less than 28 days from its service) within which any of the persons on whom it is served may require the Secretary of State to give those persons an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) If within that period any of those persons so require, before the Secretary of State confirms the purchase notice or takes any other action under section 141 in respect of it he must give those persons such an opportunity.
- (5) If, after any of those persons have appeared before and been heard by the appointed person, it appears to the Secretary of State to be expedient to take action under section 141 otherwise than in accordance with the notice given by him, the Secretary of State may take that action accordingly.

#### Textual Amendments

- F4 Words in s. 140(2)(c) inserted (1.4.1996) by 1994 c. 19, s. 20(4), [Sch. 6 Pt. II para. 24\(4\)\(a\)](#) (with ss. 54(5)(7), 55(5), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); S.I. 1996/396, art. 3, [Sch. 1](#)
- F5 S. 140(2)(cc) inserted (1.4.1996) by 1994 c. 19, s. 20(4), [Sch. 6 Pt. II para. 24\(4\)\(b\)](#) (with ss. 54(5)(7), 55(5), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); S.I. 1996/396, art. 3, [Sch. 1](#)

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**Modifications etc. (not altering text)**

- C3** S. 140(2)(d): power to apply (with modifications) conferred by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 123:1\)](#), s. 149(3), **Sch. 29 Pt. II para. 2** as substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2 para. 44(13)**
- C4** S. 140(2)(d) applied (with modifications) (7.6.2004) by [The Milton Keynes \(Urban Area and Planning Functions\) Order 2004 \(S.I. 2004/932\)](#), art. 5, **Sch. para. 2** (with arts. 6, 7)
- S. 140(2)(d) applied (with modifications) (12.10.2005) by [The Thurrock Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2572\)](#), **art. 5** (with arts. 6, 7)
- S. 140(2)(d) applied (with modifications) (31.10.2005) by [The London Thames Gateway Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2721\)](#), **art. 6**
- S. 140(2)(d) applied (with modifications) (6.4.2006) by [The West Northamptonshire Development Corporation \(Planning Functions\) Order 2006 \(S.I. 2006/616\)](#), **art. 6**
- S. 140(2)(d) applied (with modifications) (7.9.2006) by [The Olympic Delivery Authority \(Planning Functions\) Order 2006 \(S.I. 2006/2185\)](#), **art. 6**

**141 Action by Secretary of State in relation to purchase notice.**

- (1) Subject to the following provisions of this section and to section 142(3), if the Secretary of State is satisfied that the conditions specified in subsection (3) or, as the case may be, subsection (4) of section 137 are satisfied in relation to a purchase notice, he shall confirm the notice.
- (2) If it appears to the Secretary of State to be expedient to do so, he may, instead of confirming the purchase notice—
  - (a) in the case of a notice served on account of the refusal of planning permission, grant planning permission for the development in question;
  - (b) in the case of a notice served on account of planning permission for development being granted subject to conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of that development;
  - (c) in the case of a notice served on account of the revocation of planning permission by an order under section 97, cancel the order;
  - (d) in the case of a notice served on account of the modification of planning permission by such an order by the imposition of conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of the development in respect of which the permission was granted; or
  - (e) in the case of a notice served on account of the making of an order under section 102 or paragraph 1 of Schedule 9, revoke the order or, as the case may be, amend the order so far as appears to him to be required in order to prevent the land from being rendered incapable of reasonably beneficial use by the order.
- (3) If it appears to the Secretary of State that the land, or any part of the land, could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out of any other development for which planning permission ought to be granted, he may, instead of confirming the purchase notice, or, as the case may be, of confirming it so far as it relates to that part of the land, direct that, if an application for planning permission for that development is made, it must be granted.



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- (4) If it appears to the Secretary of State, having regard to the probable ultimate use of the land, that it is expedient to do so, he may, if he confirms the notice, modify it, either in relation to the whole or any part of the land, by substituting another local authority or statutory undertakers for the council on whom the notice was served.
- (5) Any reference in section 140 to the taking of action by the Secretary of State under this section includes a reference to the taking by him of a decision not to confirm the purchase notice either on the grounds that any of the conditions referred to in subsection (1) are not satisfied or by virtue of section 142.

#### **Modifications etc. (not altering text)**

- C5** S. 141(4): power to apply (with modifications) conferred by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 123:1\)](#), s. 149(3), **Sch. 29 Pt. II para. 3** as substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2 para. 44(13)**
- C6** S. 141(4) applied (with modifications) (7.6.2004) by [The Milton Keynes \(Urban Area and Planning Functions\) Order 2004 \(S.I. 2004/932\)](#), art. 5, **Sch. para. 3** (with arts. 6, 7)  
S. 141(4) applied (with modifications) (12.10.2005) by [The Thurrock Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2572\)](#), **art. 5** (with arts. 6, 7)  
S. 141(4) applied (with modifications) (31.10.2005) by [The London Thames Gateway Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2721\)](#), **art. 6**  
S. 141(4) applied (with modifications) (6.4.2006) by [The West Northamptonshire Development Corporation \(Planning Functions\) Order 2006 \(S.I. 2006/616\)](#), **art. 6**  
S. 141(4) applied (with modifications) (7.9.2006) by [The Olympic Delivery Authority \(Planning Functions\) Order 2006 \(S.I. 2006/2185\)](#), **art. 6**

#### **142 Power to refuse to confirm purchase notice where land has restricted use by virtue of previous planning permission.**

- (1) This section applies where a purchase notice is served in respect of land which consists in whole or in part of land which has a restricted use by virtue of an existing planning permission.
- (2) For the purposes of this section, land is to be treated as having a restricted use by virtue of an existing planning permission if it is part of a larger area in respect of which planning permission has previously been granted (and has not been revoked) and either—
  - (a) it remains a condition of the planning permission (however expressed) that that part shall remain undeveloped or be preserved or laid out in a particular way as amenity land in relation to the remainder; or
  - (b) the planning permission was granted on an application which contemplated (expressly or by necessary implication) that the part should not be comprised in the development for which planning permission was sought, or should be preserved or laid out as mentioned in paragraph (a).
- (3) Where a copy of the purchase notice is sent to the Secretary of State under section 139(4), he need not confirm the notice under section 141(1) if it appears to him that the land having a restricted use by virtue of an existing planning permission ought, in accordance with that permission, to remain undeveloped or, as the case may be, remain or be preserved or laid out as amenity land in relation to the remainder of the large area for which that planning permission was granted.

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### **143 Effect of Secretary of State’s action in relation to purchase notice.**

- (1) Where the Secretary of State confirms a purchase notice—
- (a) the council on whom the purchase notice was served, or
  - (b) if under section 141(4) the Secretary of State modified the purchase notice by substituting another local authority or statutory undertakers for that council, that other authority or those undertakers,
- shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the relevant provisions, and to have served a notice to treat in respect of it on such date as the Secretary of State may direct.
- (2) If, before the end of the relevant period, the Secretary of State has neither—
- (a) confirmed the purchase notice, nor
  - (b) taken any such action in respect of it as is mentioned in section 141(2) or (3), nor
  - (c) notified the owner by whom the notice was served that he does not propose to confirm the notice,
- the notice shall be deemed to be confirmed at the end of that period, and the council on whom the notice was served shall be deemed to be authorised as mentioned in subsection (1) and to have served a notice to treat in respect of the owner’s interest at the end of that period.
- (3) Subject to subsection (4), for the purposes of subsection (2) the relevant period is—
- (a) the period of nine months beginning with the date of service of the purchase notice; or
  - (b) if it ends earlier, the period of six months beginning with the date on which a copy of the purchase notice was sent to the Secretary of State.
- (4) The relevant period does not run if the Secretary of State has before him at the same time both—
- (a) a copy of the purchase notice sent to him under section 139(4); and
  - (b) a notice of appeal under section 78, 174 or 195 of this Act or under section 20 or 39 of the Planning <sup>M4</sup>(Listed Buildings and Conservation Areas) Act 1990 (appeals against refusal of listed building consent, etc. and appeals against listed building enforcement notices) or under section 21 <sup>M5</sup>of the Planning (Hazardous Substances) Act 1990 (appeals against decisions and failure to take decisions relating to hazardous substances) relating to any of the land to which the purchase notice relates.
- (5) Where—
- (a) the Secretary of State has notified the owner by whom a purchase notice has been served of a decision on his part to confirm, or not to confirm, the notice; and
  - (b) that decision is quashed under Part XII,
- the purchase notice shall be treated as cancelled, but the owner may serve a further purchase notice in its place.
- (6) The reference in subsection (5) to a decision to confirm, or not to confirm, the purchase notice includes—
- (a) any decision not to confirm the notice in respect of any part of the land to which it relates, and



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- (b) any decision to grant any permission, or give any direction, instead of confirming the notice, either wholly or in part.
- (7) For the purposes of determining whether a further purchase notice under subsection (5) was served within the period prescribed for the service of purchase notices, the planning decision in consequence of which the notice was served shall be treated as having been made on the date on which the decision of the Secretary of State was quashed.
- (8) A notice to treat which is deemed to have been served by virtue of subsection (1) or (2) may not be withdrawn under section 31 of the <sup>M6</sup>Land Compensation Act 1961.

#### Modifications etc. (not altering text)

- C7** S. 143(1)(b): power to apply (with modifications) conferred by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 123:1\)](#), s. 149(3), **Sch. 29 Pt. II para. 4** as substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2 para. 44(13)**
- C8** S. 143(1)(b) applied (with modifications) (7.6.2004) by [The Milton Keynes \(Urban Area and Planning Functions\) Order 2004 \(S.I. 2004/932\)](#), art. 5, **Sch. para. 4** (with arts. 6, 7)
- S. 143(1)(b) applied (with modifications) (12.10.2005) by [The Thurrock Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2572\)](#), art. 5 (with arts. 6, 7)
- S. 143(1)(b) applied (with modifications) (31.10.2005) by [The London Thames Gateway Development Corporation \(Planning Functions\) Order 2005 \(S.I. 2005/2721\)](#), art. 6
- S. 143(1)(b) applied (with modifications) (6.4.2006) by [The West Northamptonshire Development Corporation \(Planning Functions\) Order 2006 \(S.I. 2006/616\)](#), art. 6
- S. 143(1)(b) applied (with modifications) (7.9.2006) by [The Olympic Delivery Authority \(Planning Functions\) Order 2006 \(S.I. 2006/2185\)](#), art. 6

#### Marginal Citations

- M4** 1990 c. 9.  
**M5** 1990 c. 10.  
**M6** 1961 c. 33.

### Compensation

#### 144 Special provisions as to compensation where purchase notice served.

- (1) Where compensation is payable by virtue of section 107 in respect of expenditure incurred in carrying out any works on land, any compensation payable in respect of the acquisition of an interest in the land in pursuance of a purchase notice shall be reduced by an amount equal to the value of those works.
- (2) Where—
- (a) the Secretary of State directs under section 141(3) that, if an application for it is made, planning permission must be granted for the development of any land, and
- (b) on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that the permitted development value of the interest in that land in respect of which the purchase notice was served is less than its [<sup>F6</sup>Schedule 3 value],

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that authority shall pay the person entitled to that interest compensation of an amount equal to the difference.

- (3) If the planning permission mentioned in subsection (2)(a) would be granted subject to conditions for regulating the design or external appearance, or the size or height of buildings, or for regulating the number of buildings to be erected on the land, the Secretary of State may direct that in assessing any compensation payable under subsection (2) those conditions must be disregarded, either altogether or to such extent as may be specified in the direction.
- (4) The Secretary of State may only give a direction under subsection (3) if it appears to him to be reasonable to do so having regard to the local circumstances.
- (5) Sections 117 and 118 shall have effect in relation to compensation under subsection (2) as they have effect in relation to compensation to which those sections apply.
- (6) In this section—
- [<sup>F7</sup>“Schedule 3 value”, in relation to such an interest, means the value of that interest calculated on the assumption that planning permission would be granted—
- (a) subject to the condition in Schedule 10, for any development of a class specified in paragraph 1 of Schedule 3; and
- (b) for any development of a class specified in paragraph 2 of Schedule 3.]
- (a) that interest is acquired in accordance with this Chapter; or
- (b) compensation is payable in respect of that interest under subsection (2),
- no compensation shall be payable in respect of that order under section 115.

#### Textual Amendments

- F6** Words in s. 144(2)(b) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 31, [Sch. 6 para. 19\(a\)](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)
- F7** Definition in s. 144(6) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 31, [Sch. 6 para. 19\(b\)](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)

*Special provisions for requiring purchase of whole of partially affected agricultural unit*

#### 145 Counter-notice requiring purchase of remainder of agricultural unit.

- (1) This section applies where—
- (a) an acquiring authority is deemed under this Chapter to have served notice to treat in respect of any agricultural land on a person (“the claimant”) who has a greater interest in the land than as tenant for a year or from year to year (whether or not he is in occupation of the land), and

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- (b) the claimant has such an interest in other agricultural land (“the unaffected area”) comprised in the same agricultural unit as that to which the notice relates.
- (2) Where this section applies the claimant may serve on the acquiring authority a counter-notice—
- (a) claiming that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and
  - (b) requiring the acquiring authority to purchase his interest in the whole of the unaffected area.
- (3) Subject to subsection (4), “other relevant land” in subsection (2) means—
- (a) land which is comprised in the same agricultural unit as the land to which the notice to treat relates and in which the claimant does not have such an interest as is mentioned in subsection (1); and
  - (b) land which is comprised in any other agricultural unit occupied by the claimant on the date on which the notice to treat is deemed to have been served and in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year.
- (4) Where a notice to treat has been served or is deemed under this Chapter or under Part III of the<sup>M7</sup>Compulsory Purchase (Vesting Declarations) Act 1981 to have been served in respect of any of the unaffected area or in respect of other relevant land as defined in subsection (3), then, unless and until the notice to treat is withdrawn, this section and section 146 shall have effect as if that land did not form part of the unaffected land or, as the case may be, did not constitute other relevant land.
- (5) Where a counter-notice is served under subsection (2) the claimant shall also serve a copy of it on any other person who has an interest in the unaffected area (but failure to comply with this subsection shall not invalidate the counter-notice).
- (6) A counter-notice under subsection (2) and any copy of that notice required to be served under subsection (5) must be served within the period of two months beginning with the date on which the notice to treat is deemed to have been served.
- (7) This section is without prejudice to the rights conferred by sections 93 and 94 of the<sup>M8</sup>Lands Clauses (Consolidation) Act 1845 or section 8(2) and (3) of the<sup>M9</sup>Compulsory Purchase Act 1965 (provisions as to divided land).

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**Marginal Citations**

- M7** 1981 c. 66.
- M8** 1845 c. 18.
- M9** 1965 c. 56.

**146 Effect of counter-notice under s. 145.**

- (1) If the acquiring authority do not within the period of two months beginning with the date of service of a counter-notice under section 145 agree in writing to accept the counter-notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal.

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- (2) On such a reference the Tribunal shall determine whether the claim in the counter-notice is justified and declare the counter-notice valid or invalid accordingly.
- (3) Where a counter-notice is accepted as valid under subsection (1) or declared to be valid under subsection (2), the acquiring authority shall be deemed—
  - (a) to be authorised to acquire compulsorily the interest of the claimant in the land to which the requirement in the counter-notice relates under the same provision of this Chapter as they are authorised to acquire the other land in the agricultural unit in question; and
  - (b) to have served a notice to treat in respect of it on the date on which notice to treat is deemed to have been served under that provision.
- (4) A claimant may withdraw a counter-notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the counter-notice has been determined by the Lands Tribunal or at any time before the end of six weeks beginning with the date on which it is determined.
- (5) Where a counter-notice is withdrawn by virtue of subsection (4) any notice to treat deemed to have been served in consequence of it shall be deemed to have been withdrawn.
- (6) Without prejudice to subsection (5), a notice to treat deemed to have been served by virtue of this section may not be withdrawn under section 31 of the <sup>MI0</sup>Land Compensation Act 1961.
- (7) The compensation payable in respect of the acquisition of an interest in land in pursuance of a notice to treat deemed to have been served by virtue of this section shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) of the <sup>MI1</sup>Land Compensation Act 1973.
- (8) Where by virtue of this section the acquiring authority become or will become entitled to a lease of any land but not to the interest of the lessor—
  - (a) the authority shall offer to surrender the lease to the lessor on such terms as the authority consider reasonable;
  - (b) the question of what is reasonable may be referred to the Lands Tribunal by the authority or the lessor and, if at the expiration of the period of three months after the date of the offer mentioned in paragraph (a) the authority and the lessor have not agreed on that question and that question has not been referred to the Tribunal by the lessor, it shall be so referred by the authority;
  - (c) if that question is referred to the Tribunal, the lessor shall be deemed—
    - (i) to have accepted the surrender of the lease at the expiry of one month after the date of the determination of the Tribunal or on such other date as the Tribunal may direct, and
    - (ii) to have agreed with the authority on the terms of surrender which the Tribunal has held to be reasonable.
- (9) For the purposes of subsection (8) any terms as to surrender contained in the lease shall be disregarded.
- (10) Where the lessor—
  - (a) refuses to accept any sum payable to him by virtue of subsection (8), or
  - (b) refuses or fails to make out his title to the satisfaction of the acquiring authority,

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they may pay into court any such sum payable to the lessor and section 9(2) and (5) of the <sup>M12</sup>Compulsory Purchase Act 1965 (deposit of compensation in cases of refusal to convey etc.) shall apply to that sum with the necessary modifications.

- (11) Where an acquiring authority who become entitled to the lease of any land as mentioned in subsection (8) are a body incorporated by or under any enactment, the corporate powers of the authority shall, if they would not otherwise do so, include the power to farm that land.

#### Marginal Citations

- M10 1961 c. 33.  
M11 1973 c. 26.  
M12 1965 c. 56

#### 147 Provisions supplemental to ss. 145 and 146.

- (1) Sections 145 and 146 apply in relation to the acquisition of interests in land by government departments which possess compulsory purchase powers as they apply in relation to the acquisition of interests in land by authorities who are not government departments.
- (2) In sections 145, 146 and this section—
- “agricultural” and “agricultural land” have the meaning given in section 109 of the <sup>M13</sup>Agriculture Act 1947 and references to the farming of land include references to the carrying on in relation to the land of any agricultural activities;
  - “agricultural unit” has the meaning given in section 171(1);
  - “acquiring authority” has the same meaning as in the <sup>M14</sup>Land Compensation Act 1961 ; and
  - “government departments which possess compulsory purchase powers” means government departments being authorities possessing compulsory purchase powers within the meaning of that Act.

#### Marginal Citations

- M13 1947 c. 48.  
M14 1961 c. 33.

#### *Supplemental*

#### [<sup>F8</sup>147A Application of Chapter I to National Parks.

This Chapter shall have effect as if—

- (a) the bodies on whom a purchase notice may be served under section 137 included any National Park authority which is the local planning authority for the area in which the land is situated; and
- (b) a National Park authority were a local authority for the purposes of this Act and the National Park for which it is the local planning authority were its area;

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and the references in this Chapter and in section 288(10)(a) to a council and to a local authority shall be construed accordingly.]

#### Textual Amendments

**F8** S. 147A inserted (19.9.1995) by 1995 c. 25, ss. 67(5), 125(2) (with ss. 7(6), 115, 117, Sch. 8 para. 7)

## 148 Interpretation of Chapter I.

(1) In this Chapter—

“the relevant provisions” means—

- (a) the provisions of Part IX, or
- (b) in the case of statutory undertakers, any statutory provision (however expressed) under which they have power, or may be authorised, to purchase land compulsorily for the purposes of their undertaking; and

“statutory undertakers” includes [<sup>F9</sup>electronic communications code operators and former PTOs].

(2) In the case of a purchase notice served by such a person as is mentioned in subsection (2)(b) of section 137, references in this Chapter to the owner of the land include references to that person unless the context otherwise requires.

#### Textual Amendments

**F9** Words in s. 148(1) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 102** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)

#### Modifications etc. (not altering text)

**C9** S. 148: power to apply (with modifications) conferred by Local Government, Planning and Land Act 1980 (c. 65, SIF 123:1), s. 149(3), **Sch. 29 Pt. II para. 5** as substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 44(13)**

**C10** S. 148 applied (with modifications) (7.6.2004) by The Milton Keynes (Urban Area and Planning Functions) Order 2004 (S.I. 2004/932), art. 5, **Sch. para. 5** (with arts. 6, 7)

S. 148 applied (with modifications) (12.10.2005) by The Thurrock Development Corporation (Planning Functions) Order 2005 (S.I. 2005/2572), **art. 5** (with arts. 6, 7)

S. 148 applied (with modifications) (31.10.2005) by The London Thames Gateway Development Corporation (Planning Functions) Order 2005 (S.I. 2005/2721), **art. 6**

S. 148 applied (with modifications) (6.4.2006) by The West Northamptonshire Development Corporation (Planning Functions) Order 2006 (S.I. 2006/616), **art. 6**

S. 148 applied (with modifications) (7.9.2006) by The Olympic Delivery Authority (Planning Functions) Order 2006 (S.I. 2006/2185), **art. 6**

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