

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2000, SCHEDULE 5. (See end of Document for details)

SCHEDULES

SCHEDULE 5

Section 95.

ACQUISITION OF LAND

PART I

POWERS OF ACQUISITION ETC

England and Wales

- 1 (1) The Secretary of State may authorise a universal service provider to purchase compulsorily any land in England and Wales [^{F1}where it is necessary to do so for the purpose of providing a universal postal service].
- (2) The power of purchasing land compulsorily under this paragraph includes power to acquire, by creation of a new right, an easement or other right over land.
- (3) Any land in England and Wales vested in a universal service provider by virtue of this Schedule shall be deemed for all purposes to have been acquired by him for the purposes of his undertaking as a universal service provider.

Textual Amendments

- F1** Words in Sch. 5 para. 1(1) substituted (1.10.2011) by [Postal Services Act 2011 \(c. 5\), s. 93\(2\)\(3\)](#), [Sch. 12 para. 54\(2\)](#); S.I. 2011/2329, art. 3

Scotland

- 2 (1) The Secretary of State may authorise a universal service provider to purchase compulsorily any land in Scotland [^{F2}where it is necessary to do so for the purpose of providing a universal postal service].
- (2) The power of purchasing land compulsorily under this paragraph includes power to acquire, by creation of a new right, a servitude or other right over land.
- (3) Any land in Scotland vested in a universal service provider by virtue of this Schedule shall be deemed for all purposes to have been acquired by him for the purposes of his undertaking as a universal service provider.

Textual Amendments

- F2** Words in Sch. 5 para. 2(1) substituted (1.10.2011) by [Postal Services Act 2011 \(c. 5\), s. 93\(2\)\(3\)](#), [Sch. 12 para. 54\(3\)](#); S.I. 2011/2329, art. 3

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Northern Ireland

- 3 (1) Where a universal service provider proposes to acquire, otherwise than by agreement, any land in Northern Ireland—
- [^{F3}(a) which it is necessary to acquire for the purpose of providing a universal postal service, or]
- [^{F3}(b) as to which it can reasonably be foreseen that it will be so necessary,]
- the universal service provider may apply to the Secretary of State for an order vesting the land in him, and the Secretary of State shall have power to make such an order.
- (2) The power of acquiring land compulsorily under this paragraph includes power to acquire, by the creation of a new right, an easement or other right over land.
- (3) The Secretary of State shall consult the First Minister and the deputy First Minister in Northern Ireland before exercising his power to make an order under this paragraph in respect of land which—
- (a) is the property of any public body which has power under any enactment to acquire land compulsorily, or
- (b) is declared by or under any enactment to be inalienable,
- where representations objecting to the proposal for making the order have been duly made by the owner of the land and not withdrawn.
- (4) Any land in Northern Ireland vested in a universal service provider by virtue of this Schedule shall be deemed for all purposes to have been acquired by him for the purposes of his undertaking as a universal service provider.
- (5) Section 122(1) does not apply to an order of the Secretary of State under this paragraph.
- (6) In this paragraph—
- “land” has the meaning given by section 45(1)(a) of the ^{M1}Interpretation Act (Northern Ireland) 1954, and
- “public body” means a body established by or under any enactment.

Textual Amendments

F3 Sch. 5 para. 3(1)(a)(b) substituted (1.10.2011) by [Postal Services Act 2011 \(c. 5\), s. 93\(2\)\(3\)](#), [Sch. 12 para. 54\(4\)](#); S.I. 2011/2329, art. 3

Marginal Citations

M1 1954 c. 33 (N.I.) .

PART II

PROCEDURE, COMPENSATION ETC (ENGLAND AND WALES)

Application of Acquisition of Land Act 1981

- 4 (1) The ^{M2}Acquisition of Land Act 1981 shall apply to any compulsory purchase by a universal service provider of land or rights in England and Wales.

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- (2) Schedule 3 to that Act shall apply in the case of a compulsory acquisition by a universal service provider of a right by the creation of a new right.

Marginal Citations

M2 1981 c. 67.

New rights: Compulsory Purchase Act 1965

- 5 The ^{M3}Compulsory Purchase Act 1965 shall have effect with the modifications necessary to make it apply to a universal service provider’s compulsory acquisition of a right in England and Wales by the creation of a new right as it applies to the compulsory acquisition of land, so that, in appropriate contexts, references in that Act to land are to be read as referring, or as including references, to—
- (a) the right acquired or to be acquired, or
 - (b) land over which the right is or is to be exercisable, according to the requirements of the particular context.

Marginal Citations

M3 1965 c. 56.

New rights: specific adaptations of 1965 Act

- 6 Without prejudice to the generality of paragraph 5, Part I of the ^{M4}Compulsory Purchase Act 1965 shall apply in relation to a universal service provider’s compulsory acquisition of a right in England and Wales by the creation of a new right with the modifications specified in paragraphs 7 to 12.

Marginal Citations

M4 1965 c. 56.

- 7 For section 7 of that Act (measure of compensation) there shall be substituted the following section—

“7. 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 to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

- [^{F48} Section 8(1) of the Compulsory Purchase Act 1965 has effect as if references to acquiring land were to acquiring a right in the land, and Schedule 2A to that Act is to be read as if, for that Schedule, there were substituted—

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“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

- 1 (1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory.
- (2) But see section 2A of the Acquisition of Land Act 1981 (under which a compulsory purchase order can exclude from this Schedule land that is 9 metres or more below the surface).
- 2 In this Schedule “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

- 3 A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.
- 4 A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

- 5 On receiving a counter-notice the acquiring authority must decide whether to—
- (a) withdraw the notice to treat,
 - (b) accept the counter-notice, or
 - (c) refer the counter-notice to the Upper Tribunal.
- 6 The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).
- 7 If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.
- 8 If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.
- 9 If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

- 10 On a referral under paragraph 7 the Upper Tribunal must determine whether the acquisition of the right would—
- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

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- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.
- 11 In making its determination, the Upper Tribunal must take into account—
- (a) the effect of the acquisition of the right,
- (b) the proposed use of the right, and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.
- 12 If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10 it must determine how much of the house, building or factory the authority ought to be required to take.
- 13 If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.
- 14 (1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.
- (2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.
- (3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”]

Textual Amendments

F4 Sch. 5 para. 8 substituted (3.2.2017) by [Housing and Planning Act 2016 \(c. 22\), s. 216\(3\), Sch. 17 paras. 6, 7; S.I. 2017/75, reg. 3\(g\)](#) (with [reg. 5](#))

- 9 (1) The provisions of that Act referred to in sub-paragraph (2) (being provisions stating the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land) shall be modified in accordance with sub-paragraph (3).
- (2) The provisions are—
- (section 9) (refusal by owners to convey),
- Schedule 1, paragraph 10(3) (owners under incapacity),
- Schedule 2, paragraph 2(3) (absent and untraced owners), and
- Schedule 4, paragraphs 2(3) and 7(2) (common land).
- (3) The provisions 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 compulsorily acquired is vested absolutely in the acquiring authority.
- 10 Section 11 of that Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat

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in respect of any right, the acquiring authority have 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 [^{F5}enforcement officer's or sheriff's warrant] in the event of obstruction) shall be modified correspondingly.

Textual Amendments

F5 Words in Sch. 5 para. 10 substituted (1.4.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 22 para. 11](#); [S.I. 2007/2709](#), art. 5(b)

- 11 Section 20 of that Act (protection for interests of tenants at will etc.) 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 that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.
- 12 Section 22 of that Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) 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 acquired, subject to compliance with that section as respects compensation.

New rights: compensation

- 13 The enactments in force in England and Wales with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a universal service provider's compulsory acquisition of a right by the creation of a new right as they apply to compensation on the compulsory purchase of land and interests in land.

PART III

PROCEDURE, COMPENSATION ETC (SCOTLAND)

Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

- 14 The ^{M5}Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to the compulsory purchase by a universal service provider of land or rights in Scotland as if he were a local authority within the meaning of that Act, and as if this Act had been in force immediately before the commencement of that Act.

Marginal Citations

M5 1947 c. 42.

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New rights: application of 1947 Act and incorporated enactments

- 15 The ^{M6}Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, and the enactments incorporated with this Act by virtue of paragraph 14 above and paragraph 1 of the Second Schedule to that Act, shall have effect with the modifications necessary to make them apply to a universal service provider's compulsory acquisition of a right in Scotland by the creation of a new right as they apply to the compulsory acquisition of land, so that, in appropriate contexts, references in those enactments and that Act to land are to be read as referring, or as including references, to—
- (a) the right acquired or to be acquired, or
 - (b) land over which the right is or is to be exercisable,
- according to the requirements of the particular context.

Marginal Citations

M6 1947 c. 42.

New rights: specific adaptations of 1947 Act

- 16 Without prejudice to the generality of paragraph 15 above, Part III of the First Schedule to the ^{M7}Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (requirement of special parliamentary procedure, and other special provisions, in the case of acquisition of certain descriptions of land) shall apply in relation to a universal service provider's compulsory acquisition of a right in Scotland by the creation of a new right with the modifications specified in paragraphs 17 to 21 below.

Marginal Citations

M7 1947 c. 42.

- 17 In paragraph 9 of that Schedule (compulsory purchase affecting land of the National Trust for Scotland) for references to the compulsory purchase of land there shall be substituted references to the compulsory acquisition of rights over land.
- 18 In paragraph 10 of that Schedule (land of statutory undertakers)—
- (a) for the words “land comprised in the order” there shall be substituted the words “land over which a right is to be acquired by virtue of the order”,
 - (b) for the words “purchase of” there shall be substituted the words “acquisition of a right over”,
 - (c) for the words “it can be purchased and not replaced” there shall be substituted the words “the right can be acquired”,
 - (d) for sub-paragraph (ii) there shall be substituted the following sub-paragraph—
 - “(ii) that any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to, or available for acquisition by, them”,

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and

- (e) the references to “the Scottish Ministers” (as substituted by the ^{M8}Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999), however expressed, shall be construed as references to the Secretary of State.

Marginal Citations

M8 S.I. 1999/1820.

- 19 In paragraph 11 of that Schedule (common or open space), for sub-paragraph (1) there shall be substituted the following sub-paragraph—

“(1) In so far as a compulsory purchase order authorises the acquisition of a right over land forming part of a common or open space, it shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—

- (a) that the land, when burdened with that right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before,
- (b) that there has been or will be given in exchange for the right additional land which will as respects the persons in whom there is vested the land over which the right is to be acquired, the persons, if any, entitled to rights of common or other rights over that land, and the public, be adequate to compensate them for the disadvantages which result from the acquisition of the right, and that the additional land has been or will be vested in the persons in whom there is vested the land over which the right is to be acquired, and subject to the like rights, trusts and incidents as attach to that land apart from the compulsory purchase order, or
- (c) that the land affected by the right to be acquired does not exceed 210 square metres in extent, and that the giving of other land in exchange for the right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public,

and certifies accordingly.”

- 20 Paragraph 3(1) of the Second Schedule to the ^{M9}Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall be so modified as to secure that, as from the date on which the universal service provider has served notice to treat in respect of any right, he 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).

Marginal Citations

M9 1947 c. 42.

- 21 For paragraph 4 of that Schedule (protection for owner against severance of property) there shall be substituted the following paragraphs—

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“4. No person shall be required to grant any right over part only—
(a) of any house, building or manufactory, or
(b) of a park or garden belonging to a house,
if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal for Scotland determines that—
(i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory, or
(ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house,
and if it so determines, it shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.

4A. In considering, for the purposes of paragraph 4 above, the extent of any material detriment to a house, building or manufactory, or any extent to which the amenity or convenience of a house is affected, the Lands Tribunal for Scotland shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase.”

New rights: specific adaptations of Lands Clauses Consolidation (Scotland) Act 1845

- 22 Without prejudice to the generality of paragraph 15 above, the ^{M10}Lands Clauses Consolidation (Scotland) Act 1845 shall apply in relation to a universal service provider’s compulsory acquisition of a right in Scotland by the creation of a new right with the modifications specified in paragraphs 23 to 26 below.

Marginal Citations

M10 1845 c. 19.

- 23 For section 61 of that Act (estimation of compensation) there shall be substituted the following section—

“61. In estimating the purchase money or compensation to be paid by the universal service provider under the special Act, in any of the cases aforesaid, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right, but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

- 24 The following provisions of that Act (being provisions stating the effect of a notarial instrument or of a disposition executed in various circumstances where there is no conveyance by persons with interests in the land)—

section 74 (failure by owner to convey),
section 76 (refusal to convey or show title or owner cannot be found), and

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section 98 (vesting of common land),
shall be so modified as to secure that, as against persons with interests in the land over which the right is to be compulsorily acquired, such right is vested absolutely in the universal service provider.

25 Sections 114 (compensation to be made to tenants for a year etc.) and 115 (compensation where greater interest than tenant for a year) of that Act shall apply with the modifications necessary to secure that persons with such interests as are mentioned in those sections are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

26 Sections 117 (protection of promoter of undertaking where by inadvertence an interest in land has not been purchased etc.) and 118 (provisions supplementary to section 117) of that Act shall be so modified as to enable the universal service provider, in circumstances corresponding to those referred to in those sections, to continue to be entitled to exercise the right acquired, subject to compliance with those sections as respects compensation.

New rights: compensation

27 The enactments in force in Scotland with respect to compensation for the compulsory purchase of land shall apply as respects compensation in the case of a universal service provider's compulsory acquisition of a right by the creation of a new right as they apply to compensation on the compulsory purchase of land and interests in land.

PART IV

PROCEDURE, COMPENSATION ETC (NORTHERN IRELAND)

28 For the purposes of the acquisition of land by means of a vesting order under paragraph 3 of this Schedule, Schedule 6 to the ^{M11}Local Government Act (Northern Ireland) 1972 and Schedule 8 to the ^{M12}Health and Personal Social Services (Northern Ireland) Order 1972 are incorporated in this Act subject to the modifications in paragraph 29.

Marginal Citations

M11 1972 c. 9 (N.I.).

M12 S.I. 1972/1265 (N.I. 14).

29 The modifications mentioned in paragraph 28 are—

- (a) for any reference in Schedule 6 to a council there shall be substituted a reference to the universal service provider,
- (b) for any reference in Schedule 6 or Schedule 8 to the Department there shall be substituted a reference to the Secretary of State,
- (c) for any reference in Schedule 6 to the Act or in Schedule 8 to the Order there shall be substituted a reference to this Act,
- (d) in paragraph 6(2) of Schedule 6, for the words from “the fund” onwards there shall be substituted the words “funds of the universal service provider

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(in this Schedule referred to as “the compensation fund”) and shall be discharged by payments made by the universal service provider ”,

- (e) in paragraph 12(2) of Schedule 6, for the words “the clerk of the council” there shall be substituted “ such person as may be designated for the purposes of this Schedule by the universal service provider ”.

- 30 The enactments for the time being in force relating to the assessment of compensation in respect of land vested in a district council by an order made under Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall, subject to any necessary modifications, apply in relation to any land vested in a universal service provider by a vesting order made under paragraph 3 of this Schedule.

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