



# Town and Country Planning Act 1990

## 1990 CHAPTER 8

### PART IX

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

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

**C1** Pt. IX (ss. 226-246) modified (1.4.1996) by 1994 c. 19, s. 20(3), Sch. 5 Pt. III paras. 15(1), 20 (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1995/3198, art. 4, **Sch. 2**

#### *Acquisition for planning and public purposes*

#### **226 Compulsory acquisition of land for development and other planning purposes.**

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area<sup>F1</sup> . . . —

[<sup>F2</sup>(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land,]

(b) [<sup>F3</sup>which]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.

[<sup>F4</sup>(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects—

(a) the promotion or improvement of the economic well-being of their area;

(b) the promotion or improvement of the social well-being of their area;

(c) the promotion or improvement of the environmental well-being of their area.]

(2)<sup>F5</sup> . . . . .

(3) Where a local authority exercise their power 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—

*Status: Point in time view as at 30/04/2005.*

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- (a) any land adjoining that land which is required for the purpose of executing works for facilitating its development or use; or
  - (b) where that land forms part of a common or open space or fuel or field garden allotment, 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 that any activity or purpose mentioned in subsection (1) or (3)(a) should be undertaken or achieved (and in particular the local authority need not propose to undertake an activity or to achieve that purpose themselves).
- (5) Where under subsection (1) the Secretary of State has power to authorise a local authority to whom this section applies to acquire any land compulsorily he may, after the requisite consultation, authorise the land to be so acquired by another authority, being a local authority within the meaning of this Act.
- (6) Before giving an authorisation under subsection (5), the Secretary of State shall—
- (a) if the land is in a non-metropolitan county [<sup>F6</sup>in England], consult with the councils of the county and the district;
  - (b) if the land is in a metropolitan district, consult with the council of the district;
  - [<sup>F7</sup>(bb) if the land is in Wales, consult with the council of the county or county borough;] and
  - (c) if the land is in a London borough, consult with the council of the borough.
- (7) The <sup>M1</sup>Acquisition of Land Act 1981 shall apply to the compulsory acquisition of land under this section.
- (8) The local authorities to whom this section applies are the councils of counties, [<sup>F8</sup>county boroughs,] districts and London boroughs.

#### Textual Amendments

- F1** Word in s. 226(1) repealed (31.10.2004) by Planning and Compulsory Purchase Act 2004 (c. 5), ss. 99(2)(a), 120, 121, **Sch. 9** (with ss. 99(5), 111); S.I. 2004/2593, **art. 2**
- F2** S. 226(1)(a) substituted (31.10.2004) by Planning and Compulsory Purchase Act 2004 (c. 5), **ss. 99(2)(b)**, 121 (with ss. 99(5), 111); S.I. 2004/2593, **art. 2**
- F3** Word in s. 226(1)(b) inserted (31.10.2004) by Planning and Compulsory Purchase Act 2004 (c. 5), **ss. 99(2)(c)**, 121 (with ss. 99(5), 111); S.I. 2004/2593, **art. 2**
- F4** S. 226(1A) inserted (31.10.2004) by Planning and Compulsory Purchase Act 2004 (c. 5), **ss. 99(3)**, 121 (with ss. 99(5), 111); S.I. 2004/2593, **art. 2**
- F5** S. 226(2) repealed (31.10.2004) by Planning and Compulsory Purchase Act 2004 (c. 5), ss. 99(4), 120, 121, **Sch. 9** (with ss. 99(5), 111); S.I. 2004/2593, **art. 2**
- F6** Words in s. 226(6)(a) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(6)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F7** S. 226(6)(bb) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(6)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F8** Words in s. 226(8) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(6)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

#### Marginal Citations

- M1** 1981 c.67.

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## 227 Acquisition of land by agreement.

- (1) The council of any county, [<sup>F9</sup>county borough,] district or London borough may acquire by agreement any land which they require for any purpose for which a local authority may be authorised to acquire land under section 226.
- (2) The provisions of Part 1 of the <sup>M2</sup>Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, section 10 and section 31, shall apply in relation to the acquisition of land under this section.

### Textual Amendments

- F9** Words in s. 227(1) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(7)** (with ss. 54(5) (7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

### Marginal Citations

- M2** 1965 c.56.

## 228 Compulsory acquisition of land by the [<sup>F10</sup>First Secretary of State].

- (1) The [<sup>F10</sup>First Secretary of State] 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.
- (2) Where the Secretary of State 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; or
  - (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 <sup>M3</sup>Government, Planning and Land Act 1980, forms part of a common, open space or fuel or field garden allotment, for the purpose of being given in exchange for that land,  
he may compulsorily acquire that other land.
- (3) Subject to subsection (4), the power of acquiring land compulsorily under this section shall include power to acquire an easement or other right over land by the grant of a new right.
- (4) Subsection (3) shall not apply to an easement or other right over any land which would for the purposes of the <sup>M4</sup>Acquisition of Land Act 1981 form part of a common, open space or fuel or field garden allotment.
- (5) References in this section to the public service include the service in the United Kingdom—

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- (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.
- (6) For the purposes of subsection (5)(b) "treaty" includes any international agreement and any protocol or annex to a treaty or international agreement.
- (7) The Acquisition of Land Act 1981 shall apply to any compulsory acquisition by the <sup>[F10]</sup>First Secretary of State] under this section.

#### Textual Amendments

**F10** Words in s. 228 substituted (25.11.2002) by [The Transfer of Functions \(Transport, Local Government and the Regions\) Order 2002 \(S.I. 2002/2626\)](#), art. 20, **Sch. 2 para. 15(2)**

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

**C2** S. 228(1) extended (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), **ss. 50(3)**, 148; S.I. 2009/1604, **art. 2**

S. 228(1) extended (19.9.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), **ss. 41(3)(b)**, 148; S.I. 2007/2709, **art. 2(a)**

#### Marginal Citations

**M3** 1980 c. 65.

**M4** 1981 c.67.

## 229 Appropriation of land forming part of common, etc.

- (1) Any local authority may be authorised, by an order made by that authority and confirmed by the Secretary of State, to appropriate for any purpose for which that authority can be authorised to acquire land under any enactment any land to which this subsection applies which is for the time being held by them for other purposes.
- (2) Subsection (1) applies to land which is or forms part of a common or fuel or field garden allotment (including any such land which is specially regulated by any enactment, whether public general or local or private), other than land which is Green Belt land within the meaning of the <sup>M5</sup>Green Belt (London and Home Counties) Act 1938.
- (3) Section 19 of the <sup>M6</sup>Acquisition of Land Act 1981 (special provision with respect to compulsory purchase orders under that Act relating to land forming part of a common, open space or fuel or field garden allotment) shall apply to an order under this section authorising the appropriation of land as it applies to a compulsory purchase order under that Act.
- (4) Where land appropriated under this section was acquired under an enactment incorporating the Lands Clauses Acts, any works executed on the land after the appropriation has been effected shall, for the purposes of section 68 of the <sup>M7</sup>Lands Clauses Consolidation Act 1845 and section 10 of the <sup>M8</sup>Compulsory Purchase Act

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1965, be deemed to have been authorised by the enactment under which the land was acquired.

- (5) On an appropriation of land by a local authority under this section, where—
- (a) the authority is not an authority to whom Part II of the 1959 Act applies;
  - (b) the land was immediately before the appropriation held by the authority for the purposes of a grant-aided function (within the meaning of that Act); or
  - (c) the land is appropriated by the authority for the purposes of such a function,
- such adjustments shall be made in the accounts of the local authority as the Secretary of State may direct.
- (6) On an appropriation under this section which does not fall within subsection (5), such adjustment of accounts shall be made as is required by section 24(1) of the 1959 Act.

#### Marginal Citations

- M5** 1938 c. xciii.  
**M6** 1981 c. 67.  
**M7** 1845 c.18.  
**M8** 1965 c.56.

### **230 Acquisition of land for purposes of exchange.**

- (1) Without prejudice to the generality of the powers conferred by sections 226 and 227, any power of a local authority to acquire land under those sections, whether compulsorily or by agreement, shall include power to acquire land required for giving in exchange—
- (a) for land appropriated under section 229; or
  - (b) for Green Belt land appropriated in accordance with the Green Belt (London and Home Counties) Act 1938 for any purpose specified in a development plan.
- (2) In subsection (1) “Green Belt land” has the same meaning as in that Act.

### **231 Power of Secretary of State to require acquisition or development of land.**

- (1) If the Secretary of State is satisfied after holding a local inquiry that the council of a county, [<sup>F11</sup>county borough,] district or London borough have failed to take steps for the acquisition of any land which in his opinion ought to be acquired by them under section 226 <sup>F12</sup>. . . , he may by order require the council to take such steps as may be specified in the order for acquiring the land.
- (2) If the Secretary of State is satisfied after holding a local inquiry that a local authority have failed to carry out, on land acquired by them under section 226 (or section 68 of the 1962 Act or section 112 of the 1971 Act) or appropriated by them under section 229 (or section 121 of the 1971 Act), any development which in his opinion ought to be carried out, he may by order require the authority to take such steps as may be specified in the order for carrying out the development.
- (3) An order under this section shall be enforceable on the application of the Secretary of State by mandamus.

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#### **Textual Amendments**

- F11** Words in s. 231(1) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(7)** (with ss. 54(5) (7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F12** Words in s. 231 repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 70, 84(6), Sch. 15 Pt. II para. 29, **Sch. 19 Pt. III** (with s. 84(5)); S.I. 1991/2067, **art. 3** (subject to art. 5)

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

- C3** S. 231 power to apply conferred (10.11.1993) by 1993 c. 28, s. 171(4)(a); S.I. 1993/2762, **art. 3**

*Appropriation, disposal and development of land held for planning purposes, etc.*

### **232 Appropriation of land held for planning purposes.**

- (1) Where any land has been acquired or appropriated by a local authority for planning purposes and is for the time being held by them for the purposes for which it was so acquired or appropriated, the authority may appropriate the land for any purpose for which they are or may be authorised in any capacity to acquire land by virtue of or under any enactment not contained in this Part or in Chapter V of Part I of the <sup>M9</sup>Planning (Listed Buildings and Conservation Areas) Act 1990.
- (2) Land which consists or forms part of a common, or formerly consisted or formed part of a common, and is held or managed by a local authority in accordance with a local Act shall not be appropriated under this section without the consent of the Secretary of State.
- (3) Such consent may be given—
  - (a) either in respect of a particular appropriation or in respect of appropriations of any class, and
  - (b) either subject to or free from any conditions or limitations.
- (4) Before appropriating under this section any land which consists of or forms part of an open space, a local authority—
  - (a) shall publish a notice of their intention to do so for at least two consecutive weeks in a newspaper circulating in their area; and
  - (b) shall consider any objections to the proposed appropriation which may be made to them.
- (5) In relation to any appropriation under this section—
  - (a) subsection (4) of section 122 of the <sup>M10</sup>Local Government Act 1972 (which relates to the operation of section 68 of the <sup>M11</sup>Lands Clauses Consolidation Act 1845 and section 10 of the <sup>M12</sup>Compulsory Purchase Act 1965) shall have effect as it has effect in relation to appropriations under section 122 of that Act of 1972; and
  - (b) subsections (5) and (6) of section 229 of this Act shall have effect as they have effect in relation to appropriations under that section.
- (6) In relation to any such land as is mentioned in subsection (1), this section shall have effect to the exclusion of the provisions of section 122(1) of the <sup>M13</sup>Local Government Act 1972.



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

- C4** Ss. 232, 233, 235(1) amended by [Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c. 9, SIF 123:1\)](#), [s. 66\(2\)](#)

**Marginal Citations**

- M9** 1990 c. 9.  
**M10** 1972 c. 70.  
**M11** 1845 c.18.  
**M12** 1965 c.56.  
**M13** 1972 c. 70.

**233 Disposal by local authorities of land held for planning purposes.**

- (1) Where any land has been acquired or appropriated by a local authority for planning purposes and is for the time being held by them 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 appear to them to be expedient in order—
  - (a) to secure 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) to secure the erection, construction or carrying out on it of any buildings or works appearing to them to be needed for the proper planning of the area of the authority.
- (2) Land which consists of or forms part of a common, or formerly consisted or formed part of a common, and is held or managed by a local authority in accordance with a local Act shall not be disposed of under this section without the consent of the Secretary of State.
- (3) The consent of the Secretary of State is also required where the disposal is to be for a consideration less than the best that can reasonably be obtained and is not—
  - (a) the grant of a term of seven years or less; or
  - (b) the assignment of a term of years of which seven years or less are unexpired at the date of the assignment.
- (4) Before disposing under this section of any land which consists of or forms part of an open space, a local authority—
  - (a) shall publish a notice of their intention to do so for at least two consecutive weeks in a newspaper circulating in their area; and
  - (b) shall consider any objections to the proposed disposal which may be made to them.
- (5) In relation to land acquired or appropriated for planning purposes for a reason mentioned in section 226(1)(a) or (3) the powers conferred by this section on a local authority, and on the Secretary of State in respect of the giving of consent to disposals under this section, shall be so exercised as to secure to relevant occupiers, so far as may be practicable, a suitable opportunity for accommodation.
- (6) A person is a relevant occupier for the purposes of subsection (5) if—

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- (a) he was living or carrying on business or other activities on any such land as is mentioned in that subsection which the authority have acquired as mentioned in subsection (1),
  - (b) he desires to obtain accommodation on such land, and
  - (c) he is willing to comply with any requirements of the authority as to the development and use of such land;
- and in this subsection “development” includes redevelopment.
- (7) In subsection (5) a suitable opportunity for accommodation means, in relation to any person, an opportunity to obtain accommodation on the land in question which is suitable to his reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from him.
- (8) In relation to any such land as is mentioned in subsection (1), this section shall have effect to the exclusion of section 123 of the <sup>M14</sup>Local Government Act 1972 (disposal of land by principal councils).

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

**C5** Ss. 232, 233, 235(1) amended by [Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c. 9, SIF 123:1\)](#), s. 66(2)

**Marginal Citations**

**M14** 1972 c. 70.

**234 Disposal by Secretary of State of land acquired under s. 228.**

- (1) The Secretary of State may dispose of land held by him and acquired by him or any other Minister under section 228 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.

**235 Development of land held for planning purposes.**

- (1) A local authority may—
  - (a) erect, construct or carry out on any land to which this section applies any building or work other than a building or work for the erection, construction or carrying out of which, whether by that local authority or by any other person, statutory power exists by virtue of, or could be conferred under, an alternative enactment; and
  - (b) repair, maintain and insure any buildings or works on such land and generally deal with such land in a proper course of management.
- (2) This section applies to any land which—
  - (a) has been acquired or appropriated by a local authority for planning purposes, and
  - (b) is for the time being held by the authority for the purposes for which it was so acquired or appropriated.



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- (3) A local authority may exercise the powers conferred by subsection (1) notwithstanding any limitation imposed by law on their capacity by virtue of their constitution.
- (4) A local authority may enter into arrangements with an authorised association for the carrying out by the association of any operation which, apart from the arrangements, the local authority would have power under this section to carry out, on such terms (including terms as to the making of payments or loans by the authority to the association) as may be specified in the arrangements.
- (5) Nothing in this section shall be construed—
  - (a) as authorising any act or omission on the part of a local authority which is actionable at the suit of any person on any grounds other than such a limitation as is mentioned in subsection (3); or
  - (b) as authorising an authorised association to carry out any operation which they would not have power to carry out apart from subsection (4).

- (6) In this section—

“alternative enactment” means any enactment which is not contained in this Part, in section 2, 5 or 6 of the <sup>M15</sup>Local Authorities (Land) Act 1963, in section 14(1) or (4) or 17(3) of the <sup>M16</sup>Industrial Development Act 1982 or in Chapter V of Part I of the <sup>M17</sup>Planning (Listed Buildings and Conservation Areas) Act 1990; and

“authorised association” means any society, company or body of persons—

- (a) whose objects include the promotion, formation or management of garden cities, garden suburbs or garden villages and the erection, improvement or management of buildings for the working classes and others, and
- (b) which does not trade for profit or whose constitution forbids the issue of any share or loan capital with interest or dividend exceeding the rate for the time being fixed by the Treasury.

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

C6 Ss. 232, 233, 235(1) amended by [Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(c. 9, SIF 123:1\)](#), s. 66(2)

**Marginal Citations**

M15 1963 c.29.

M16 1982 c.52.

M17 1990 c. 9.

*Extinguishment of certain rights affecting acquired or appropriated land*

**236 Extinguishment of rights over land compulsorily acquired.**

- (1) Subject to the provisions of this section, upon the completion of a compulsory acquisition of land under section 226, 228 or 230—
  - (a) all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land shall be extinguished, and
  - (b) any such apparatus shall vest in the acquiring authority.

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- (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, or
  - (b) to any right conferred by or in accordance with the [<sup>F13</sup>electronic communications code] on the operator of [<sup>F14</sup>an electronic communications code network] , or
  - (c) to any [<sup>F15</sup>electronic communications apparatus] kept installed for the purposes of any such [<sup>F16</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
  - (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 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>M18</sup>Land Compensation Act 1961.

#### Textual Amendments

- F13** Words in s. 236(2) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(a)(2)(a)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- F14** Words in s. 236(2) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(a)(2)(b)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- F15** Words in s. 236(2) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(a)(2)(c)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- F16** Word in s. 236(2) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(a)(2)(e)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)

#### Marginal Citations

- M18** 1961 c.33.

### 237 Power to override easements and other rights.

- (1) 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 local

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- authority for planning purposes (whether done by the local authority or by a person deriving title under 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 user of land arising by virtue of a contract.
- (2) Subject to subsection (3), the interests and rights to which this section applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.
- (3) Nothing in this section shall authorise 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 [F17]electronic communications code] on the operator of [F18]an electronic communications code network] .
- (4) In respect of any interference or breach in pursuance of subsection (1), compensation—
- (a) shall be payable under section 63 or 68 of the M19Lands Clauses Consolidation Act 1845 or under section 7 or 10 of the M20Compulsory Purchase Act 1965, 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 under the local 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 be enforceable against the local authority.
- (6) Nothing in subsection (5) shall be construed as affecting any agreement between the local authority and any other person for indemnifying the local 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 suit of any person on any grounds other than such an interference or breach as is mentioned in subsection (1).

#### Textual Amendments

**F17** Words in s. 237(3)(b) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, Sch. 17 para. 103(1)(b)(2)(a) (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), 3(2) (with art. 11)

**F18** Words in s. 237(3)(b) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, Sch. 17 para. 103(1)(b)(2)(b) (with transitional

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provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), 3(2) (with art. 11)

#### **Marginal Citations**

**M19** 1845 c.18.

**M20** 1965 c.56.

### **238 Use and development of consecrated land.**

- (1) Notwithstanding any obligation or restriction imposed under ecclesiastical law or otherwise in respect of consecrated land, any such land, which has been the subject of a relevant acquisition or appropriation, may subject to the following provisions of this section—
  - (a) if it has been 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.
- (2) Subsection (1) applies whether or not the land includes a building but it does not apply to land which consists of or forms part of a burial ground.
- (3) Any use of consecrated land authorised by subsection (1) shall be subject—
  - (a) to compliance with the prescribed requirements with respect—
    - (i) to the removal and reinterment of any human remains, and
    - (ii) to the disposal of monuments and fixtures and furnishings; and
  - (b) to such provisions as may be prescribed for prohibiting or restricting the use of the land, either absolutely or until the prescribed consent has been obtained, so long as any church or other building used or formerly used for religious worship, or any part of it, remains on the land.
- (4) Any use of land other than consecrated land which—
  - (a) has been the subject of a relevant acquisition or appropriation, and
  - (b) at the time of acquisition or appropriation included a church or other building used or formerly used for religious worship or the site of such a church or building,
 shall be subject to compliance with such requirements as are mentioned in subsection (3)(a).
- (5) Any regulations made for the purposes of subsection (3) or (4)—
  - (a) shall contain such provisions as appear to the Secretary of State to be requisite for securing that any use of land which is subject to compliance with the regulations shall, as nearly as may be, be subject to the same control as is imposed by law in the case of a similar use authorised by an enactment not contained in this Act or by a Measure, or as it would be proper to impose on a disposal of the land in question otherwise than in pursuance of an enactment or Measure;
  - (b) shall contain such requirements relating to the disposal of any such land as is mentioned in subsection (3) or (4) as appear to the Secretary of State requisite for securing that the provisions of those subsections are complied with in relation to the use of the land; and

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- (c) may contain such incidental and consequential provisions (including provision as to the closing of registers) as appear to the Secretary of State to be expedient for the purposes of the regulations.
- (6) Nothing in this section shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in subsection (1).

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

- C7** Ss. 238, 239 modified by [National Health Service Act 1977 \(c. 49, SIF 113:2\)](#), [s. 87\(6\)](#) as substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), [s. 4](#), [Sch. 2 para. 40](#)
- C8** Ss. 238, 239 excluded (with modifications) by [S.I. 2000/90](#), [art. 4](#) (with [art. 2\(5\)](#))
- C9** Ss. 238-240 applied (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by [Communications Act 2003 \(c. 21\)](#), [ss. 118, 411](#), [Sch. 4 para. 3\(5\)\(6\)\(a\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\), 2\(1\)](#), [Sch. 1](#) (with transitional provisions in [arts. 3-6](#)); [S.I. 2003/3142](#), [arts. 1\(2\), 3\(2\)](#) (with [art. 11](#))
- Ss. 238-240 applied (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), [ss. 34, 199](#), [Sch. 4 para. 86](#); [S.I. 2004/759](#) {[art. 2](#)}
- S. 238 applied (1.3.2007) by [National Health Service Act 2006 \(c. 41\)](#), [ss. 211\(7\), 277](#)
- S. 238 applied (1.3.2007) by [National Health Service \(Wales\) Act 2006 \(c. 42\)](#), [ss. 159\(7\), 208](#) (with [s. 19\(3\)](#))

**239 Use and development of burial grounds.**

- (1) Notwithstanding anything in any enactment relating to burial grounds or any obligation or restriction imposed under ecclesiastical law or otherwise in respect of them, any land consisting of a burial ground or part of a burial ground, which has been the subject of a relevant acquisition or appropriation, may—
- (a) if it has been 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.
- (2) This section does not apply to land which has been used for the burial of the dead until the prescribed requirements with respect to the removal and reinterment of human remains, and the disposal of monuments, in or upon the land have been complied with.
- (3) Nothing in this section shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such enactment, obligation or restriction as is mentioned in subsection (1).

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

- C10** Ss. 238, 239 modified by [National Health Service Act 1977 \(c. 49, SIF 113:2\)](#), [s. 87\(6\)](#) as substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), [s. 4](#), [Sch. 2 para. 40](#)
- C11** Ss. 238, 239 extended (with modifications) (8.2.2000) by [S.I. 2000/90](#), [art. 4](#) (with [art. 2\(5\)](#))
- C12** Ss. 238-240 applied (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by [Communications Act 2003 \(c. 21\)](#), [ss. 118, 411](#), [Sch. 4 para. 3\(5\)\(6\)\(a\)](#) (with transitional provisions

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in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)  
 Ss. 238-240 applied (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 86**; S.I. 2004/759, **art. 2**  
 S. 239 applied (1.3.2007) by National Health Service Act 2006 (c. 41), **ss. 211(7), 277**  
 S. 239 applied (1.3.2007) by National Health Service (Wales) Act 2006 (c. 42), **ss. 159(7), 208** (with s. 19(3))

## **240 Provisions supplemental to ss. 238 and 239.**

- (1) Provision shall be made by any regulations made for the purposes of sections 238(3) and (4) and 239(2)—
- (a) for requiring the persons in whom the land is vested to publish notice of their intention to carry out the removal and reinterment of any human remains or the disposal of any monuments;
  - (b) for enabling the personal representatives or relatives of any deceased person themselves to undertake—
    - (i) the removal and reinterment of the remains of the deceased, and
    - (ii) the disposal of any monument commemorating the deceased,
 and for requiring the persons in whom the land is vested to defray the expenses of such removal, reinterment and disposal (not exceeding such amount as may be prescribed);
  - (c) for requiring compliance—
    - (i) with such reasonable conditions (if any) as may be imposed in the case of consecrated land, by the bishop of the diocese, with respect to the manner of removal and the place and manner of reinterment of any human remains and the disposal of any monuments, and
    - (ii) with any directions given in any case by the Secretary of State with respect to the removal and reinterment of any human remains.
- (2) Subject to the provisions of any such regulations, no faculty is required—
- (a) for the removal and reinterment in accordance with the regulations of any human remains, or
  - (b) for the removal or disposal of any monuments,
- and section 25 of the <sup>M21</sup>Burial Act 1857 (prohibition of removal of human remains without the licence of the Secretary of State except in certain cases) does not apply to a removal carried out in accordance with the regulations.
- (3) In sections 238 and 239 and 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,
- “monument” includes a tombstone or other memorial, and
- “relevant acquisition or appropriation” means an acquisition made by a Minister, a local authority or statutory undertakers under this Part or Chapter V of Part I of the <sup>M22</sup>Planning (Listed Buildings and Conservation Areas) Act 1990 or compulsorily under any other enactment, or an appropriation by a local authority for planning purposes.



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

- C13** Ss. 238-240 applied (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 118, 411, **Sch. 4 para. 3(5)(6)(a)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- Ss. 238-240 applied (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 86**; S.I. 2004/759, **art. 2**

#### Marginal Citations

- M21** 1857 c. 81.  
**M22** 1990 c. 9.

### 241 Use and development of open spaces.

- (1) Notwithstanding anything in any enactment relating to land which is or forms part of a common, open space or fuel or field garden allotment or in any enactment by which the land is specially regulated, such land 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) Act 1990 or compulsorily under any other enactment, or which has been appropriated by a local authority for planning purposes—
- if it has been acquired by a Minister, may be used in any manner by him or on his behalf for any purpose for which he acquired the land; and
  - in any other case, may be used by any person in any manner in accordance with planning permission.
- (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 suit of any person on any grounds other than contravention of any such enactment as is mentioned in subsection (1).

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

- C14** S. 241 applied (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 118, 411, **Sch. 4 para. 3(5)(6)(b)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)

### 242 Overriding of rights of possession.

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

- has been acquired or appropriated by a local authority for planning purposes, and
- 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>M23</sup>Rent Act 1977 or Part I of the <sup>M24</sup>Housing Act 1988 shall prevent the acquiring or appropriating authority from obtaining possession of the house.

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**Marginal Citations**

**M23** 1977 c.42.

**M24** 1988 c. 50.

*Constitution of joint body to hold land for planning purposes*

**243 Constitution of joint body to hold land for planning purposes.**

- (1) If it appears to the Secretary of State, after consultation with the local authorities concerned, to be expedient that any land acquired by a local authority for planning purposes should be held by a joint body, consisting of representatives of that authority and of any other local authority, he may by order provide for the establishment of such a joint body and for the transfer to that body of the land so acquired.
- (2) Any order under this section providing for the establishment of a joint body may make such provision as the Secretary of State considers expedient with respect to the constitution and functions of that body.
- (3) The provisions which may be included under subsection (2) include provisions—
  - (a) for incorporating the joint body;
  - (b) for conferring on them, in relation to land transferred to them as mentioned in subsection (1), any of the powers conferred on local authorities by this Part or Chapter V of Part I of the <sup>M25</sup>Planning (Listed Buildings and Conservation Areas) Act 1990 in relation to land acquired and held by such authorities for the purposes of this Part or that Chapter;
  - (c) for determining the manner in which their expenses are to be defrayed.
- (4) Regulations under this Act may make such provision consequential upon or supplementary to the provisions of this section as appears to the Secretary of State to be necessary or expedient.

**Marginal Citations**

**M25** 1990 c. 9.

*General and supplementary provisions*

**244 Powers of joint planning boards under Part IX.**

- (1) A joint planning board <sup>F19</sup>. . . shall, on being authorised to do so by the Secretary of State, have the same power to acquire land compulsorily as the local authorities to whom section 226 applies have under that section.
- (2) Such a board shall have the same power to acquire land by agreement as the local authorities mentioned in subsection (1) of section 227 have under that subsection.
- (3) Sections 226(1) and (7), 227, 229, 230, 232, 233 and 235 to 242 apply with the necessary modifications as if any such board were a local authority to which those sections applied.

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- (4) On being authorised to do so by the Secretary of State such a board shall have, for any purpose for which by virtue of this section they may acquire land compulsorily, the power which section 13 of the <sup>M26</sup>Local Government (Miscellaneous Provisions) Act 1976 confers on the local authorities to whom subsection (1) of that section applies to purchase compulsorily rights over land not in existence when their compulsory purchase is authorised, and subsections (2) to (5) of that section shall accordingly apply to the purchase of rights under this subsection as they apply to the purchase of rights under subsection (1) of that section.

#### Textual Amendments

**F19** Words in s. 244(1) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**

#### Marginal Citations

**M26** 1976 c.57.

### [<sup>F20</sup>**244A Powers of National Park authorities under Part IX.**

- (1) A National Park authority shall, on being authorised to do so by the Secretary of State, have the same power to acquire land compulsorily as the local authorities to whom section 226 applies have under that section.
- (2) A National Park authority shall have the same power to acquire land by agreement as the local authorities mentioned in subsection (1) of section 227 have under that subsection.
- (3) Sections 226(1) and (7), 227, 229, 230, 232, 233 and 235 to 242 shall apply with the necessary modifications as if a National Park authority were a local authority to which those sections applied and as if the Park in relation to which it carries out functions were the authority's area.]

#### Textual Amendments

**F20** S. 244A inserted (19.9.1995) by 1995 c. 25, ss. 65(7), 125(2), **Sch. 8 para. 2(1)** (with ss. 7(6), 115, 117, **Sch. 8 para. 7**)

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

- (1) Where—
- (a) it is proposed that land should be acquired compulsorily under section 226 or 228, and
- (b) a compulsory purchase order relating to that land is submitted to the confirming authority in accordance with Part II of the <sup>M27</sup>Acquisition of Land Act 1981 or, as the case may be, is made in draft by [<sup>F21</sup>the First Secretary of State] in accordance with Schedule 1 to that Act,

the confirming authority or, as the case may be, that Secretary of State may disregard for the purposes of that Part or, as the case may be, that Schedule any objection to the order or draft which, in the opinion of that authority or Secretary of State, amounts

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in substance to an objection to the provisions of the development plan defining the proposed use of that or any other land.

- (2) <sup>F22</sup> .....
- (3) <sup>F22</sup> .....
- (4) In construing the <sup>M28</sup>Compulsory Purchase Act 1965 in relation to any of the provisions of this Part—
- (a) references to the execution of the works shall be construed as including references to any erection, construction or carrying out of buildings or works authorised by section 237;
  - (b) in relation to the erection, construction or carrying out of any buildings or works so authorised, references in section 10 of that Act to the acquiring authority 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.

#### Textual Amendments

- F21** Words in s. 245(1) substituted (25.11.2002) by [The Transfer of Functions \(Transport, Local Government and the Regions\) Order 2002 \(S.I. 2002/2626\)](#), art. 20, **Sch. 2 para. 15**
- F22** S. 245(2)(3) repealed (31.10.2004) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), ss. 118, 120, 121, **Sch. 6 para. 7**, **Sch. 9** (with s. 111, **Sch. 6 para. 7(2)**); S.I. 2004/2593, **art. 2**

#### Marginal Citations

- M27** 1981 c.67.
- M28** 1965 c.56.

## 246 Interpretation of Part IX.

- (1) In this Part—
- (a) any reference to the acquisition of land for planning purposes is a reference to the acquisition of it under section 226 or 227 of this Act or section 52 of the <sup>M29</sup>Planning (Listed Buildings and Conservation Areas) Act 1990 (or, as the case may be, under section 112 or 119 of the 1971 Act or section 68 or 71 of the 1962 Act); and
  - (b) any reference to the appropriation of land for planning purposes is a reference to the appropriation of it for purposes for which land can be (or, as the case may be, could have been) acquired under those sections.
- (2) Nothing in sections 237 to 241 shall be construed as authorising any act or omission on the part of a local authority or body corporate in contravention of any limitation imposed by law on their capacity by virtue of their constitution.
- (3) Any power conferred by section 238, 239 or 241 to use land in a manner mentioned in those sections shall be construed as a power so to use the land, whether or not it involves the erection, construction or carrying out of any building or work or the maintenance of any building or work.

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**Marginal Citations**

**M29** 1990 c. 9.

**Status:**

Point in time view as at 30/04/2005.

**Changes to legislation:**

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