



# Housing and Planning Act 2016

## 2016 CHAPTER 22

### PART 7

#### COMPULSORY PURCHASE ETC

##### *Right to enter and survey land*

#### **172 Right to enter and survey land**

- (1) A person authorised in writing by an acquiring authority may enter and survey or value land in connection with a proposal to acquire an interest in or a right over land.
- (2) The person—
  - (a) may only enter and survey or value land at a reasonable time, and
  - (b) may not use force unless a justice of the peace has issued a warrant under section 173(1) authorising the person to do so.
- (3) The person must, if required when exercising or seeking to exercise the power conferred by subsection (1), produce—
  - (a) evidence of the authorisation, and
  - (b) a copy of any warrant issued under section 173(1).
- (4) An authorisation under subsection (1) may relate to the land which is the subject of the proposal or to other land.
- (5) If the land is unoccupied or the occupier is absent from the land when the person enters it, the person must leave it as secure against trespassers as when the person entered it.
- (6) In this section and sections 173 to 178 “acquiring authority” and “owner” have the meanings given in section 7 of the Acquisition of Land Act 1981.

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### **173 Warrant authorising use of force to enter and survey land**

- (1) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by section 172(1) if satisfied—
  - (a) that another person has prevented or is likely to prevent the exercise of that power, and
  - (b) that it is reasonable to use force in the exercise of that power.
- (2) The force that may be authorised by a warrant is limited to that which is reasonably necessary.
- (3) A warrant authorising the person to use force must specify the number of occasions on which the authority can rely on the warrant when entering and surveying or valuing land.
- (4) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.
- (5) Any evidence in proceedings for a warrant under this section must be given on oath.

### **174 Notice of survey and copy of warrant**

- (1) The acquiring authority must give every owner or occupier of land at least 14 days' notice before the first day on which the authority intends to enter the land in exercise of the power conferred by section 172.
- (2) Notice given in accordance with subsection (1) must include—
  - (a) a statement of the recipient's rights under section 176, and
  - (b) a copy of the warrant, if there is one.
- (3) If the authority proposes to do any of the following, the notice must include details of what is proposed—
  - (a) searching, boring or excavating;
  - (b) leaving apparatus on the land;
  - (c) taking samples;
  - (d) an aerial survey;
  - (e) carrying out any other activities that may be required to facilitate compliance with the instruments mentioned in subsection (5).
- (4) If the authority obtains a warrant after giving notice in accordance with subsection (1) it must give a copy of the warrant to all those to whom it gave that notice.
- (5) The instruments referred to in subsection (3)(e) are—
  - (a) Council Directive [85/337/EEC](#) of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended from time to time,
  - (b) Council Directive [92/43/EC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended from time to time, or
  - (c) any EU instrument from time to time replacing all or part of those Directives.

## **175 Enhanced authorisation procedures etc. for certain surveys**

- (1) A written authorisation from the appropriate Minister is required before a person enters and surveys or values land in exercise of the power conferred by section 172 if—
  - (a) the land is held by a statutory undertaker,
  - (b) within the notice period mentioned in section 174(1), the statutory undertaker objects to the proposed entry and survey or valuation in writing to the acquiring authority, and
  - (c) the objection is that the proposed entry and survey or valuation would be seriously detrimental to the statutory undertaker carrying on its undertaking.
- (2) In subsection (1)—
  - “the appropriate Minister” means—
    - (a) in the case of land in Wales held by a water or sewerage undertaker, the Welsh Ministers, and
    - (b) in any other case, the Secretary of State;
  - “statutory undertaker” means—
    - (a) any person who is, or who is deemed to be, a statutory undertaker for the purposes of section 16 or 17 of the Acquisition of Land Act 1981 or of any provision of Part 11 of the Town and Country Planning Act 1990, and
    - (b) any person in relation to whom the electronic communications code is applied by a direction under section 106(3)(a) of the Communications Act 2003.
- (3) Where the survey or valuation is to take place in a street, the following sections of the New Roads and Street Works Act 1991 apply to the survey or valuation as if it were street works—
  - (a) section 55 (notice of starting date of works),
  - (b) section 69 (requirements to be complied with where works likely to affect another person’s apparatus in the street), and
  - (c) section 82 (liability for damage or loss caused).
- (4) In the application of those sections references to an “undertaker” are to be read as references to the acquiring authority which authorised the survey or valuation.
- (5) See section 169(4) of the Water Industry Act 1991 and section 171(4) of the Water Resources Act 1991 for additional procedures in relation to the exercise of the power in section 172 on behalf of a water undertaker, the Environment Agency or the Natural Resources Body for Wales.

## **176 Right to compensation after entry on or survey of land**

- (1) A person interested in land is entitled to compensation from the acquiring authority for damage as a result of the exercise of the power conferred by section 172.
- (2) Any disputes relating to compensation under this section are to be determined by the Upper Tribunal.
- (3) The provisions of section 4 of the Land Compensation Act 1961 apply to the determination of such disputes, with any necessary modifications.

### **177 Offences in connection with powers to enter land**

- (1) A person who without reasonable excuse obstructs another person in the exercise of the power conferred by section 172 commits an offence.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person commits an offence if the person discloses confidential information, obtained in the exercise of the power conferred by section 172, for purposes other than those for which the power was exercised.
- (4) A person who commits an offence under subsection (3) is liable—
  - (a) on summary conviction to a fine,
  - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (5) In subsection (3) “confidential information” means information—
  - (a) which constitutes a trade secret, or
  - (b) the disclosure of which would or would be likely to prejudice the commercial interests of any person.

### **178 Right to enter and survey or value Crown land**

- (1) Sections 172 to 177 apply in relation to Crown land.
- (2) But a person may only exercise the power conferred by section 172 in relation to Crown land if the person has the permission of the appropriate authority.
- (3) In this section, “Crown land” and “the appropriate authority” have the meaning given in section 293 of the Town and Country Planning Act 1990.

### **179 Amendments to do with sections 172 to 178**

Schedule 14 amends legislation conferring rights of entry relating to the acquisition of an interest in or a right over land in England and Wales.

#### *Confirmation and time limits*

### **180 Timetable for confirmation of compulsory purchase order**

After section 14A of the Acquisition of Land Act 1981 (confirmation by acquiring authorities) insert—

#### **“14B Timetables for confirmation of CPOs except by Welsh Ministers**

- (1) The Secretary of State must publish one or more timetables in relation to steps to be taken by confirming authorities, other than the Welsh Ministers, in confirming a compulsory purchase order.
- (2) Different timetables may be published in relation to—
  - (a) different confirming authorities, or
  - (b) different types of compulsory purchase order.

- (3) The Secretary of State may at any time revise a timetable published under this section.
- (4) The validity of an order is not affected by any failure to comply with a timetable published under this section.
- (5) The Secretary of State must lay before Parliament an annual report showing the extent to which confirming authorities have complied with any applicable timetable published under this section.
- (6) A report laid by the Secretary of State under this section need not include information about a confirming authority if the number of compulsory purchase orders submitted to it is lower than a minimum specified by the Secretary of State in the report.

#### **14C Timetables for confirmation of CPOs by Welsh Ministers**

- (1) The Welsh Ministers may publish one or more timetables in relation to steps to be taken by them in confirming a compulsory purchase order.
- (2) Different timetables may be published in relation to different types of compulsory purchase order.
- (3) The Welsh Ministers may at any time revise a timetable published under this section.
- (4) The validity of an order is not affected by any failure to comply with a timetable published under this section.
- (5) The Welsh Ministers must lay before the National Assembly for Wales an annual report showing the extent to which they have complied with any applicable timetable published under this section.”

#### **181 Confirmation by inspector**

- (1) The Acquisition of Land Act 1981 is amended as follows.
- (2) After section 14C (inserted by section 180 of this Act), insert—

##### **“14D Power to appoint inspector**

- (1) A confirming authority may appoint a person (“an inspector”) to act instead of it in relation to the confirmation of a compulsory purchase order to which section 13A applies.
- (2) An inspector may be appointed to act in relation to—
  - (a) a specific compulsory purchase order, or
  - (b) a description of compulsory purchase orders.
- (3) An inspector—
  - (a) has the same functions as a confirming authority under this Part (excluding this section),

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- (b) retains those functions even if all remaining objections are withdrawn after the inspector has begun to act in relation to a compulsory purchase order, and
  - (c) may hold a public local inquiry under section 13A(3)(a) or act as the person appointed to hear remaining objections under section 13A(3)(b).
- (4) Where an inspector is to act in relation to a compulsory purchase order, the confirming authority must inform—
- (a) every person who has made a remaining objection, and
  - (b) the acquiring authority.
- (5) Where an inspector decides whether or not to confirm the whole or part of a compulsory purchase order, the inspector’s decision is to be treated as that of the confirming authority.
- (6) The confirming authority may at any time—
- (a) revoke its appointment of an inspector, and
  - (b) appoint another inspector.
- (7) If the confirming authority revokes its appointment of an inspector while the inspector is acting in relation to a compulsory purchase order and does not replace the inspector, the authority must give its reasons—
- (a) to the inspector whose appointment has been revoked, and
  - (b) to all those informed under subsection (4).
- (8) Where in any enactment there is a provision that applies in relation to a confirming authority acting under this Part, that provision is to be read as applying equally in relation to an inspector so far as the context permits.
- (9) In this section “remaining objection” is to be construed in accordance with section 13A.”
- (3) In section 2 (procedure for authorisation), for subsection (2) substitute—
- “(2) A compulsory purchase order authorising a compulsory purchase by an authority other than a Minister is to be—
- (a) made by that authority,
  - (b) submitted to the confirming authority, and
  - (c) confirmed in accordance with Part 2 of this Act.”

## **182 Time limits for notice to treat or general vesting declaration**

- (1) For section 4 of the Compulsory Purchase Act 1965 substitute—

### **“4 Time limit for giving notice to treat**

A notice to treat may not be served by the acquiring authority after the end of the period of 3 years beginning with the day on which the compulsory purchase order becomes operative.”

- (2) After section 5 of the Compulsory Purchase (Vesting Declarations) Act 1981 insert—

### **“5A Time limit for general vesting declaration**

A general vesting declaration may not be executed after the end of the period of 3 years beginning with the day on which the compulsory purchase order becomes operative.”

#### *Vesting declarations: procedure*

### **183 Notice of general vesting declaration procedure**

Schedule 15 changes the notice requirements for general vesting declarations.

### **184 Earliest vesting date under general vesting declaration**

In section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration vesting land at the end of a period of not less than 28 days from the date of service), in subsection (1) for “28 days” substitute “3 months”.

### **185 No general vesting declaration after notice to treat**

In section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration), after subsection (1) insert—

“(1A) But an acquiring authority may not execute a declaration in respect of land if they have served a notice to treat in respect of that land and have not withdrawn it.

(1B) In subsection (1A) the reference to an authority having “served” a notice does not include cases in which the authority is deemed to have served a notice.”

#### *Possession following notice to treat etc*

### **186 Extended notice period for taking possession following notice to treat**

(1) The Compulsory Purchase Act 1965 is amended as follows.

(2) In section 11 (powers of entry)—

(a) in subsection (1)—

(i) for “not less than fourteen days notice” substitute “a notice of entry”;  
and

(ii) after “specified in the notice” insert “, after the end of a period specified in the notice”;

(b) after subsection (1) insert—

“(1A) A notice of entry under subsection (1) must specify the period after the end of which the acquiring authority may enter on and take possession of the land to which the notice relates.

(1B) The period specified in a notice of entry under subsection (1) must not end earlier than the end of the period of 3 months beginning with

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the day on which the notice is served unless it is a notice to which section 11A(4) or paragraph 13 of Schedule 2A applies.”

(3) After section 11 insert—

**“11A Powers of entry: further notices of entry**

- (1) This section applies where—
  - (a) an acquiring authority have given a notice of entry under section 11(1) but have not yet entered on and taken possession of the land, and
  - (b) the authority become aware of an owner, lessee or occupier (“the newly identified person”) to whom they ought to have given a notice to treat under section 5(1) but have not.
- (2) Any notice of entry already served under section 11(1) remains valid, but the authority may not enter on and take possession of the land unless they serve on the newly identified person—
  - (a) a notice to treat under section 5(1), and
  - (b) a notice of entry under section 11(1).
- (3) Subsection (4) applies for the purpose of determining the period to be specified in the notice of entry under section 11(1) served on the newly identified person if—
  - (a) the person is an occupier of the land and the authority were not aware of the person because they were given misleading information when carrying out inquiries under section 5(1), or
  - (b) the person is not an occupier of the land.
- (4) The period specified in the notice must be a period that ends—
  - (a) no earlier than the end of the period of 14 days beginning with the day on which the notice of entry is served, and
  - (b) no earlier than the end of the period specified in any previous notice of entry given by the acquiring authority in respect of the land.”

**187 Counter-notice requiring possession to be taken on specified date**

- (1) The Compulsory Purchase Act 1965 is amended as follows.
- (2) In section 11 (powers of entry), after subsection (1B) (inserted by section 186 of this Act), insert—

“(1C) A notice of entry under subsection (1) must explain the effect of section 11B (counter-notice requiring possession to be taken on specified date) and give an address at which the acquiring authority may be served with a counter-notice.”

(3) After section 11A (inserted by section 186 above) insert—

**“11B Counter-notice requiring possession to be taken on specified date**

- (1) Where an acquiring authority serve a notice of entry under section 11(1) on an occupier with an interest in land, the occupier may serve a counter-notice requiring the acquiring authority to take possession of the land by no later than a date specified in the counter-notice.



- (2) If the occupier gives up possession of the land on or before the specified date the acquiring authority are to be treated as having taken possession on that date (unless the acquiring authority has in fact taken possession before that date).
- (3) The date specified in the counter-notice—
  - (a) must not be before the end of the period specified in the notice of entry under section 11(1), and
  - (b) must be at least 28 days after the day on which the counter-notice is served.
- (4) A counter-notice under subsection (1) has no effect if the notice to treat relating to the land is withdrawn or ceases to have effect before the date specified in the counter-notice.
- (5) A counter-notice under subsection (1) has no effect if it would require an acquiring authority to take possession of land at a time when section 11A or paragraph 6 of Schedule 2A prohibit the authority from entering on and taking possession of the land.
- (6) If subsection (5) applies, the authority must notify the occupier who served the counter-notice—
  - (a) that the counter-notice has no effect, and
  - (b) if the authority serve a notice of entry as mentioned in section 11A(2)(b), of the date after which the authority could enter on and take possession of the land.
- (7) If a counter-notice served under subsection (1) has no effect because of subsection (5), the occupier who served it may serve a further counter-notice.
- (8) Where a notice of entry under section 11(1) is served on more than one occupier with the same interest in the land, a reference in this section to the occupier with an interest in land is to all of them acting together.”

## **188 Agreement to extend notice period for possession following notice to treat**

In section 11 of the Compulsory Purchase Act 1965 (powers of entry), after subsection (1C) (inserted by section 187 of this Act), insert—

- “(1D) An acquiring authority may extend the period specified in a notice of entry under subsection (1) by agreement with each person on whom it was served.
- (1E) A reference in this Act to the period specified in a notice of entry under subsection (1) is to the period as extended by any agreement under subsection (1D).”

## **189 Corresponding amendments to the New Towns Act 1981**

- (1) Schedule 6 to the New Towns Act 1981 (modification of compulsory purchase legislation as applied for the purposes of the Act) is amended as follows.
- (2) In paragraph 4—
  - (a) in sub-paragraph (1)—
    - (i) in the words before paragraph (a), after “every owner of that land” insert “so far as known to the acquiring authority after making diligent

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inquiry in accordance with section 5(1) of the Compulsory Purchase Act 1965”;

(ii) in the words after paragraph (b), omit “(not being less than 14 days)”;

(b) after sub-paragraph (2) insert—

“(2A) The period specified in a notice under sub-paragraph (1) must not end earlier than the end of the period of 3 months beginning with the day on which the notice is served unless—

- (a) it is a notice to which paragraph 4A(4) applies, or
- (b) it is a notice to which paragraph 13 of Schedule 2A to the Compulsory Purchase Act 1965 (as modified by paragraph 1(2)(g) above) applies.

(2B) A notice under sub-paragraph (1) must explain the effect of paragraph 4B (counter-notice requiring possession to be taken on specified date) and give an address at which the acquiring authority may be served with a counter-notice.

(2C) An acquiring authority may extend the period specified in a notice under sub-paragraph (1) by agreement with each person on whom it was served.

(2D) A reference in this Schedule to the period specified in a notice under sub-paragraph (1) is to the period as extended by any agreement under sub-paragraph (2C).”

(3) After paragraph 4 insert—

“4A (1) This paragraph applies where—

- (a) an acquiring authority have given a notice under paragraph 4(1) but have not yet entered on and taken possession of the land, and
- (b) the authority become aware of an owner (“the newly identified owner”) to whom they ought to have given a notice to treat under section 5(1) of the Compulsory Purchase Act 1965 but have not.

(2) Any notice already served under paragraph 4(1) remains valid, but the authority may not enter on and take possession of the land unless they serve on the newly identified owner—

- (a) a notice to treat under section 5(1) of the Compulsory Purchase Act 1965, and
- (b) a notice under paragraph 4(1).

(3) Sub-paragraph (4) applies for the purpose of determining the period to be specified in the notice under paragraph 4(1) served on the newly identified owner if—

- (a) the owner is an occupier of the land and the authority were not aware of the owner because they were given misleading information when carrying out inquiries under section 5(1) of the Compulsory Purchase Act 1965, or
- (b) the owner is not an occupier of the land.

(4) The period must be a period that ends—

- (a) no earlier than the end of the period of 14 days beginning with the day on which the notice of entry is served, and

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- (b) no earlier than the end of the period specified in any previous notice under paragraph 4(1) given by the acquiring authority in respect of the land.
- (5) This paragraph applies instead of section 11A of the Compulsory Purchase Act 1965.
- 4B (1) Where the acquiring authority serves a notice under paragraph 4(1) on an occupier with an interest in land, the occupier may serve a counter-notice requiring the acquiring authority to take possession of the land by no later than a date specified in the counter-notice.
- (2) If the occupier gives up possession of the land on or before the specified date, the acquiring authority is to be treated as having taken possession on that date (unless the acquiring authority has in fact taken possession before that date).
- (3) The date specified in the counter-notice—
  - (a) must not be before the end of the period specified in the notice under paragraph 4(1), and
  - (b) must be at least 28 days after the day on which the counter-notice is served.
- (4) A counter-notice under sub-paragraph (1) has no effect if the notice to treat relating to the land is withdrawn or ceases to have effect before the date specified in the counter-notice.
- (5) A counter-notice under sub-paragraph (1) has no effect if it would require an acquiring authority to take possession of land at a time when either paragraph 4A of this Schedule or paragraph 6 of Schedule 2A to the Compulsory Purchase Act 1965 prohibit the authority from entering on and taking possession of the land.
- (6) If sub-paragraph (5) applies, the authority must notify the occupier who served the counter-notice—
  - (a) that the counter-notice has no effect, and
  - (b) if the authority serve a notice under paragraph 4(1) of this Schedule as mentioned in paragraph 4A(2)(b) of this Schedule, of the date after which the authority could enter on and take possession of the land.
- (7) If a counter-notice served under sub-paragraph (1) has no effect because of sub-paragraph (5), the occupier who served it may serve a further counter-notice.
- (8) Where a notice under paragraph 4(1) is served on more than one occupier with the same interest in the land, a reference in this section to the occupier with an interest in land is to all of them acting together.
- (9) This paragraph applies instead of section 11B of the Compulsory Purchase Act 1965.”

**190 Abolition of alternative possession procedure following notice to treat**

Schedule 16 abolishes the alternative procedure for taking possession of land under section 11(2) of, and Schedule 3 to, the Compulsory Purchase Act 1965.

**191 Extended notice period for taking possession following vesting declaration**

In section 9 of the Compulsory Purchase (Vesting Declarations) Act 1981 (minor tenancies and tenancies about to expire), in subsection (2), for “14 days” substitute “3 months”.

*Compensation*

**192 Making a claim for compensation**

(1) After section 4 of the Land Compensation Act 1961 (costs) insert—

**“4A Making a claim for compensation**

- (1) The appropriate national authority may by regulations impose further requirements about the notice mentioned in section 4(1)(b).
- (2) In subsection (1) “appropriate national authority” means—
  - (a) in relation to a claim for compensation for the compulsory acquisition of land in England, the Secretary of State;
  - (b) in relation to a claim for compensation for the compulsory acquisition of land in Wales, the Welsh Ministers.
- (3) Regulations under subsection (1) may make provision about—
  - (a) the form and content of the notice, and
  - (b) the time at which the notice must be given.
- (4) Regulations under subsection (1) may permit or require a person specified in the regulations to design the form of the notice.
- (5) Regulations under subsection (1) may require an acquiring authority to supply, at specified stages of the compulsory acquisition process, copies of a form to be used in giving the notice.
- (6) Regulations under subsection (1) are to be made by statutory instrument.
- (7) A statutory instrument containing regulations under subsection (1) is subject to annulment—
  - (a) in the case of an instrument made by the Secretary of State, in pursuance of a resolution of either House of Parliament;
  - (b) in the case of an instrument made by the Welsh Ministers, in pursuance of a resolution of the National Assembly for Wales.”

(2) In section 5 of the Compulsory Purchase Act 1965 (notice to treat and untraced owners), after subsection (2) insert—

“(2ZA) For provision about notice of claims for compensation, see sections 4 and 4A of the Land Compensation Act 1961.”

### **193 Compensation after withdrawal of notice to treat**

- (1) Section 31 of the Land Compensation Act 1961 (withdrawal of notices to treat) is amended in accordance with subsections (2) and (3).
- (2) After subsection (3) insert—
  - “(3A) Where the acquiring authority withdraw a notice to treat under this section, the authority shall also be liable to pay a person compensation for any loss or expenses occasioned by the person as a result of the giving and withdrawal of the notice to treat if the person—
    - (a) acquired the interest to which the notice to treat relates before its withdrawal, and
    - (b) has not subsequently been given a notice to treat in relation to that interest.”
- (3) In subsection (4), after “(3)” insert “or (3A)”.
- (4) In Schedule 18 to the Planning and Compensation Act 1991 (provisions under which compensation is payable with interest), in Part 1, in the entry relating to the Land Compensation Act 1961, after “section 31(3)” insert “or (3A)”.

### **194 Making a request for advance payment of compensation**

- (1) The Land Compensation Act 1973 is amended as follows.
- (2) In section 52 (right to advance payment of compensation), for subsection (2) substitute—
  - “(2) A request for advance payment must be made in writing by the person entitled to it (“the claimant”) and must include—
    - (a) details of the claimant’s interest in the land, and
    - (b) information to enable the acquiring authority to estimate the amount of the compensation in respect of which the advance payment is to be made.
  - (2A) Within 28 days of receiving a request, the acquiring authority must—
    - (a) determine whether they have enough information to estimate the amount of compensation, and
    - (b) if they need more information, require the claimant to provide it.”
- (3) In section 52ZC (land subject to mortgage: supplementary), for subsection (2) substitute—
  - “(2) Within 28 days of receiving a request for a payment under section 52ZA or 52ZB, the acquiring authority must—
    - (a) determine whether they have enough information to give effect to section 52ZA or, as the case may be, 52ZB, and
    - (b) if they need more information, require the claimant to provide it.”
- (4) After section 52ZC (land subject to mortgage: supplementary) insert—

**“52ZD Making a request for advance payment**

- (1) The appropriate national authority may by regulations impose requirements about the form and content of a request under section 52(2), 52ZA(3) or 52ZB(3).
- (2) In subsection (1) “appropriate national authority” means—
  - (a) in relation to a request relating to the compulsory acquisition of land in England, the Secretary of State;
  - (b) in relation to a request relating to the compulsory acquisition of land in Wales, the Welsh Ministers.
- (3) Regulations under subsection (1) may permit or require a person specified in the regulations to design a form to be used in making a request.
- (4) Regulations under subsection (1) may require an acquiring authority to supply, at specified stages of the compulsory acquisition process, copies of a form to be used in making a request.
- (5) Regulations under subsection (1) are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under subsection (1) is subject to annulment—
  - (a) in the case of an instrument made by the Secretary of State, in pursuance of a resolution of either House of Parliament;
  - (b) in the case of an instrument made by the Welsh Ministers, in pursuance of a resolution of the National Assembly for Wales.”

**195 Power to make and timing of advance payment**

- (1) The Land Compensation Act 1973 is amended as follows.
- (2) In section 52 (right to advance payment of compensation)—
  - (a) for subsections (1) to (1B) substitute—
    - “(1) An acquiring authority may make an advance payment on account of compensation payable by them for the compulsory acquisition of an interest in land if a request has been made under subsection (2) after the compulsory acquisition has been authorised.
    - (1A) In a case where the compulsory acquisition is one to which the Lands Clauses Consolidation Act 1845 applies, the acquiring authority may not make an advance payment if they have not taken possession of the land, but must do so if they have.
    - (1B) In all other cases, an acquiring authority must make an advance payment under subsection (1) if, before or after the request is made, the authority—
      - (a) give a notice of entry under section 11(1) of the Compulsory Purchase Act 1965, or
      - (b) execute a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in respect of that land.”;

(b) for subsection (4) substitute—

“(4) An advance payment required by subsection (1A) must be made—

- (a) before the end of the day on which the authority take possession of the land, or
- (b) if later, before the end of the period of two months beginning with the day on which the authority—
  - (i) received the request for the advance payment, or
  - (ii) received any further information required under subsection (2A)(b).

(4ZA) An advance payment required by subsection (1B) must be made—

- (a) before the end of the day on which the notice of entry is given or the general vesting declaration is executed, or
- (b) if later, before the end of the period of two months beginning with the day on which the authority—
  - (i) received the request for the advance payment, or
  - (ii) received any further information required under subsection (2A)(b).”;

(c) omit subsection (11).

(3) In section 52ZA (advance payments: land subject to mortgage for up to 90% of value), for subsection (1) substitute—

“(1) This section applies if—

- (a) a request is made for an advance payment under section 52(1) in respect of land,
- (b) the authority is required by section 52(1A) or (1B) to make the advance payment, and
- (c) the land is subject to a mortgage the principal of which does not exceed 90% of the relevant amount.”

(4) In section 52ZB (advance payments: land subject to mortgage for more than 90% of value)—

(a) for subsection (1) substitute—

“(1) This section applies if—

- (a) a request is made for an advance payment under section 52(1) in respect of land,
- (b) the authority would be required by section 52(1A) or (1B) to make the advance payment if it were not for this section, and
- (c) the land is subject to a mortgage the principal of which exceeds 90% of the relevant amount.”;

(b) in subsection (9)(c) for “section 52ZA(1)(b)” substitute “section 52ZA(1)(c)”.

(5) In section 52ZC (land subject to mortgage: supplementary provisions)—

(a) after subsection (3) insert—

“(3A) In a case where the compulsory acquisition to which the request relates is one to which the Lands Clauses Consolidation Act 1845 applies, the acquiring authority must make any payment under section 52ZA or 52ZB—

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- (a) before the end of the day on which the authority take possession of the land, or
  - (b) if later, before the end of the period of two months beginning with the day on which the authority—
    - (i) received the request under section 52ZA(3) or 52ZB(3), or
    - (ii) received any further information required under subsection (2).
- (3B) In all other cases, the authority must make any payment under section 52ZA or 52ZB—
- (a) before the end of the day on which the notice of entry is given or the general vesting declaration is executed, or
  - (b) if later, before the end of the period of two months beginning with the day on which the authority—
    - (i) received the request under section 52ZA(3) or 52ZB(3), or
    - (ii) received any further information required under subsection (2).”;
- (b) in subsection (4) omit “(4) and”.

## 196 Interest on advance payments of compensation

- (1) The Land Compensation Act 1973 is amended as follows.
- (2) In section 52A (right to interest where advance payment made)—
  - (a) in subsection (2), after the words “payment under section 52(1)” insert “after the date of entry”;
  - (b) after subsection (2A) insert—
 

“(2B) In respect of any period in relation to which the acquiring authority is required to pay interest under section 52B (interest on advance payment), the interest payable under subsection (2) is limited to the interest which accrues on the difference between the total amount and the paid amount.”
- (3) After section 52A insert—

### “52B Interest on advance payments of compensation paid late

- (1) If the acquiring authority are required by section 52(1A) or (1B) to make an advance payment of compensation but pay some or all of it late, the authority must pay interest on the amount which is paid late (“the unpaid amount”).
- (2) Interest under subsection (1) accrues on the unpaid amount for the period beginning with the day after the last day on which payment could have been made in accordance with section 52(4) or (4ZA).
- (3) If the amount of the advance payment is greater than the compensation as finally determined or agreed (“the actual amount”), the claimant must repay any interest paid under this section that is attributable to the amount by which the advance payment exceeded the actual amount.



- (4) The Treasury must by regulations specify the rate of interest for the purposes of subsection (1).
- (5) Regulations under subsection (4) may contain further provision in connection with the payment of interest under subsection (1).
- (6) Regulations under subsection (4) are to be made by statutory instrument.
- (7) A statutory instrument containing regulations under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.”

### **197 Repayment of advance payment where no compulsory purchase**

- (1) The Land Compensation Act 1973 is amended as follows.
- (2) Section 52 (right to advance payment of compensation) is amended in accordance with subsections (3) and (4).
- (3) Omit subsection (5).
- (4) In subsection (9), for the words from “he disposes” to the end substitute—
  - “(a) the claimant’s interest in some or all of the land is acquired by another person, or
  - (b) the claimant creates an interest in some or all of the land in favour of a person other than the acquiring authority,

the amount of the advance payment together with any amount paid under section 52A shall be set off against any sum payable by the authority to that other person in respect of the compulsory acquisition of the interest acquired or the compulsory acquisition or release of the interest created.”

- (5) After section 52 insert—

#### **“52AZA Repayment by claimant etc.**

- (1) Where the amount or aggregate amount of any payments under section 52 made on the basis of the acquiring authority’s estimate of the compensation exceeds the compensation as finally determined or agreed, the excess is to be repaid.
- (2) If after any payment under section 52 has been made to any person it is discovered that the person was not entitled to it, the person must repay it.
- (3) If the notice to treat relating to an interest in land in relation to which an acquiring authority have made a payment to a claimant under section 52 is withdrawn or has ceased to have effect before the authority take possession of the land, the authority may by notice require the claimant to pay them an amount equal to the amount of the payment, unless another person has acquired the whole of the claimant’s interest in the land.
- (4) Subsection (5) applies where—
  - (a) a payment made to a claimant has been registered as a local land charge in accordance with section 52(8A),

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- (b) the whole of the claimant’s interest in land has subsequently been acquired by another person (a “successor”),
  - (c) any notice to treat given in relation to the interest is withdrawn or ceases to have effect before the acquiring authority take possession of the land, and
  - (d) the authority notify the successor that they are not going to give the successor a notice to treat (or a further notice to treat) for the interest.
- (5) The authority may by notice require the successor to pay them an amount equal to the amount of any payment made to the claimant under section 52.
- (6) A notice under subsection (3) or (5) must specify the date by which the claimant or successor must pay the amount.
- (7) The date mentioned in subsection (6) must be after the period of two months beginning with the day on which the authority give the notice under subsection (3) or (5).
- (8) Neither subsection (3) nor subsection (5) affects a right to compensation under section 31(3) or (3A) of the Land Compensation Act 1961 or section 5(2C) (b) of the Compulsory Purchase Act 1965.”

## **198 Repayment of payment to mortgagee if land not acquired**

In the Land Compensation Act 1973, after section 52ZD (inserted by section 194 above) insert—

### **“52ZE Payment to mortgagee recoverable if notice to treat withdrawn**

- (1) Where an acquiring authority have made a payment to a mortgagee under section 52ZA or 52ZB in relation to an interest in land and notify the claimant that the notice to treat relating to the interest is withdrawn or has ceased to have effect before the authority take possession of the land, the authority may by notice require the claimant to pay them an amount equal to the amount of the payment, unless another person has acquired the whole of the claimant’s interest in the land.
- (2) Subsection (3) applies where—
- (a) a payment under section 52ZA or 52ZB has been registered as a local land charge in accordance with section 52(8A),
  - (b) the whole of a claimant’s interest in land has subsequently been acquired by another person (a “successor”),
  - (c) any notice to treat given in relation to the interest is withdrawn or ceases to have effect before the authority take possession of the land, and
  - (d) the acquiring authority notify the successor that they are not going to give the successor a notice to treat (or a further notice to treat) in relation to the interest.
- (3) The authority may by notice require the successor to pay them an amount equal to the amount of the payment.
- (4) A notice under subsection (1) or (3) must specify the date by which the claimant or successor must pay the amount.

- (5) The date mentioned in subsection (4) must be after the period of two months beginning with the day on which the authority give the notice under subsection (1) or (3).
- (6) Neither subsection (1) nor subsection (3) affects a right to compensation under section 31(3) or (3A) of the Land Compensation Act 1961 or section 5(2C)(b) of the Compulsory Purchase Act 1965.”

### *Disputes*

#### **199 Objection to division of land**

- (1) Schedule 17 contains amendments about objecting to the division of land following a notice to treat under section 5 of the Compulsory Purchase Act 1965.
- (2) Schedule 18 contains amendments about objecting to the division of land following a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

#### **200 Objection to division of land: blight notices**

- (1) The Town and Country Planning Act 1990 is amended as follows.
- (2) In section 153 (reference of objection to Upper Tribunal), after subsection (4) insert—
  - “(4A) Where the effect of a blight notice would be a compulsory purchase to which Part 1 of the Compulsory Purchase Act 1965 applies, the Upper Tribunal may uphold an objection on the grounds mentioned in section 151(4)(c) only if it is satisfied that the part of the hereditament or affected area proposed to be acquired in the counter-notice—
    - (a) in the case of a house, building or factory, can be taken without material detriment to the house, building or factory, or
    - (b) in the case of a park or garden belonging to a house, can be taken without seriously affecting the amenity or convenience of the house.”
- (3) In section 166 (saving for claimant’s right to sell whole hereditament etc.)—
  - (a) in subsection (1) omit paragraph (b) (and the “or” before it);
  - (b) omit subsection (2).

#### **201 Power to quash decision to confirm compulsory purchase order**

In section 24 of the Acquisition of Land Act 1981 (powers of the court), after subsection (2) insert—

- “(3) If the court has power under subsection (2) to quash a compulsory purchase order it may instead quash the decision to confirm the order either generally or in so far as it affects any property of the applicant.”

#### **202 Extension of compulsory purchase time limit during challenge**

- (1) After section 4 of the Compulsory Purchase Act 1965 (time limit for giving notice to treat) insert—

**“4A Extension of time limit during challenge**

- (1) If an application is made under section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4 is to be extended by—
  - (a) a period equivalent to the period beginning with the day the application is made and ending on the day it is withdrawn or finally determined, or
  - (b) if shorter, one year.
- (2) An application is not finally determined for the purposes of subsection (1)(a) if an appeal in respect of the application—
  - (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) has been made and not withdrawn or finally determined.”
- (2) After section 5A of the Compulsory Purchase (Vesting Declarations) Act 1981 (time limit for general vesting declaration) insert—

**“5B Extension of time limit during challenge**

- (1) If an application is made under section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A is to be extended by—
  - (a) a period equivalent to the period beginning with the day the application is made and ending on the day it is withdrawn or finally determined, or
  - (b) if shorter, one year.
- (2) An application is not finally determined for the purposes of subsection (1)(a) if an appeal in respect of the application—
  - (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) has been made and not withdrawn or finally determined.”

*Power to override easements and other rights***203 Power to override easements and other rights**

- (1) A person may carry out building or maintenance work to which this subsection applies even if it involves—
  - (a) interfering with a relevant right or interest, or
  - (b) breaching a restriction as to the user of land arising by virtue of a contract.
- (2) Subsection (1) applies to building or maintenance work where—
  - (a) there is planning consent for the building or maintenance work,
  - (b) the work is carried out on land that has at any time on or after the day on which this section comes into force—
    - (i) become vested in or acquired by a specified authority, or

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- (ii) been appropriated by a local authority for planning purposes as defined by section 246(1) of the Town and Country Planning Act 1990,
  - (c) the authority could acquire the land compulsorily for the purposes of the building or maintenance work, and
  - (d) the building or maintenance work is for purposes related to the purposes for which the land was vested, acquired or appropriated as mentioned in paragraph (b).
- (3) Subsection (1) also applies to building or maintenance work where—
  - (a) there is planning consent for the building or maintenance work,
  - (b) the work is carried out on other qualifying land,
  - (c) the qualifying authority in relation to the land could acquire the land compulsorily for the purposes of the building or maintenance work, and
  - (d) the building or maintenance work is for purposes related to the purposes for which the land was vested in, or acquired or appropriated by, the qualifying authority in relation to the land.
- (4) A person may use land in a case to which this subsection applies even if the use involves—
  - (a) interfering with a relevant right or interest, or
  - (b) breaching a restriction as to the user of land arising by virtue of a contract.
- (5) Subsection (4) applies to the use of land in a case where—
  - (a) there is planning consent for that use of the land,
  - (b) the land has at any time on or after the day on which this section comes into force—
    - (i) become vested in or acquired by a specified authority, or
    - (ii) been appropriated by a local authority for planning purposes as defined by section 246(1) of the Town and Country Planning Act 1990,
  - (c) the authority could acquire the land compulsorily for the purposes of erecting or constructing any building, or carrying out any works, for that use, and
  - (d) the use is for purposes related to the purposes for which the land was vested, acquired or appropriated as mentioned in paragraph (b).
- (6) Subsection (4) also applies to the use of land in a case where—
  - (a) there is planning consent for that use of the land,
  - (b) the land is other qualifying land, and
  - (c) the qualifying authority in relation to the land could acquire the land compulsorily for the purposes of erecting or constructing any building, or carrying out any works, for that use, and
  - (d) the use is for purposes related to the purposes for which the land was vested in, or acquired or appropriated by, the qualifying authority in relation to the land.
- (7) Land currently owned by a specified authority is to be treated for the purposes of subsection (2)(c) or (5)(c) as if it were not currently owned by the authority.
- (8) Land currently owned by a qualifying authority is to be treated for the purposes of subsection (3)(c) or (6)(c) as if it were not currently owned by the authority.
- (9) Nothing in this section authorises an interference with—

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- (a) a right of way on, under or over land that is a protected right, or
  - (b) a right of laying down, erecting, continuing or maintaining apparatus on, under or over land if it is a protected right.
- (10) Nothing in this section authorises—
- (a) an interference with a relevant right or interest annexed to land belonging to the National Trust which is held by the National Trust inalienably, or
  - (b) a breach of a restriction as to the user of land which does not belong to the National Trust—
    - (i) arising by virtue of a contract to which the National Trust is a party, or
    - (ii) benefiting land which does belong to the National Trust.
- (11) For the purposes of subsection (10)—
- (a) “National Trust” means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907, and
  - (b) land is held by the National Trust “inalienably” if it is inalienable under section 21 of the National Trust Act 1907 or section 8 of the National Trust Act 1939.

#### **204 Compensation for overridden easements etc**

- (1) A person is liable to pay compensation for any interference with a relevant right or interest or breach of a restriction that is authorised by section 203.
- (2) The compensation is to be calculated on the same basis as compensation payable under sections 7 and 10 of the Compulsory Purchase Act 1965.
- (3) Where a person other than a specified or qualifying authority is liable to pay compensation under this section but has not paid—
  - (a) the liability is enforceable against the authority, but
  - (b) the authority may recover from that person any amount it pays out.
- (4) The specified or qualifying authority against which a liability is enforceable by virtue of subsection (3)(a) is the specified or qualifying authority in which the land to which the compensation relates was vested, or by which the land was acquired or appropriated, as mentioned in section 203.
- (5) Any dispute about compensation payable under this section may be referred to and determined by the Upper Tribunal.

#### **205 Interpretation of sections 203 and 204**

- (1) In sections 203 and 204—
  - “building or maintenance work” means the erection, construction, carrying out or maintenance of any building or work;
  - “other qualifying land” means land in England and Wales that has at any time before the day on which this section comes into force been—
    - (a) acquired by the National Assembly for Wales or the Welsh Ministers under section 21A of the Welsh Development Agency Act 1975;
    - (b) vested in or acquired by an urban development corporation or a local highway authority for the purposes of Part 16 of the Local Government, Planning and Land Act 1980;

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- (c) acquired by a development corporation or a local highway authority for the purposes of the New Towns Act 1981;
- (d) vested in or acquired by a housing action trust for the purposes of Part 3 of the Housing Act 1988;
- (e) acquired or appropriated by a local authority for planning purposes as defined by section 246(1) of the Town and Country Planning Act 1990;
- (f) vested in or acquired by the Homes and Communities Agency, apart from land the freehold interest in which was disposed of by the Agency before 12 April 2015;
- (g) vested in or acquired by the Greater London Authority for the purposes of housing or regeneration, apart from land the freehold interest in which was disposed of before 12 April 2015—
  - (i) by the Authority, other than to a company or body through which it exercises functions in relation to housing or regeneration, or
  - (ii) by such a company or body;
- (h) vested in or acquired by a Mayoral development corporation (established under section 198(2) of the Localism Act 2011), apart from land the freehold interest in which was disposed of by the corporation before 12 April 2015;

“planning consent” means—

- (a) permission under Part 3 of the Town and Country Planning Act 1990 or section 293A of that Act, or
- (b) development consent under the Planning Act 2008;

“protected right” means—

- (a) a right vested in, or belonging to, a statutory undertaker for the purpose of carrying on its statutory undertaking, or
- (b) a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network (and expressions used in this paragraph have the meaning given by paragraph 1(1) of Schedule 17 to the Communications Act 2003);

“qualifying authority” in relation to other qualifying land means the authority in which the land was vested, or which acquired or appropriated the land, as mentioned in the definition of “other qualifying land”;

“relevant right or interest” means any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support);

“specified authority” means—

- (a) a Minister of the Crown or the Welsh Ministers or a government department,
- (b) a local authority as defined by section 7 of the Acquisition of Land Act 1981,
- (c) a body established by or under an Act,
- (d) a body established by or under an Act or Measure of the National Assembly for Wales, or
- (e) a statutory undertaker;

“statutory undertaker” means—

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- (a) a person who is, or who is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990, or
  - (b) a person in relation to whom the electronic communications code is applied by a direction under section 106(3)(a) of the Communications Act 2003;
- “statutory undertaking” is to be read in accordance with section 262 of the Town and Country Planning Act 1990 (meaning of “statutory undertakers”).
- (2) The Secretary of State may by regulations amend the definition of “specified authority” in subsection (1).

## **206 Amendments to do with sections 203 and 204**

Schedule 19 gets rid of legislation replaced by sections 203 and 204.