



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART VIII

ACQUISITION AND APPROPRIATION OF LAND FOR PLANNING PURPOSES ETC.

Acquisition for planning and public purposes

188 Acquisition of land by agreement.

- (1) A planning authority may acquire by agreement any land which they require for any purpose for which a planning authority may be authorised to acquire land under section 189.
- (2) The Lands Clauses Acts (except the provisions relating to the purchase of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections 120 to 125 of the ^{M1}Lands Clauses Consolidation (Scotland) Act 1845) and sections 6 and 70 of the ^{M2}Railways Clauses Consolidation (Scotland) Act 1845, and sections 71 to 78 of that Act, as originally enacted and not as amended for certain purposes by section 15 of the ^{M3}Mines (Working Facilities and Support) Act 1923, shall be incorporated with this section, and in construing those Acts as so incorporated this section shall be deemed to be the special Act and references to the promoters of the undertaking or to the company shall be construed as references to the authority authorised to acquire the land under this section.

^{F1}(3)

Textual Amendments

- F1** S. 188(3) repealed (1.4.2003) by [Local Government in Scotland Act 2003 \(asp 1\)](#), ss. **60(1)(i)**, 62(2); S.S.I. 2003/134, art. 2(1), Sch.

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Modifications etc. (not altering text)

- C1** S. 188(2) applied (with modifications)(26.3.2001) by 2000 c. 26, s. 95, **Sch. 6 para. 7**; S.I. 2000/2957, art. 2(3), **Sch. 3** (with arts. 3-8)

Marginal Citations

- M1** 1845 c. 19.
M2 1845 c. 33.
M3 1923 c. 20.

189 Compulsory acquisition of land in connection with development and for other planning purposes.

- (1) A local authority shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area which—
- (a) is suitable for and is required in order to secure the carrying out of development, redevelopment or improvement;
 - (b) is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

- (2) A local authority and the Secretary of State in considering for the purposes of subsection (1)(a) whether land is suitable for development, redevelopment or improvement shall have regard to—
- (a) the provisions of the development plan, so far as material,
 - (b) whether planning permission for any development on the land is in force, and
 - (c) any other considerations which would be material for the purpose of determining an application for planning permission for development on the land.

[^{F2}(2A) The Scottish Ministers must not authorise the acquisition of any interest in Crown land unless—

- (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and
- (b) the appropriate authority consents to the acquisition.]

- (3) Where a local authority exercise their powers under subsection (1) in relation to any land, they shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily—

- (a) any land adjoining that land which is required for the purposes of executing works for facilitating its development or use, or
- (b) where the land forms part of a common or open space, any land which is required for the purpose of being given in exchange for the land which is being acquired.

- (4) It is immaterial by whom the local authority propose any activity or purpose mentioned in subsection (1) or (3)(a) is to be undertaken or achieved and in particular the local authority need not propose to undertake that activity or achieve that purpose themselves.

- (5) The Secretary of State may authorise a local authority to acquire compulsorily under subsection (1) land which is not in their area.

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(6) Before giving an authorisation under subsection (5), the Secretary of State shall consult the local authority within whose area the land is situated.

(7) The ^{M4}Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to the compulsory acquisition of land under this section and accordingly shall have effect as if this section had been in force immediately before the commencement of that Act.

^{F3}(8)

[^{F4}(9) Crown land must be construed in accordance with Part 12.]

Textual Amendments

- F2** S. 189(2A) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 3\(2\)](#) (with s. 111); S.S.I. 2006/268, art. 3(f)
- F3** S. 189(8) repealed (1.4.2003) by [Local Government in Scotland Act 2003 \(asp 1\)](#), ss. [60\(1\)\(j\)](#), 62(2); S.S.I. 2003/134, art. 2(1), Sch.
- F4** S. 189(9) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 3\(3\)](#) (with s. 111); S.S.I. 2006/268, art. 3(f)

Marginal Citations

- M4** 1947 c. 42.

190 Compulsory acquisition of land by Secretary of State for the Environment.

- (1) The Secretary of State for the Environment may acquire compulsorily—
- (a) any land necessary for the public service, and
 - (b) any land which it is proposed to use not only for the public service but also—
 - (i) to meet the interests of proper planning of the area, or
 - (ii) to secure the best, or most economic development or use of the land, otherwise than for the public service.

[^{F5}(1A) But subsection (1) does not permit the acquisition of any interest in Crown land unless—

- (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and
- (b) the appropriate authority consents to the acquisition.]

(2) Where the Secretary of State for the Environment has acquired or proposes to acquire any land under subsection (1) (“the primary land”) and in his opinion other land ought to be acquired together with the primary land—

- (a) in the interests of the proper planning of the area concerned,
- (b) for the purpose of ensuring that the primary land can be used, or developed and used, (together with that other land) in what appears to him to be the best or most economic way, or
- (c) where the primary land or any land acquired, or which he proposes to acquire, by virtue of paragraph (a) or (b) of this subsection or of section 122(1)(a) or (b) of the ^{M5}Local Government, Planning and Land Act 1980, forms part of a common or open space, for the purpose of being given in exchange for that land,

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he may compulsorily acquire that land.

- (3) Subject to subsection (4), the power of acquiring land compulsorily under this section shall include power to acquire a servitude or other right over land by the grant of a new right.
- (4) Subsection (3) shall not apply to a servitude or other right over any land which would for the purposes of the ^{M6}Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 form part of a common or open space.
- (5) That Act shall apply to any compulsory acquisition by the Secretary of State for the Environment under this section as it applies to a compulsory acquisition by another Minister in a case falling within section 1(1) of that Act.
- (6) In this section, “the public service” includes the service in the United Kingdom—
- (a) of any international organisation or institution whether or not the United Kingdom or Her Majesty’s Government in the United Kingdom is or is to become a member;
 - (b) of any office or agency established by such an organisation or institution or for its purposes, or established in pursuance of a treaty (whether or not the United Kingdom is or is to become a party to the treaty);
 - (c) of a foreign Sovereign Power or the Government of such a Power.
- (7) For the purpose of subsection (6)(b), “treaty” includes any international agreement, and any protocol or annex to a treaty or international agreement.

[^{F6}(8) Crown land must be construed in accordance with Part 12.]

Textual Amendments

- F5** S. 190(1A) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 4\(2\)](#) (with s. 111); S.S.I. 2006/268, art. 3(f)
- F6** S. 190(8) added (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 4\(3\)](#) (with s. 111); S.S.I. 2006/268, art. 3(f)

Marginal Citations

- M5** 1980 c. 65.
- M6** 1947 c. 42.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied by [S.S.I. 2008/189 art. 53\(3\)](#)
- Act power to apply (with or without modifications) conferred by [2021 asp 9 s. 45\(3\)\(b\)\(c\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 11A inserted by [2006 asp 17 s. 29](#)
- Pt. 12A inserted by [2006 asp 17 s. 30](#)
- Pt. 12A inserted by [2019 asp 13 s. 46\(2\)](#)
- s. 3CD inserted by [2019 asp 13 s. 4\(2\)](#)
- s. 20AA(4)(a)(iii) inserted by [2019 asp 13 s. 14\(6\)](#)
- s. 29(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(3\)\(b\)](#)
- s. 36(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(4\)\(b\)](#)
- s. 36(5)(6) inserted by [2019 asp 13 s. 36\(2\)](#)
- s. 40A inserted by [2019 asp 13 s. 19\(2\)](#)
- s. 43A-43AD substituted for s. 43A by [2019 asp 13 s. 28\(2\)](#)
- s. 47(2)(aa) inserted by [2019 asp 13 s. 28\(3\)\(a\)](#)
- s. 47(2A) inserted by [2019 asp 13 s. 28\(3\)\(b\)](#)
- s. 47(6) inserted by [2019 asp 13 s. 31\(2\)\(c\)](#)
- s. 54A-54F and cross-heading inserted by [2019 asp 13 s. 15\(2\)](#)
- s. 57(2C)(2D) inserted by [2021 asp 9 s. 44\(2\)](#)
- s. 58(4)(fa) inserted by [2019 asp 13 Sch. 2 para. 5\(5\)\(b\)](#)
- s. 61(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(6\)\(b\)](#)
- s. 75(4A) inserted by [2019 asp 13 s. 35\(2\)](#)
- s. 75A(5A) inserted by [2019 asp 13 s. 35\(3\)](#)
- s. 77A inserted by [2019 asp 13 s. 39\(2\)](#)
- s. 135(4A) inserted by [2019 asp 13 s. 43\(2\)\(c\)](#)
- s. 154(1)(c) and word inserted by [2019 asp 13 s. 28\(4\)\(a\)\(ii\)](#)
- s. 154(1A) inserted by [2019 asp 13 s. 28\(4\)\(b\)](#)
- s. 158A(1A) inserted by [2019 asp 13 s. 44\(2\)](#)
- s. 158B-158F and cross-heading inserted by [2019 asp 13 s. 43\(3\)](#)
- s. 183(1)(c) inserted by [2019 asp 13 Sch. 2 para. 5\(7\)\(b\)](#)
- s. 237(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(8\)](#)
- s. 238(3)(a)-(c) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(a\)\(ii\)](#)
- s. 238(5)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(b\)](#)
- s. 238(7) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(c\)](#)