

Changes to legislation: Housing and Planning Act 2016, PART 2 is up to date with all changes known to be in force on or before 08 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 2

CONSEQUENTIAL AMENDMENTS

Land Compensation Act 1961 (c. 33)

- 4 (1) Section 5A of the Land Compensation Act 1961 (relevant valuation date) is amended as follows.
- (2) After subsection (5) insert—
- “(5A) If—
- (a) the acquiring authority enters on and takes possession of land in pursuance of a notice of entry given as mentioned in paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (“the original land”),
 - (b) the acquiring authority are subsequently required by a determination under paragraph 27 of Schedule 2A to the Compulsory Purchase Act 1965 to take additional land, and
 - (c) the acquiring authority enters on and takes possession of that additional land,
- the authority is deemed for the purposes of subsection (3)(a) to have entered on and taken possession of the additional land when it entered on and took possession of the original land.”
- (3) In subsection (6), for “Subsection (5) also applies” substitute “ Subsections (5), (5A) and (5B) also apply ”.

Commencement Information

II Sch. 17 para. 4 in force at 3.2.2017 by S.I. 2017/75, reg. 3(g)

Land Compensation Act 1973 (c. 26)

- 5 In section 58 of the Land Compensation Act 1973 (determination of material detriment where part of house etc. subject to compulsory acquisition)—
- (a) in subsection (1) omit “section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or”;
 - (b) omit subsection (2).

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Commencement Information

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

Provisions which refer to section 8(1)

- 6 For each of the following provisions substitute, with the same paragraph or sub-paragraph number as the provision being replaced, the provision in paragraph 7—
- (a) paragraph 7 of Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1976;
 - (b) paragraph 23(2) of Schedule 28 to the Local Government, Planning and Land Act 1980;
 - (c) paragraph 7 of Schedule 19 to the Highways Act 1980;
 - (d) paragraph 8 of Schedule 3 to the Gas Act 1986;
 - (e) paragraph 22 of Schedule 10 to the Housing Act 1988;
 - (f) paragraph 9 of Schedule 3 to the Electricity Act 1989;
 - (g) paragraph 4 of Schedule 9 to the Water Industry Act 1991;
 - (h) paragraph 4 of Schedule 18 to the Water Resources Act 1991;
 - (i) paragraph 4 of Schedule 1B to the Coal Industry Act 1994;
 - (j) paragraph 8 of Schedule 5 to the Postal Services Act 2000;
 - (k) paragraph 11 of Schedule 2 to the Housing and Regeneration Act 2008.

Commencement Information

I3 Sch. 17 para. 6 in force at 3.2.2017 by S.I. 2017/75, reg. 3(g) (with reg. 5)

- 7 This is the provision to be substituted for the provisions listed in paragraph 6—
- [“X] 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—

“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.

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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
 - (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

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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.””

Commencement Information

I4 Sch. 17 para. 7 in force at 3.2.2017 by S.I. 2017/75, reg. 3(g) (with reg. 5)

New Towns Act 1981 (c. 64)

- 8 In Part 1 of Schedule 6 to the New Towns Act 1981 (modifications of the Compulsory Purchase Act 1965 for the purposes of the New Towns Act 1981), in paragraph 1(2)—
 - (a) at the end of paragraph (e) omit “and”, and
 - (b) at the end of paragraph (f) insert “;”
 - (g) in Schedule 2A to that Act references to section 11 or 11A of that Act are to be read respectively as references to paragraph 4 or 4A of this Schedule.”

Commencement Information

I5 Sch. 17 para. 8 in force at 3.2.2017 by S.I. 2017/75, reg. 3(g) (with reg. 5)

Acquisition of Land Act 1981 (c. 67)

- 9 In the Acquisition of Land Act 1981, after section 2 insert—

“2A Tunnels etc

- (1) A compulsory purchase order may provide that in the following provisions, a reference to land (however expressed) does not include specified land that is at least 9 metres or more below the surface.
- (2) The provisions mentioned in subsection (1) are—

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- (a) Schedule 2A of the Compulsory Purchase Act 1965 (objection to division of land),
- (b) any substituted version of that Schedule that applies by virtue of provision made by or under any Act, and
- (c) Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 (objection to division of land).”

Commencement Information

I6 [Sch. 17 para. 9](#) in force at 3.2.2017 by [S.I. 2017/75](#), [reg. 3\(g\)](#)

Water Industry Act 1991 (c. 56)

- 10 In Schedule 11 to the Water Industry Act 1991 (orders conferring compulsory works powers), in paragraph 6(1)(b), for “section” substitute “ sections 2A and ”.

Commencement Information

I7 [Sch. 17 para. 10](#) in force at 3.2.2017 by [S.I. 2017/75](#), [reg. 3\(g\)](#)

Water Resources Act 1991 (c. 57)

- 11 In Schedule 19 to the Water Resources Act 1991 (orders conferring compulsory works powers), in paragraph 6(1)(b), for “section” substitute “ sections 2A and ”.

Commencement Information

I8 [Sch. 17 para. 11](#) in force at 3.2.2017 by [S.I. 2017/75](#), [reg. 3\(g\)](#)

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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\(8\)\(a\)\(ii\)](#)