



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART VIII

#### ACQUISITION AND APPROPRIATION OF LAND FOR PLANNING PURPOSES ETC.

##### *Extinguishment of certain rights affecting acquired or appropriated land*

#### **194 Extinguishment of rights over land compulsorily acquired.**

- (1) Subject to the provisions of this section, upon the completion by the acquiring authority of a compulsory acquisition of land under this Part—
  - (a) all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land and all other rights or servitudes in or relating to that land shall be extinguished, and
  - (b) any such apparatus shall vest in the acquiring authority.
- (2) Subsection (1) shall not apply—
  - (a) to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of the carrying on of their undertaking,
  - (b) to any right conferred by or in accordance with the [<sup>F1</sup>electronic communications code] on the operator of [<sup>F2</sup>an electronic communications code network], or
  - (c) to any [<sup>F3</sup>electronic communications apparatus] kept installed for the purposes of any such [<sup>F4</sup>network] .
- (3) In respect of any right or apparatus not falling within subsection (2), subsection (1) shall have effect subject—
  - (a) to any direction given by the acquiring authority before the completion of the acquisition that subsection (1) shall not apply to any right or apparatus specified in the direction, and

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- (b) to any agreement which may be made (whether before or after the completion of the acquisition) between the acquiring authority and the person in or to whom the right or apparatus in question is vested or belongs.
- (4) Any person who suffers loss by the extinguishment of a right or servitude or the vesting of any apparatus under this section shall be entitled to compensation from the acquiring authority.
- (5) Any compensation payable under this section shall be determined in accordance with the <sup>M1</sup>Land Compensation (Scotland) Act 1963.

#### Textual Amendments

- F1** Words in s. 194(2) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(a)(2)(e)
- F2** Words in s. 194(2) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(a)(2)(a)
- F3** Words in s. 194(2) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(a)(2)(d)
- F4** Word in s. 194(2) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), Sch. 1 para. 13(1)(a), (2)(f)

#### Marginal Citations

- M1** 1963 c. 51.

## 195 General vesting declarations.

- (1) Schedule 15 shall have effect for the purpose of enabling any authority to whom this section applies to vest in themselves by a declaration land which they are authorised by a compulsory purchase order to acquire and with respect to the effect of such a declaration, the payment and recovery of sums in respect of compensation for the acquisition of land so vested and other matters connected with it.
- (2) This section applies to any Minister or local or other public authority authorised to acquire land by means of a compulsory purchase order, and any such authority is in Schedule 15 referred to as an acquiring authority.
- (3) This section shall not apply to the compulsory acquisition of land with respect to which a compulsory purchase order was in force before 8th December 1969.

#### Modifications etc. (not altering text)

- C1** S. 195 extended (27.5.1997) by [1997 c. 9, ss. 79\(1\), 83\(2\)](#) (with s. 45(4))  
 S. 195 applied (with modifications) (23.12.1999) by [S.I. 1999/201](#) art. 26(1)(2)  
 S. 195 applied (with modifications) (23.12.1999) by [S.I. 1999/203](#) art. 27(1)
- C2** S. 195 applied (with modifications) (2.4.2004) by [Highland Council \(Inverie\) Harbour Empowerment Order 2004 \(S.S.I. 2004/171\)](#), arts. 1, **26** (with arts. 28, 29)
- C3** S. 195 applied (with modifications) (18.1.2006) by [Highland Council \(Raasay\) Harbour Revision Order 2006 \(S.S.I. 2006/17\)](#), arts. 1, **31** (with art. 35)
- C4** S. 195 applied (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\)](#), s. **42(1)** (with s. 75)
- C5** S. 195 applied (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\)](#), s. **42(1)** (with ss. 76, 84)
- C6** S. 195 applied (24.7.2006) by [Waverley Railway \(Scotland\) Act 2006 \(asp 13\)](#), s. **42** (with ss. 50(2), 51)

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- C7 S. 195 applied (15.1.2007) by [Glasgow Airport Rail Link Act 2007 \(asp 1\), s. 40\(1\)](#) (with s. 50)
- C8 S. 195 applied (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\), s. 35\(1\)](#) (with ss. 52, 60)
- C9 S. 195 applied (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\), s. 35\(1\)](#) (with ss. 48, 59)
- C10 S. 195 applied (with modifications) (1.6.2010) by [The Network Rail \(Waverley Steps\) Order 2010 \(S.S.I. 2010/188\), arts. 1, 24](#)
- C11 S. 195 applied (with modifications) (11.4.2017) by [The Network Rail \(Glasgow Queen Street Station\) Order 2017 \(S.S.I. 2017/100\), arts. 1, 32](#) (with art. 37)

## 196 Power to override servitudes and other rights.

- (1) The interests and rights to which this section applies are any servitude, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.
- (2) Subject to subsection (3) the erection, construction or carrying out, or maintenance, of any building or work on land which has been acquired or appropriated by a planning authority for planning purposes, whether done by the planning authority or by a person deriving title from them, is authorised by virtue of this section if it is done in accordance with planning permission, notwithstanding that it involves—
  - (a) interference with an interest or right to which this section applies, or
  - (b) a breach of a restriction as to the use of land arising by virtue of any deed or contract.
- (3) Nothing in subsection (2) authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is—
  - (a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
  - (b) a right conferred by or in accordance with the <sup>F5</sup>electronic communications code] on the operator of <sup>F6</sup>an electronic communications code network].
- (4) In respect of any interference or breach in pursuance of subsection (2), compensation—
  - (a) shall be payable under section 61 of the <sup>M2</sup>Lands Clauses Consolidation (Scotland) Act 1845 or under section 6 of the <sup>M3</sup>Railways Clauses Consolidation (Scotland) Act 1845, and
  - (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
    - (i) the compensation is to be estimated in connection with a purchase under those Acts, or
    - (ii) the injury arises from the execution of works on land acquired under those Acts.
- (5) Where a person deriving title from the planning authority by whom the land in question was acquired or appropriated—
  - (a) is liable to pay compensation by virtue of subsection (4), and
  - (b) fails to discharge that liability,the liability shall, subject to subsection (6), be enforceable against the planning authority.

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- (6) Nothing in subsection (5) affects any agreement between the planning authority and any other person for indemnifying the planning authority against any liability under that subsection.
- (7) Nothing in this section shall be construed as authorising any act or omission on the part of any person which is actionable at the instance of any person on any ground other than such an interference or breach as is mentioned in subsection (2).

#### Textual Amendments

- F5** Words in s. 196(3) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(b)(2)(e)
- F6** Words in s. 196(3) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(b)(2)(a)

#### Marginal Citations

- M2** 1845 c. 19.
- M3** 1845 c. 33.

### 197 Provisions as to churches and burial grounds.

- (1) Any land consisting of a church or other building used or formerly used for religious worship, or the site of such a building, or a burial ground, which has been acquired by a Minister, a planning authority or statutory undertakers under this Part or under Chapter V of Part I of the <sup>M4</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or compulsorily under any other enactment, or which has been appropriated by a planning authority for planning purposes, may, subject to the following provisions of this section—
- (a) in the case of land acquired by a Minister, be used in any manner by him or on his behalf for any purpose for which he acquired the land, and
  - (b) in any other case, be used by any person in any manner in accordance with planning permission,
- notwithstanding anything in any enactment relating to churches or such other buildings or to burial grounds or any obligation or restriction imposed under any deed or agreement or otherwise as respects that church or other building or burial ground.
- (2) In the case of land which—
- (a) has been acquired by the Secretary of State under section 79(1) of the <sup>M5</sup>National Health Service (Scotland) Act 1978, and
  - (b) is held, used or occupied by a health service body, as defined in section 60(7) of the <sup>M6</sup>National Health Service and Community Care Act 1990,
- subsection (1) shall apply with the omission of paragraph (a) and, in paragraph (b), of the words “in any other case”.
- (3) No authority shall be required for the removal and reinterment of any human remains, or for the removal or disposal of any monuments.
- (4) Nothing in this section shall be construed as authorising any act or omission on the part of any person which is actionable at the instance of any person on any ground other than contravention of any such enactment, obligation or restriction as is mentioned in subsection (1).

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(5) In this section—

“burial ground” includes any churchyard, cemetery or other ground, whether consecrated or not, which has at any time been set apart for the purposes of interment, and includes part of a burial ground; and

“monument” includes a tombstone or other memorial and any fixtures or furnishings.

**Modifications etc. (not altering text)**

**C12** S. 197 applied (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), Sch. 4 para. 4(5)(6)(a) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

**Marginal Citations**

**M4** 1997 c. 9.

**M5** 1978 c. 29.

**M6** 1990 c. 19.

**198 Use and development of land for open spaces.**

(1) Any land being, or forming part of, a common or open space, which has been acquired by a Minister, a local authority or statutory undertakers under this Part or under Chapter V of Part I of the <sup>M7</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or compulsorily under any other enactment, or which has been appropriated by a planning authority for planning purposes, may—

(a) in the case of land acquired by a Minister, be used in any manner by him or on his behalf for any purpose for which he acquired the land, and

(b) in any other case, be used by any person in any manner in accordance with planning permission,

notwithstanding anything in any enactment relating to land of that kind, or in any enactment by which the land is specially regulated.

(2) Nothing in this section shall be construed as authorising any act or omission on the part of any person which is actionable at the instance of any person on any ground other than contravention of any such enactment as is mentioned in subsection (1).

**Modifications etc. (not altering text)**

**C13** S. 198 applied (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), Sch. 4 para. 4(5)(6)(b) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

**Marginal Citations**

**M7** 1997 c. 9.

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## **199 Displacement of persons from land acquired or appropriated.**

(1) Where—

- (a) any land has been acquired or appropriated for planning purposes,
- (b) the land is for the time being held by a planning authority for the purposes for which it was acquired or appropriated, and
- (c) the carrying out of redevelopment on the land will involve the displacement of persons residing in premises on it,

it shall be the duty of the authority, in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacements from time to time becoming necessary as the redevelopment proceeds.

(2) If the Secretary of State certifies that possession of a house which—

- (a) has been acquired or appropriated by a planning authority for planning purposes, and
- (b) is for the time being held by the authority for the purposes for which it was acquired or appropriated,

is immediately required for those purposes, nothing in the <sup>M8</sup>Rent (Scotland) Act 1984 shall prevent the acquiring or appropriating authority from obtaining possession of the house.

(3) Where—

- (a) any land has been acquired by a Minister or a planning authority under this Part or under Chapter V of Part I of the <sup>M9</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, or has been appropriated by a planning authority for planning purposes, and
- (b) possession of any building on the land is required by that Minister or the planning authority in question, as the case may be, for the purposes for which the land was acquired or appropriated,

then, at any time after the tenancy of the occupier has expired or has been determined, the Minister or planning authority in question may serve a notice on the occupier of the building requiring him to remove from it within a period of 21 days.

(4) On the expiry of that period a certified copy of the notice to remove shall be sufficient warrant for ejection against the occupier or any party in his right in the event of non-compliance with the notice.

### **Marginal Citations**

**M8** 1984 c. 58.

**M9** 1997 c. 9.

## **200 Modification of incorporated enactments for purposes of this Part.**

(1) Where it is proposed that land should be acquired compulsorily under section 189 or 190 and a compulsory purchase order relating to that land is submitted to the confirming authority in accordance with Part I of Schedule 1 to the <sup>M10</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or, as the case may be, is made in draft by the Secretary of State for the Environment in accordance with Part II of that Schedule, the confirming authority or the Secretary of State, as the case may be,

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may disregard for the purposes of that Schedule any objection to the order or draft which, in the opinion of that authority or Secretary of State, amounts in substance to an objection to the provisions of the development plan defining the proposed use of that or any other land.

(2) Where a compulsory purchase order authorising the acquisition of any land under section 189 is submitted to the Secretary of State in accordance with Part I of Schedule 1 to the said Act of 1947, then if the Secretary of State—

- (a) is satisfied that the order ought to be confirmed so far as it relates to part of the land comprised therein, but
- (b) has not for the time being determined whether it ought to be confirmed so far as it relates to any other such land,

he may confirm the order so far as it relates to the land mentioned in paragraph (a), and give directions postponing consideration of the order, so far as it relates to any other land specified in the directions, until such time as may be so specified.

(3) Where the Secretary of State gives directions under subsection (2), the notices required by paragraph 6 of Schedule 1 to the said Act of 1947 to be published and served shall include a statement of the effect of the directions.

(4) In construing the Lands Clauses Acts and section 6 of the <sup>M11</sup>Railways Clauses Consolidation (Scotland) Act 1845, as incorporated by virtue of paragraph 1 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, in relation to any of the provisions of this Part—

- (a) references to the execution of the works or to the construction of the railway shall be construed as including references to any erection, construction or carrying out of buildings or works authorised by section 196,
- (b) in relation to the erection, construction or carrying out of any buildings or works so authorised, references in section 6 of the said Act of 1845 to the company shall be construed as references to the person by whom the buildings or works in question are erected, constructed or carried out, and
- (c) references to the execution of the works shall be construed as including also references to any erection, construction or carrying out of buildings or works on behalf of a Minister or statutory undertakers on land acquired by that Minister or those undertakers, where the buildings or works are erected, constructed or carried out for the purposes for which the land was acquired.

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**Marginal Citations**

**M10** 1947 c. 42.

**M11** 1845 c. 33.

## 201 Interpretation of this Part.

(1) In this Part—

- (a) any reference to the acquisition of land for planning purposes is a reference to the acquisition thereof under section 188 or 189 of this Act or section 47 of the <sup>M12</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (or, as the case may be, under section 102 or 109 of the 1972 Act), and

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- (b) any reference to the appropriation of land for planning purposes is a reference to the appropriation thereof for purposes for which land can be or could have been acquired under those sections.
- (2) In relation to a planning authority or body corporate, nothing in sections 196 to 198 shall be construed as authorising any act or omission on their part in contravention of any limitation imposed by law on their capacity by virtue of the constitution of the authority or body.
- (3) Any power conferred by section 197 or 198 to use land in a manner therein mentioned shall be construed as a power so to use the land, whether it involves the erection, construction or carrying out of any building or work, or the maintenance of any building or work or not.

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**Marginal Citations**

**M12** 1997 c. 9.



**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\(9\)\(c\)](#)