



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 Lands Clauses Consolidation (Scotland) Act 1845) and sections 6 and 70 of the Railways Clauses Consolidation (Scotland) Act 1845, and sections 71 to 78 of that Act, as originally enacted and not as amended for certain purposes by section 15 of the Mines (Working Facilities and Support) Act 1923, shall be incorporated with this section, and in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.
- (3) The exercise by a planning authority of any power which they have under this section is subject to the provisions of sections 171A and 171B (promotion of economic development) of the Local Government (Scotland) Act 1973.

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.
- (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.
- (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 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.
- (8) The exercise by a local authority of any power which they have under this section, is subject to the provisions of sections 171A and 171B (promotion of economic development) of the Local Government (Scotland) Act 1973.

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

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- (ii) to secure the best, or most economic development or use of the land, otherwise than for the public service.
- (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 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,
- 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 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.

Powers relating to land held for planning purposes

191 Disposal of land held for planning purposes

- (1) Where a planning authority—
- (a) has acquired or appropriated any land for planning purposes, and
 - (b) holds that land for the purposes for which it was so acquired or appropriated,
- the authority may dispose of the land to such person, in such manner and subject to such conditions as may appear to them to be expedient for the purposes mentioned in subsection (2).

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- (2) Those purposes are to secure—
 - (a) the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it, whether by themselves or by any other person, or
 - (b) the erection, construction or carrying out on it of any buildings or works appearing to them to be needed for the proper planning of their area.
- (3) Subject to the provisions of subsection (7), any land disposed of under this section shall not be disposed of otherwise than at the best price or on the best terms that can reasonably be obtained.
- (4) Where representations are made to the Secretary of State—
 - (a) that a planning authority have refused to dispose of any land under this section to any person or to agree with him as to the manner in which, or the terms or conditions on or subject to which, it is to be disposed of to him, and
 - (b) that the refusal constitutes unfair discrimination against that person or is otherwise oppressive,the Secretary of State may cause the representations to be intimated to the authority.
- (5) After considering any statement in writing made to him by the authority, the Secretary of State may, if he thinks fit, cause a public local inquiry to be held.
- (6) After considering the report of the person appointed to hold the inquiry (if any), the Secretary of State may, if it appears to him that the representations are well founded and that it is expedient as mentioned in subsection (1) that the authority should dispose of the land under this section to that person, require the authority to offer to dispose of it to him, and give directions as to the manner of the disposal and as to all or any of the terms or conditions on or subject to which it is to be offered to him.
- (7) In relation to land acquired or appropriated for planning purposes for a reason mentioned in section 189(1)(a) or (3), the powers conferred by this section on a planning authority shall be so exercised as to secure, so far as may be practicable, to persons who—
 - (a) were living or carrying on business or other activities on any such land,
 - (b) desire to obtain accommodation on such land, and
 - (c) are willing to comply with any requirements of the authority as to the development and use of such land,an opportunity to obtain accommodation on it suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.
- (8) In subsection (7), “development” includes redevelopment.
- (9) Where land is disposed of under this section by a planning authority to any person for the erection of a church or other building for religious worship or buildings ancillary thereto, then, unless the parties otherwise agree, such disposal shall be by way of feu.
- (10) In relation to any such land as is mentioned in subsection (1), this section shall have effect to the exclusion of the provisions of any enactment, other than this Act, by virtue of or under which the planning authority are or may be authorised to dispose of land held by them.

192 Disposal by Secretary of State of land acquired under section 190

- (1) The Secretary of State may dispose of land held by him and acquired by him or any other Minister under section 190 to such person, in such manner and subject to such conditions as appear to him expedient.
- (2) In particular, the Secretary of State may under subsection (1) dispose of land held by him for any purpose in order to secure its use for that purpose.

193 Development of land held for planning purposes

- (1) This section applies to any land acquired or appropriated by a planning authority for planning purposes and held by them for those purposes.
- (2) Subject to subsection (3), the functions of a planning authority shall include power for the authority, notwithstanding any limitation imposed by law on the capacity of the authority by virtue of its constitution, to erect, construct or carry out any building or work on any land to which this section applies.
- (3) Subsection (2) confers such power only if such power is not and could not be conferred on the authority or any other person by or under any enactment, other than an enactment in this Part.
- (4) The functions of a planning authority shall include power for the authority, notwithstanding any such limitation as is mentioned in subsection (2), to repair, maintain and insure any buildings or works on land to which this section applies, and generally to deal therewith in a proper course of management.
- (5) Nothing in this section shall be construed as authorising any act or omission on the part of a planning authority which is actionable at the instance of any person on any ground other than such a limitation as is mentioned in subsection (2).

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 telecommunications code on the operator of a telecommunications code system, or
 - (c) to any telecommunication apparatus kept installed for the purposes of any such system.
- (3) In respect of any right or apparatus not falling within subsection (2), subsection (1) shall have effect subject—

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- (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
 - (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 Land Compensation (Scotland) Act 1963.

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.

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 telecommunications code on the operator of a telecommunications code system.
- (4) In respect of any interference or breach in pursuance of subsection (2), compensation—

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- (a) shall be payable under section 61 of the Lands Clauses Consolidation (Scotland) Act 1845 or under section 6 of the 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.
- (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).

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 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 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 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”.

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- (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).
- (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.

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 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).

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 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 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.

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 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, 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 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—

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- (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.

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 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
 - (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.