



Neighbourhood Planning Act 2017

2017 CHAPTER 20

PART 2

COMPULSORY PURCHASE ETC

CHAPTER 1

TEMPORARY POSSESSION OF LAND

18 Power to take temporary possession of land

- (1) Subsection (2) applies where a person (an “acquiring authority”)—
 - (a) has a power conferred by an Act to acquire land compulsorily (with or without authorisation from another person), or
 - (b) is or has been, at any time, otherwise authorised to acquire land compulsorily.
- (2) The acquiring authority may, for purposes connected with the purposes for which it could acquire land compulsorily, take temporary possession of land—
 - (a) by agreement, or
 - (b) compulsorily, if authorised to do so in accordance with section 19.
- (3) Subject to any express provision in another Act, the power in subsection (2) is the only power under which a person may take temporary possession of land compulsorily.
- (4) For the purposes of this Chapter references to acquiring land include references to acquiring a right over land by creation.

19 Procedure for authorising temporary possession etc

- (1) This section sets out how an acquiring authority may be authorised to take temporary possession of land compulsorily under section 18(2).
- (2) The temporary possession of the land must be authorised by the type of instrument (the “authorising instrument”) that would be required if the acquiring authority proposed to

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acquire that land compulsorily for the purposes for which it proposes to take temporary possession of that land.

- (3) Accordingly, the authorising instrument—
- (a) may make provision relating to temporary possession of land as well as, or instead of, compulsory acquisition,
 - (b) if it authorises the compulsory acquisition of land, may authorise temporary possession of the same or other land, and
 - (c) if it makes provision relating to temporary possession, is to be subject to the same procedures for authorising and challenging it as if the provision relating to temporary possession were provision relating to compulsory acquisition.
- (4) But in so far as an authorising instrument authorises the temporary possession of land, the instrument is not to be subject to special parliamentary procedure by virtue of any enactment applying that procedure to an instrument authorising the compulsory acquisition of land, unless the land which is proposed to be subject to temporary possession is held by the National Trust inalienably.
- (5) For the purposes of subsection (4)—
- (a) “the 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.
- (6) For the purposes of subsection (3)(c), the reference to compulsory acquisition does not include the compulsory acquisition of a right over land by creation unless section 18(2) applies in relation to the acquiring authority by virtue only of a power or authorisation to acquire a right over land by creation.
- (7) The authorising instrument must—
- (a) identify the land which is to be subject to temporary possession,
 - (b) describe the purposes for which temporary possession is required, and
 - (c) specify the total period of time for which the land may be subject to temporary possession.
- (8) The authorising instrument does not need to include the dates of any particular period of temporary possession (but see section 20).

20 Notice requirements

- (1) Before taking temporary possession of land compulsorily for a period of time by virtue of section 18(2) an acquiring authority must give a notice of intended entry to each person who has an interest in or a right to occupy the land, so far as known to the authority after making diligent inquiry.
- (2) The notice must specify the period after the end of which the acquiring authority may take temporary possession of the land (“the notice period”).
- (3) The notice period must not end earlier than the end of the period of three months beginning with the day on which the notice is given.
- (4) The notice must specify the period for which the acquiring authority is to take temporary possession of the land.

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- (5) For the purposes of this section an acquiring authority is to be treated as taking temporary possession of land at the beginning of the first day of any period of temporary possession.
- (6) The notice period may be reduced by agreement between the acquiring authority and all persons to whom a notice must be given under subsection (1).
- (7) An acquiring authority must comply with this section again in relation to each subsequent period of temporary possession even if there is to be no gap between periods.
- (8) Where the authorising instrument mentioned in section 19 is a compulsory purchase order, a notice of intended entry under this section may not be served after the end of the period of three years beginning with the day on which the authorising instrument becomes operative.
- (9) In any other case, a notice of intended entry under this section may not be served after the end of the period of five years beginning with the day on which the authorising instrument becomes operative.

21 Counter-notice

- (1) This section applies where an acquiring authority gives a notice of intended entry under section 20 in relation to land to a person (the “owner”) who—
 - (a) has a leasehold interest in, and the right to occupy, the land, or
 - (b) has the freehold interest in the land.
- (2) The owner may give the acquiring authority a counter-notice which provides that the total period of time for which the land may be subject to temporary possession is limited to—
 - (a) 12 months where the land is or is part of a dwelling, or
 - (b) 6 years in any other case.
- (3) If the owner falls within subsection (1)(a), the owner may instead give the acquiring authority a counter-notice which provides that the authority may not take temporary possession of the land.
- (4) A counter-notice under subsection (2) or (3) must be given within the period of 28 days beginning with the day on which the notice of intended entry was given.
- (5) On receiving a counter-notice under subsection (2), the acquiring authority must decide whether to—
 - (a) accept the counter-notice,
 - (b) withdraw the notice of intended entry, or
 - (c) proceed as if the land were subject to compulsory acquisition.
- (6) On receiving a counter-notice under subsection (3), the acquiring authority must decide whether to—
 - (a) accept the counter-notice, or
 - (b) proceed as if the land were subject to compulsory acquisition.
- (7) The acquiring authority must give a notice of its decision in response to a counter-notice to the owner within the period of 28 days beginning with the day on which the counter-notice was given.

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- (8) If the acquiring authority decides to proceed as if the land were subject to compulsory acquisition—
- (a) the instrument which authorised temporary possession of the land is to be treated as authorising the compulsory acquisition of the owner’s interest in the land (as well as the temporary possession of the land, if there are other interests in it), and
 - (b) the authority may proceed as if it had given any notice or taken any step required in relation to the authorisation or confirmation of the instrument.
- (9) See Schedule 2A to the Compulsory Purchase Act 1965 and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981 for options available to the owner if, in response to a counter-notice under this section, the acquiring authority decides to purchase the owner’s interest in part of a house, building or factory.
- (10) Nothing in this section prevents an acquiring authority acquiring land compulsorily after accepting a counter-notice or withdrawing a notice of intended entry in respect of that land.

22 Refusal to give up possession

Section 13 of the Compulsory Purchase Act 1965 (refusal to give up possession of land to acquiring authority) applies in relation to temporary possession by virtue of section 18(2) of this Act as if—

- (a) the reference to “this Act” in subsection (1) were a reference to section 18(2) of this Act, and
- (b) the references to taking possession of land were references to taking temporary possession of land compulsorily by virtue of section 18(2) of this Act.

23 Compensation

- (1) This section applies if an acquiring authority takes or is authorised to take temporary possession of land compulsorily by virtue of section 18(2).
- (2) A person (a “claimant”) who has an interest in or a right to occupy the land is entitled to receive compensation from the authority for any loss or injury the claimant sustains as a result.
- (3) A person (a “beneficial claimant”) is entitled to receive compensation from the authority for any loss or injury the beneficial claimant sustains as a result of the authority—
 - (a) interfering with a relevant right or interest annexed to land belonging to the beneficial claimant, or
 - (b) breaching a restriction as to the user of land arising by virtue of a contract where—
 - (i) the beneficial claimant is a party to the contract, or
 - (ii) the restriction benefits land which belongs to the beneficial claimant.
- (4) Where the claimant is carrying on a trade or business on the land, the compensation to which the claimant is entitled includes compensation for any loss which the claimant sustains by reason of the disturbance of the trade or business consequent upon the claimant having to quit the land for the period of the temporary possession.

- (5) In estimating loss for the purposes of subsection (4) regard is to be had—
 - (a) to the period for which the land occupied by the claimant may reasonably have been expected to be available for the purposes of the claimant’s trade or business,
 - (b) to the terms on which the land may reasonably have been expected to be available for those purposes, and
 - (c) to the availability of other land suitable for those purposes during the period of temporary possession.
- (6) For the purposes of section 9 of the Limitation Act 1980, a cause of action for compensation under this section which, apart from this subsection, would accrue before or during a period of compulsory temporary possession for which notice is given under section 20 is to be treated as accruing on the last day of the period.
- (7) Compensation under this section in relation to a particular head of loss or injury carries interest from the day after the last day on which that loss or injury occurs.
- (8) The interest is to be at the rate prescribed by regulations under section 32 of the Land Compensation Act 1961 in relation to the compulsory acquisition of land.
- (9) Any dispute about compensation payable under this section may be referred to and determined by the Upper Tribunal.
- (10) In this Chapter “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).

24 Advance payments

- (1) This section applies where a person (a “claimant”) to whom compensation is or will be payable under section 23 makes a request in accordance with subsection (3).
- (2) The acquiring authority—
 - (a) must make an advance payment on account of the compensation if it has given a notice of intended entry under section 20 in relation to the land in respect of which the claimant is or will be entitled to compensation, but
 - (b) may not do so if it has not given such a notice.
- (3) A request for advance payment must be made in writing by the claimant and must include—
 - (a) details of the basis on which the claimant is or is going to be entitled to compensation, and
 - (b) information which is sufficient to enable the acquiring authority to estimate the amount of the compensation in respect of which the advance payment is to be made.
- (4) Before the end of the period of 28 days beginning with the day on which the acquiring authority receives a request under subsection (3), the authority must—
 - (a) determine whether it has enough information to estimate the amount of compensation, and
 - (b) if it needs more information, require the claimant to provide it.
- (5) The amount of an advance payment is to be equal to 90% of—

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- (a) if the acquiring authority and the claimant have agreed on the amount of the compensation, the agreed amount, or
 - (b) in any other case, an amount equal to the compensation as estimated by the acquiring authority.
- (6) An advance payment must be made—
- (a) before the end of the day on which the authority takes temporary 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) receives the request for the advance payment, or
 - (ii) receives any further information required under subsection (4)(b).
- (7) If, after making an advance payment on the basis of its estimate of the compensation, the acquiring authority considers that its estimate was too low, the authority must pay the claimant the balance of the amount of the advance payment calculated on the basis of the authority's new estimate of the compensation.
- (8) Where the total amount of any payments under this section 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.
- (9) If, after a payment under this section has been made to a person, it is discovered that the person was not entitled to it, the person must repay it.

25 Interest on advance payments of compensation paid late

- (1) If an acquiring authority is required by section 24(2) to make an advance payment of compensation but pays some or all of it after the day or (as the case may be) the end of the period specified in section 24(6), the authority must pay interest on the amount which is paid after that period (the “unpaid amount”).
- (2) Interest under subsection (1) accrues on the unpaid amount for the period beginning with the day after the day or (as the case may be) the end of the period specified in section 24(6).
- (3) If the total amount of any advance payment made under section 24 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).

26 Consequential amendments

- (1) The Town and Country Planning Act 1990 is amended in accordance with subsections (2) to (7).
- (2) In section 150 (notices requiring purchase of blighted land), in subsection (1)(b), for “or paragraph 24” substitute “, paragraph 24 or paragraph 24A”.

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- (3) In section 151 (counter-notice objecting to blight notices)—
- (a) in subsection (4)(b), after “to acquire” insert “or (in the case of land to which paragraph 24A of Schedule 13 applies) take temporary possession of”, and
 - (b) in subsection (8), for “to acquire that land” substitute “to acquire or (in the case of land to which paragraph 24A of Schedule 13 applies) to take temporary possession of that land”.
- (4) In section 155 (effect on powers of compulsory acquisition of counter-notice disclaiming intention to acquire)—
- (a) in the heading, after “acquire” insert “etc.”, and
 - (b) in subsection (2)—
 - (i) in paragraph (a), after “appropriate enactment” insert “, or, in a case to which paragraph 24A of Schedule 13 applies, the temporary possession of land has been authorised by the appropriate enactment.”,
 - (ii) in the closing words, after “that order” insert “or appropriate enactment.”, and
 - (iii) after “claimant in” insert “, or the temporary possession of.”.
- (5) In section 169 (meaning of “appropriate authority” in relation to blighted land), in subsection (1)—
- (a) the words from “by whom” to the end become paragraph (a), and
 - (b) after that paragraph insert “, or
 - (b) which is authorised to take temporary possession of the land as mentioned in paragraph 24A of Schedule 13.”
- (6) In section 170 (meaning of “appropriate enactment” in relation to blighted land), after subsection (8B) insert—
- “(8BA) In relation to land falling within paragraph 24A of that Schedule “the appropriate enactment” is the instrument mentioned in section 19(2) of the Neighbourhood Planning Act 2017 (procedure for authorising temporary possession etc.) under which the acquiring authority mentioned in section 18(1) of that Act (power to take temporary possession of land) is authorised to take temporary possession of the land.”
- (7) In Schedule 13 (list of categories of land which are blighted land as a result of planning proposals etc. by public authorities), after paragraph 24 insert—
- “24A Land the temporary possession of which is authorised by virtue of section 18(2) of the Neighbourhood Planning Act 2017.”
- (8) In section 172 of the Housing and Planning Act 2016 (right to enter and survey land in connection with proposal to acquire land etc.)—
- (a) in subsection (1)—
 - (i) the words from “to” to the end become paragraph (a), and
 - (ii) after paragraph (a) insert “, or
 - (b) take temporary possession of land compulsorily under section 18(2) of the Neighbourhood Planning Act 2017.”” and
 - (b) in subsection (6) for the words from “acquiring authority” to the end of the subsection substitute “—

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- (a) “acquiring authority” means a person who could be authorised to acquire compulsorily the land to which the proposal mentioned in subsection (1) relates (regardless of whether the proposal is to acquire an interest in or a right over the land or to take temporary possession of it), and
- (b) “owner” has the meaning given in section 7 of the Acquisition of Land Act 1981.”

27 Powers of acquiring authority in relation to land

- (1) Subject to subsection (4) and to any regulations under section 29, where an acquiring authority takes temporary possession of land compulsorily by virtue of section 18(2), the authority may use the land as if it had acquired all interests in it.
- (2) In particular, the acquiring authority may—
 - (a) remove or erect buildings or other works, and
 - (b) remove any vegetation,
 to the extent that it would be able to do so if it had acquired all interests in the land.
- (3) The acquiring authority may use land as described in subsection (1) even if this 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.
- (4) But the acquiring authority may use the land only for the purposes for which temporary possession was required, as described in the authorising instrument (see section 19(7)(b)).
- (5) Nothing in this section authorises an interference with—
 - (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.
- (6) 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.
- (7) For the purposes of subsection (6)—
 - (a) “the 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.
- (8) In this section—

“protected right” means—

 - (a) a right vested in, or belonging to, a statutory undertaker for the purpose of carrying on its statutory undertaking, or

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(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);

“statutory undertaker” means 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;

“statutory undertaking” is to be read in accordance with section 262 of the Town and Country Planning Act 1990 (meaning of “statutory undertakers”).

28 Impact of temporary possession on tenancies etc

- (1) Subsection (2) applies where an acquiring authority takes temporary possession under section 18(2) of land subject to a tenancy.
- (2) A person is not to be treated as being in breach of—
 - (a) any term of the tenancy, or
 - (b) any other obligation associated with the tenancy or the land subject to temporary possession,to the extent that the person cannot reasonably comply with the term or other obligation as a result of the temporary possession.
- (3) Subsection (2) does not affect terms or obligations about—
 - (a) the length of the tenancy, or
 - (b) the payment of rent.
- (4) Subsection (5) applies where—
 - (a) an acquiring authority takes temporary possession of land subject to a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business tenants) applies immediately before the period of temporary possession,
 - (b) the tenancy expires during the period of temporary possession, and
 - (c) prior to the period of temporary possession the tenant notifies in writing both the acquiring authority and the landlord that the tenant intends to resume occupation of the land after the period of temporary possession.
- (5) For the purposes of Part 2 of the Landlord and Tenant Act 1954 the tenant is to be deemed to continue to occupy the land in accordance with the tenancy mentioned in subsection (4)(b), and any tenancy which succeeds that tenancy, despite the period of temporary possession.
- (6) But if the tenant notifies in writing both the acquiring authority and the landlord that the tenant no longer intends to resume occupation of the land after the period of temporary possession subsection (5) ceases to apply.
- (7) In this section “tenancy” includes a sub-tenancy.

29 Supplementary provisions

- (1) The appropriate national authority must by regulations make provision about—
 - (a) the reinstatement of land subject to a period of temporary possession, and

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- (b) the resolution by an independent person of disputes about reinstatement.
- (2) The Secretary of State may by regulations exclude the application of any provision of this Chapter in relation to a person who is an acquiring authority as a result of an authorisation by virtue of—
- (a) section 11, 12 or 12A of the Pipe-lines Act 1962 (compulsory purchase of land or rights over land in connection with pipe-lines),
 - (b) section 12 or 13 of the Gas Act 1965 (compulsory purchase of rights in relation to storage of gas etc),
 - (c) paragraph 1 of Schedule 3 to the Gas Act 1986 (compulsory purchase of land by gas transporter), or
 - (d) paragraph 1 of Schedule 3 to the Electricity Act 1989 (compulsory purchase of land by licence holder).
- (3) The appropriate national authority may by regulations make further provision in relation to—
- (a) the authorisation and exercise of the power to take temporary possession of land by virtue of section 18(2), and
 - (b) the circumstances in which an acquiring authority may be authorised to acquire land after being authorised to take temporary possession of it.
- (4) Regulations under subsection (3) may for example—
- (a) make provision that appears to the appropriate national authority to be necessary or expedient for giving full effect to a provision of this Chapter in relation to particular cases or types of case, including by modifying that provision so that it is effective in relation to those cases or types of case,
 - (b) limit the period for which an acquiring authority may take temporary possession of land,
 - (c) limit the circumstances in which an acquiring authority may take temporary possession of land,
 - (d) make provision about the use by an acquiring authority of land of which it has taken temporary possession (for example, by limiting what an acquiring authority may do or by requiring an acquiring authority to do certain things),
 - (e) limit the types of land which may be subject to temporary possession in specified circumstances,
 - (f) require an acquiring authority to provide specified information relating to a period of temporary possession to specified persons before, during or after the period,
 - (g) make provision in relation to the sale by a person with an interest in land where that land is or may be subject to temporary possession, and
 - (h) make provision for a person who has a right to occupy land subject to temporary possession to be deemed to occupy that land for specified purposes during the period of temporary possession.
- (5) Before making regulations under this section the Secretary of State or the Welsh Ministers, as the case may be, must carry out a public consultation.
- (6) In this section—
- “appropriate national authority” means—
 - (a) in relation to cases where the Welsh Ministers are the acquiring authority or the confirming authority, the Welsh Ministers, and

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- (b) in all other cases, the Secretary of State;
“confirming authority” means the authority having power to authorise the acquiring authority to take temporary possession of land;
- “specified” means specified in regulations under subsection (3).

30 Interpretation

In this Chapter—

- “acquiring authority” has the meaning given in section 18(1);
- “the notice period” has the meaning given in section 20(2);
- “possession” means exclusive occupation;
- “relevant right or interest” has the meaning given by section 23(10).

31 Application to Crown land

- (1) This Chapter applies in relation to Crown land.
- (2) An acquiring authority may exercise the power conferred by section 18(2) in relation to Crown land only if the acquiring authority has the consent of the appropriate authority.
- (3) In this section “Crown land” and “the appropriate authority” have the meanings given in section 293 of the Town and Country Planning Act 1990.