
Changes to legislation: Housing and Planning Act 2016, SCHEDULE 17 is up to date with all changes known to be in force on or before 23 April 2024. 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

Section 199

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

II 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)

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—

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- (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

I4 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).

Commencement Information

I5 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 subparagraph 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.

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Commencement Information

I6 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.

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.

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- 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 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

I7 Sch. 17 para. 7 in force at 3.2.2017 by S.I. 2017/75, reg. 3(g) (with reg. 5)

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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

I8 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—
 - (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

I9 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

I10 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 ”.

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Commencement Information

I11 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. 95(1)(ia) inserted by [2023 c. 36 Sch. 1 para. 2](#)
- s. 100(7)(aa) inserted by [2023 c. 36 Sch. 1 para. 3](#)
- 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\(8\)\(a\)\(ii\)](#)