
Changes to legislation: There are currently no known outstanding effects for the High Speed Rail (London - West Midlands) Act 2017, Part 1. (See end of Document for details)

SCHEDULES

SCHEDULE 16

TEMPORARY POSSESSION AND USE OF LAND

PART 1

TEMPORARY POSSESSION FOR CONSTRUCTION OF WORKS

Right to enter upon and take possession of land

- 1 (1) The nominated undertaker may enter upon and take possession of the land specified in the table in Part 4 of this Schedule—
- (a) for the purpose specified in relation to the land in column (3) of the table in connection with the authorised works specified in column (4) of the table,
 - (b) for the purpose of constructing such works as are mentioned in column (5) of the table in relation to the land, or
 - (c) otherwise for Phase One purposes.
- (2) The nominated undertaker may (subject to paragraph 2(1)) enter upon and take possession of any other land within the Act limits for Phase One purposes.
- (3) The reference in sub-paragraph (1)(a) to the authorised works specified in column (4) of the table includes a reference to any works which are necessary or expedient for the purposes of or in connection with those works.

Exceptions

- 2 (1) Paragraph 1(2) does not apply in relation to—
- (a) land which is subject to a restricted power of compulsory acquisition,
 - (b) land in respect of which a notice of entry has been served under section 11 of the Compulsory Purchase Act 1965 (as applied by section 4(3) to the acquisition of land under section 4(1)), other than in connection with the acquisition of rights or subsoil only or the imposition of a restrictive covenant, or
 - (c) land in respect of which a declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (as applied by section 4(4) to the acquisition of land under section 4(1)), other than in connection with the acquisition of rights or subsoil only or the imposition of a restrictive covenant.
- (2) The power under section 4(1) (power to acquire land compulsorily) is not exercisable in relation to land specified in the table in Part 4 of this Schedule.
- (3) But sub-paragraph (2) does not apply in relation to land specified in the table to the extent (if any) that—

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- (a) the land is subject to a restricted power of compulsory acquisition, or
 - (b) there is power by virtue of section 5(3) to impose restrictive covenants over the land.
- (4) For the purposes of this Schedule, land is subject to a restricted power of compulsory acquisition if the power under section 4(1) may be exercised in relation to the land only—
- (a) so as to acquire rights relating to the land (see section 5(4)),
 - (b) so as to acquire the subsoil or under-surface of the land or so as to acquire rights of passage over the land (see paragraphs 1 and 2 of Schedule 11),
- (ignoring any power by virtue of section 5(3) to impose restrictive covenants over the land).

Powers exercisable on land of which temporary possession has been taken

- 3 (1) Where under paragraph 1(1) or (2) the nominated undertaker has entered upon and taken possession of land, the nominated undertaker may, for the purposes of or in connection with the construction of the works authorised by this Act—
- (a) remove any structure or vegetation from the land,
 - (b) construct such works as are mentioned in relation to the land in column (5) of the table in Part 4 of this Schedule,
 - (c) construct temporary works (including the provision of means of access) and structures on the land, and
 - (d) construct landscaping and other works on the land to mitigate any adverse effects of the construction, maintenance or operation of the works authorised by this Act.
- (2) The other works referred to in sub-paragraph (1)(d) include works involving the planting of trees and shrubs and the provision of replacement habitat for wild animals.
- (3) In this paragraph, “structure” includes any erection.

Procedure and compensation

- 4 (1) Not less than 28 days before entering upon and taking possession of land under paragraph 1(1) or (2), the nominated undertaker must give notice to the owners and occupiers of the land of its intention to do so.
- (2) The nominated undertaker may not, without the agreement of the owners of the land, remain in possession of land under paragraph 1(1) or (2) after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken.
- (3) Sub-paragraph (2) does not apply, in the case of land mentioned in paragraph 1(2), if before the end of the one-year period either of the following powers has been exercised in relation to the land—
- (a) the power to serve a notice to treat under Part 1 of the Compulsory Purchase Act 1965 (as applied by section 4(3) of this Act to the acquisition of land under section 4(1));
 - (b) the power to execute a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (as applied by section 4(4) of this Act to the acquisition of land under section 4(1)).

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- (4) The nominated undertaker must pay compensation to the owners and occupiers of land of which possession is taken under paragraph 1(1) or (2) for any loss which they may suffer by reason of the exercise in relation to the land of the power or powers under that paragraph.
- (5) Any dispute as to a person's entitlement to compensation under sub-paragraph (4), or as to the amount of compensation, must be determined under and in accordance with Part 1 of the Land Compensation Act 1961.
- (6) Nothing in this paragraph affects any liability to pay compensation under section 10(2) of the Compulsory Purchase Act 1965 (as applied by section 4(3) to the acquisition of land under section 4(1)) or under any other enactment, otherwise than for loss for which compensation is payable under sub-paragraph (4).
- 5 (1) Before giving up possession of land of which possession has been taken under paragraph 1(1) or (2), the nominated undertaker must, in accordance with a scheme agreed with the owners of the land and the relevant planning authority, put the land into such condition as the scheme may provide.
- (2) If no scheme has been agreed for the purposes of this paragraph within 6 months of the date of completion mentioned in paragraph 4(2) in relation to the land, the scheme is to be such as may be determined by the appropriate Ministers after consulting the nominated undertaker, the owners of the land and the relevant planning authority.
- (3) Unless the owners of the land and the nominated undertaker otherwise agree, a scheme determined under sub-paragraph (2) must provide for land to be restored to its former condition.
- (4) Sub-paragraph (3) does not require land on which works referred to in paragraph 1(1)(b) or 3(1)(d) have been constructed to be restored to its former condition.
- (5) Unless the nominated undertaker otherwise agrees, a scheme determined under sub-paragraph (2) may not provide for the nominated undertaker to replace a structure removed under paragraph 3, other than a fence.
- (6) Where the appropriate Ministers ask the relevant planning authority for assistance in connection with the carrying out by them of their function under sub-paragraph (2), they may require the nominated undertaker to reimburse to the relevant planning authority any expenses which it reasonably incurs in meeting the request.
- (7) The duty under sub-paragraph (1) in relation to any land is owed separately to the owners of the land and to the relevant planning authority.
- (8) Where a scheme for the purposes of this paragraph provides for any step to be taken by the nominated undertaker before a specified date and that step has not been taken before that date, the relevant planning authority may—
- (a) enter the land concerned and take that step, and
 - (b) require the nominated undertaker to reimburse to it any expenses which it reasonably incurs in acting under paragraph (a).
- (9) In this paragraph—
- “‘appropriate Ministers’” means the Secretary of State for [^{F1}Levelling Up, Housing and Communities] and the Secretary of State for Transport and, in relation to the carrying out of any function, means those Ministers acting jointly;

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““relevant planning authority”” means the unitary authority or, in a non-unitary area, the district council in whose area the land is situated.

(10) But where—

- (a) the unitary authority in whose area the land is situated is a London borough council, and
- (b) as a result of a Localism Act TCPA order, a Mayoral development corporation is the local planning authority for the purposes of Part 3 of the Town and Country Planning Act 1990 for that area,

the relevant planning authority is the Mayoral development corporation instead of the London borough council.

Textual Amendments

F1 Words in Sch. 16 para. 5(9) substituted (8.12.2021) by The Transfer of Functions (Secretary of State for Levelling Up, Housing and Communities) Order 2021 (S.I. 2021/1265), art. 1(2), **Sch. 2 para. 25(b)** (with art. 12)

6 (1) The Secretary of State may make regulations modifying the operation of this Part of this Schedule—

- (a) in consequence of an order under section 198(2) of the Localism Act 2011 giving effect to a decision under section 204(2) of that Act (decision removing or restricting planning functions), or
- (b) to make transitional provision relating to—
 - (i) an order mentioned in paragraph (a),
 - (ii) a Localism Act TCPA order, or
 - (iii) an order under section 217 of the Localism Act 2011 (order dissolving Mayoral development corporation).

(2) Regulations under this paragraph—

- (a) must be made by statutory instrument;
- (b) may make different provision for different purposes.

(3) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

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