

**Changes to legislation:** Housing and Planning Act 2016, PART 1 is up to date with all changes known to be in force on or before 30 August 2023. 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) View outstanding changes

## SCHEDULES

### SCHEDULE 17

#### OBJECTION TO DIVISION OF LAND FOLLOWING NOTICE TO TREAT

##### PART 1

##### AMENDMENTS TO COMPULSORY PURCHASE ACT 1965

1 The Compulsory Purchase Act 1965 is amended as follows.

##### Commencement Information

**II** Sch. 17 para. 1 in force at 3.2.2017 by S.I. 2017/75, reg. 3(g) (with reg. 5)

2 In section 8 (material detriment arising from severance of land etc.), for subsection (1) substitute—

“(1) Schedule 2A makes provision in respect of a proposal by an acquiring authority to acquire part only of a—

(a) house, building or factory, or

(b) park or garden belonging to a house.”

##### Commencement Information

**I2** Sch. 17 para. 2 in force at 3.2.2017 by S.I. 2017/75, reg. 3(g) (with reg. 5)

3 After Schedule 2 insert—

“SCHEDULE  
2A

Section 8

#### COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

##### PART 1

##### COUNTER-NOTICE WHERE ACQUIRING AUTHORITY HAS NOT TAKEN POSSESSION

##### Introduction

1 (1) This Part applies where an acquiring authority—

(a) serve a notice to treat in respect of part only of a house, building or factory,

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- (b) have not entered on and taken possession of the land to which the notice to treat relates, and
  - (c) have not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in respect of the land to which the notice to treat relates.
- (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 This Part does not apply by virtue of a notice to treat that is deemed to have been served in respect of part only of a house, building or factory under section 154(5) of the Town and Country Planning Act 1990 (deemed notice to treat in relation to blighted land).
- 3 In this Part—
  - “additional land” means the part of the house, building, or factory not specified in the notice to treat;
  - “house” includes any park or garden belonging to a house;
  - “land proposed to be acquired” means the part of the house, building or factory specified in the notice to treat;
  - “whole of the land” means the land proposed to be acquired and the additional land.

*Counter-notice requiring authority to purchase whole of land*

- 4 A person who is able to sell the whole of the land (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner's interest in the whole of the land.
- 5 A counter-notice under this Part must be served within—
  - (a) the period of 28 days beginning with the day on which the notice to treat was served, or
  - (b) if it would end earlier, the period specified in a repeat notice of entry served in accordance with section 11A.

*Effect of counter-notice on notice of entry*

- 6 If the owner serves a counter-notice—
  - (a) any notice of entry under section 11(1) that has already been served on the owner in respect of the land proposed to be acquired ceases to have effect, and
  - (b) the acquiring authority may not serve a notice of entry (or a further notice of entry) on the owner under section 11(1) in respect of that land unless they are permitted to do so by paragraph 11 or 12.

*Acquiring authority must respond to counter-notice within three months*

- 7 On receiving a counter-notice the acquiring authority must decide whether to—
  - (a) withdraw the notice to treat,
  - (b) accept the counter-notice, or

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(c) refer the counter-notice to the Upper Tribunal.

- 8 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”).
- 9 If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.
- 10 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.

*Effects of accepting counter-notice or referring it to the Upper Tribunal*

- 11 If the acquiring authority serve notice of a decision to accept the counter-notice—
- (a) the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the whole of the land, and
  - (b) the authority may serve a notice of entry under section 11(1) in relation to the whole of the land.
- 12 If the acquiring authority serve notice of a decision to refer the counter-notice to the Upper Tribunal, the acquiring authority may serve a notice of entry under section 11(1) on the owner in relation to the land proposed to be acquired.
- 13 If the authority have already served one or more notices of entry under section 11(1) in respect of the land proposed to be acquired the period specified in any new notice of entry in relation to that land must be a period that ends no earlier than the end of the period in the most recent notice of entry.

## PART 2

### COUNTER-NOTICE WHERE AUTHORITY HAS TAKEN POSSESSION

#### *Introduction*

- 14 (1) This Part applies where an acquiring authority—
- (a) have entered on and taken possession of part only of a house, building or factory,
  - (b) did not enter on and take possession of the land in accordance with section 11(1), whether because they had not served a notice to treat or otherwise, and
  - (c) have not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in respect of the land which they have entered on and taken possession of.
- (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).

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15 This Part does not apply if the acquiring authority are deemed to have served a notice to treat in respect of the land proposed to be acquired under section 154(5) of the Town and Country Planning Act 1990 (deemed notice to treat in relation to blighted land).

16 In this Part—

“additional land” means the part of the house, building, or factory that the authority have not entered on and taken possession of;

“house” includes any park or garden belonging to a house;

“land proposed to be acquired” means the part of the house, building or factory that the authority entered on and took possession of otherwise than in accordance with section 11(1);

“whole of the land” means the land proposed to be acquired and the additional land.

*Counter-notice requiring authority to purchase additional land*

17 A person who is able to sell the whole of the land (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner's interest in the whole of the land.

18 A counter-notice under this Part must be served within the period of 28 days beginning with the day on which—

- (a) the owner first had knowledge that the acquiring authority had entered on and taken possession of the land, or
- (b) if later, the owner receives any notice to treat.

*Acquiring authority must respond to counter-notice within 3 months*

19 On receiving a counter-notice the acquiring authority must decide whether to—

- (a) accept the counter-notice, or
- (b) refer the counter-notice to the Upper Tribunal.

20 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”).

21 If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

22 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 accept the counter-notice at the end of that period.

*Effects of accepting counter-notice*

23 (1) This paragraph applies where the acquiring authority serve notice of a decision to accept the counter-notice.

(2) The compulsory purchase order has effect as if it included the owner's interest in the additional land.

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- (3) If the acquiring authority have already served a notice to treat in relation to the land proposed to be acquired, the notice has effect as if it also included the owner's interest in the additional land.
- (4) If the acquiring authority have not served a notice to treat, they must serve a notice to treat in relation to the owner's interest in the whole of the land.

### PART 3

#### DETERMINATION BY THE UPPER TRIBUNAL

##### *Introduction*

- 24 This Part applies where, in accordance with paragraph 9 or 21, the acquiring authority refer a counter-notice to the Upper Tribunal.
- 25 In this Part “land proposed to be acquired” and “additional land” have the meanings given by paragraph 3 or 16 as the case may be.

##### *Role of the Upper Tribunal*

- 26 (1) The Upper Tribunal must determine whether the severance of the land proposed to be acquired would—
  - (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
  - (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.
- (2) In making its determination, the Upper Tribunal must take into account—
  - (a) the effect of the severance,
  - (b) the proposed use of the land proposed to be acquired, and
  - (c) if that land 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.
- 27 If the Upper Tribunal determines that the severance of the land proposed to be acquired would have either of the consequences described in paragraph 26(1) it must determine how much of the additional land the acquiring authority ought to be required to take in addition to the land proposed to be acquired.

##### *Effect of determination that more land should be acquired*

- 28 (1) This paragraph applies where the Upper Tribunal determines that the acquiring authority ought to be required to take the whole or part of the additional land.
- (2) The compulsory purchase order has effect as if it included the owner's interest in the additional land.
- (3) If the acquiring authority have already served a notice to treat in relation to the land proposed to be acquired, the notice has effect as if it also included the owner's interest in the additional land.

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- (4) If the acquiring authority have not served a notice to treat, they must serve a notice to treat in relation to the owner's interest in the land proposed to be acquired and the additional land.
- (5) If the acquiring authority have already entered on and taken possession of the land proposed to be acquired, the power to award compensation under section 7 includes power to award compensation for any loss suffered by the owner by reason of the temporary severance of the land from the additional land.
- (6) Where the Upper Tribunal determines that the acquiring authority ought to be required to take part only of the additional land, a reference in subparagraph (2) to (5) to “the additional land” is to that part.

*Withdrawal of notice to treat following determination*

- 29 (1) This paragraph applies where—
- (a) the acquiring authority have served a notice to treat in respect of the land proposed to be acquired,
  - (b) the Upper Tribunal has determined that the authority ought to be required to take the whole or part of the additional land, and
  - (c) the authority have not yet entered on and taken possession of any of the land proposed to be acquired or the additional land.
- (2) The acquiring authority may withdraw the notice to treat in respect of the whole of the land at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal made its determination.
- (3) 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.
- (4) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

**Commencement Information**

**I3** Sch. 17 para. 3 in force at 3.2.2017 by S.I. 2017/75, reg. 3(g) (with reg. 5)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 172(1)(a) words renumbered as s. 172(1)(a) by [2017 c. 20 s. 26\(8\)\(a\)\(i\)](#)
- s. 172(1)(b) inserted by [2017 c. 20 s. 26\(8\)\(a\)\(ii\)](#)