



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART I

#### ADMINISTRATION

#### 1 Planning authorities.

- (1) The planning authority for the purposes of this Act shall be the local authority and the district of the planning authority shall be the area of the local authority.
- (2) In any enactment or instrument made under or by virtue of an enactment, a reference to a planning authority shall, unless otherwise provided, or unless the context otherwise requires, be construed as a reference to a local authority.

[<sup>F1</sup>(3) This section is subject to the provisions of this Act and of any other enactment.]

#### Textual Amendments

- F1** S. 1(3) added (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **54(2)**, 59(2); S.S.I. 2007/130, art. 2(2), sch.

#### 2 Enterprise zones.

- (1) An order under paragraph 5 of Schedule 32 to the <sup>M1</sup>Local Government, Planning and Land Act 1980 (designation of enterprise zone) may provide that the enterprise zone authority shall be the planning authority for the zone for such purposes of the planning Acts and in relation to such kinds of development as may be specified in the order.
- (2) Without prejudice to the generality of paragraph 15(1) of that Schedule (modification of orders by the Secretary of State), an order under that paragraph may provide that

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the enterprise zone authority shall be the planning authority for the zone for different purposes of the planning Acts or in relation to different kinds of development.

- (3) Where such provision as is mentioned in subsection (1) or (2) is made by an order designating an enterprise zone or, as the case may be, an order modifying such an order, while the zone subsists the enterprise zone authority shall be, to the extent mentioned in the order (as it has effect subject to any such modifications) and to the extent that it is not already, the planning authority for the zone in place of any authority who would otherwise be the planning authority for the zone.
- (4) The Secretary of State may by regulations make transitional and supplementary provision in relation to a provision of an order under paragraph 5 of that Schedule made by virtue of subsection (1).
- (5) Such regulations may modify any provision of the planning Acts or any instrument made under any of them or may apply any such enactment or instrument (with or without modification) in making such transitional or supplementary provision.

**Marginal Citations**

**M1** 1980 c. 65.

**3 Urban development areas.**

- (1) Where an order is made under subsection (6) of section 149 of the <sup>M2</sup>Local Government, Planning and Land Act 1980 (urban development corporation as planning authority), the urban development corporation specified in the order shall be the planning authority for such area as may be so specified in place of any authority who would otherwise be the planning authority for that area in relation to such kinds of development as may be so specified.
- (2) Where an order under subsection (8)(a) of that section confers any functions on an urban development corporation in relation to any area the corporation shall have those functions in place of any authority (except the Secretary of State) who would otherwise have them in that area.

**Marginal Citations**

**M2** 1980 c. 65.

**[<sup>F2</sup>PART 1A**

NATIONAL PLANNING FRAMEWORK

**Textual Amendments**

**F2** Pt. 1A inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 1, 59(2)**; [S.S.I. 2007/130](#), [art. 2\(2\)](#), [sch.](#)

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### **3A National Planning Framework**

- (1) There is to be a spatial plan for Scotland to be known as the “National Planning Framework”.
- (2) The National Planning Framework is to set out in broad terms how the Scottish Ministers consider that the development and use of land could and should occur.
- (3) The National Planning Framework must contain—
  - (a) a strategy for Scotland's spatial development, and
  - (b) a statement of what the Scottish Ministers consider to be priorities for that development.
- (4) The framework may—
  - (a) contain an account of such matters as the Scottish Ministers consider affect, or may come to affect, the development and use of land,
  - (b) describe—
    - (i) a development and designate it, or
    - (ii) a class of development and designate each development within that class,a “national development”, and
  - (c) contain any other matter which the Scottish Ministers consider it appropriate to include.
- (5) If the framework contains a designation under subsection (4)(b), the framework—
  - (a) must contain a statement by the Scottish Ministers of their reasons for considering that there is a need for the national development in question, and
  - (b) may contain a statement by the Scottish Ministers as regards other matters pertaining to that designation.
- (6) The Scottish Ministers are to—
  - (a) prepare and publish the framework, and
  - (b) keep it under review.
- (7) Within 5 years after publishing the framework under subsection (6)(a), the Scottish Ministers are either—
  - (a) to revise the framework, or
  - (b) to publish an explanation of why they have decided not to revise it.
- (8) If the Scottish Ministers revise the framework, they are to publish it as revised.
- (9) Within 5 years after publishing the framework under subsection (8) or an explanation either under paragraph (b) of subsection (7) or under paragraph (b) of this subsection, the Scottish Ministers are either—
  - (a) to revise the framework, or
  - (b) to publish an explanation of why they have decided not to revise it.
- (10) The Scottish Ministers are to prepare and publish an account (in this Part referred to as their “ participation statement ”) of when consultation as regards the preparation or review of the framework is likely to take place and with whom and of its likely form and of the steps to be taken to involve the public at large in the preparation or review.

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### **3B Proposals for National Planning Framework: Parliamentary consideration**

- (1) After complying with section 3A(10), the Scottish Ministers—
  - (a) are to lay the proposed National Planning Framework (or of the framework as proposed to be revised) before the Scottish Parliament, and
  - (b) are not to complete their preparation or revision of the framework until the period for Parliamentary consideration has expired.
- (2) In this section, the “ period for Parliamentary consideration ” means the period of 60 days beginning on the day on which the draft is so laid; and in reckoning that period no account is to be taken of any time during which the Scottish Parliament—
  - (a) is dissolved, or
  - (b) is in recess for more than 4 days.
- (3) In preparing or revising the framework, the Scottish Ministers are to have regard to any resolution or report of, or of any committee of, the Scottish Parliament made, during the period for Parliamentary consideration, as regards the proposed framework (or as the case may be the framework as proposed to be revised).

### **3C National Planning Framework to be laid before Parliament**

- (1) The Scottish Ministers are to lay a copy of the National Planning Framework published, or published as revised, under section 3A before the Scottish Parliament.
- (2) Together with any copy laid under subsection (1), the Scottish Ministers are to lay—
  - (a) a report as to the extent to which their actings with regard to consultation and the involvement of the public at large have conformed with (or have gone beyond the requirements of) their current participation statement, and
  - (b) a statement giving details of—
    - (i) any resolution or report falling within subsection (3) of section 3B, and
    - (ii) the changes (if any) which in the light of any such resolution or report the Scottish Ministers have made to what was laid under subsection (1)(a) of that section.

### **3D Sustainable development: exercise of functions by Scottish Ministers**

- (1) This section applies to the Scottish Ministers in the exercise of their functions of preparing and revising the National Planning Framework.
- (2) The Scottish Ministers must exercise those functions with the objective of contributing to sustainable development.
- (3) In construing the expression “ sustainable development ” for the purposes of this section, regard may be had to any guidance issued, for the purposes of section 3E, under subsection (3) of that section. ]



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## [<sup>F3</sup> PART 2

### DEVELOPMENT PLANS

#### Textual Amendments

- F3** Pt. 2 substituted (19.5.2008 for specified purposes, 25.6.2008 for specified purposes, 28.2.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 2, 59(2)** (with savings and transitional provisions in [S.S.I. 2008/165](#), arts. 1, 2 and [S.S.I. 2008/427](#), arts. 1(1), **2-5**); [S.S.I. 2008/164](#), art. 2(1)(2), **sch.**; [S.S.I. 2009/70](#), art. 2, **sch.**

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

- C1** Pt. 2 savings for effects of 2006 asp 17 s. 2 (19.5.2008) by [Planning etc. \(Scotland\) Act 2006 \(Development Planning\) \(Saving Provisions\) Order 2008 \(S.S.I. 2008/165\)](#), arts. 1, 2
- C2** Pt. II savings for effects of 2006 asp 17 s. 2 (28.2.2009) by [The Planning etc. \(Scotland\) Act 2006 \(Development Planning\) \(Saving, Transitional and Consequential Provisions\) Order 2008 \(S.S.I. 2008/427\)](#), arts. 1(1), **2-5**

### *Sustainable development*

#### **3E Sustainable development**

- (1) This section applies to a planning authority in the exercise of any function under this Part.
- (2) The planning authority must exercise the function with the objective of contributing to sustainable development.
- (3) The Scottish Ministers may issue guidance to a planning authority for the purposes of this section and that authority must have regard to any guidance so issued.

#### [<sup>F4</sup>3F **Greenhouse gas emissions policies**

A planning authority, in any local development plan prepared by them, must include policies requiring all developments in the local development plan area to be designed so as to ensure that all new buildings avoid a specified and rising proportion of the projected greenhouse gas emissions from their use, calculated on the basis of the approved design and plans for the specific development, through the installation and operation of low and zero-carbon generating technologies.]

#### Textual Amendments

- F4** S. 3F inserted (1.4.2010) by [Climate Change \(Scotland\) Act 2009 \(asp 12\)](#), **ss. 72, 100(2)** (with s. 95); [S.S.I. 2009/341](#), art. 2(3)

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### *Strategic development planning*

#### **4 Strategic development planning authorities**

- (1) The Scottish Ministers may by order designate a group of planning authorities as authorities which are jointly—
  - (a) to prepare a plan (to be known as a “ strategic development plan ”)—
    - (i) whenever required to do so by the Scottish Ministers, and
    - (ii) (subject to sub-paragraph (i) and to section 10(8)) whenever the group think it appropriate to do so,
 for an area (to be known as a “ strategic development plan area ”) to be determined under section 5(3), and
  - (b) to keep under review the plan so prepared.
- (2) No part of the strategic development plan area is to be outwith the districts of the designated group.
- (3) The Scottish Ministers may direct—
  - (a) that an employee of a constituent authority of the designated group is to be assigned to manage the process of preparing and reviewing the strategic development plan, and
  - (b) that other employees of the constituent authorities are to be assigned to assist in that process.
- (4) The Scottish Ministers are not to issue a direction to an authority under subsection (3) within the period of 3 months beginning with the day on which the order under subsection (1) designating the authority as a constituent authority of the designated group was made.
- (5) A group of planning authorities acting jointly by virtue of subsection (1) may be referred to as a “ strategic development planning authority ”; and an employee assigned as is mentioned in paragraph (a) of subsection (3) may be referred to as a “ strategic development plan manager ”.
- (6) For any strategic development plan area there is at no time to be more than one strategic development plan.
- (7) The Scottish Ministers may, for the purposes of this section, issue guidance to the constituent authorities of the designated group; and those authorities must have regard to any guidance so issued.
- (8) The Scottish Ministers may request a planning authority to provide them with information regarding arrangements for the assignment of any employee of that authority to manage, or assist in, the process of preparing and reviewing a strategic development plan and the authority must provide such information within 14 days of receipt of the request.
- (9) In carrying out their duty under paragraph (b) of subsection (1), a strategic development planning authority are in particular to monitor—
  - (a) changes in the characteristics referred to in section 7(4)(a), and
  - (b) the impact of the policies and proposals contained within the strategic development plan.
- (10) A strategic development plan authority are—

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- (a) from time to time, and
  - (b) in any event whenever they publish a main issues report by virtue of that paragraph,
- to publish a statement as to the carrying out by them of their duty under that paragraph.
- (11) In subsection (10), “ publish ” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

## **5 Strategic development plan area**

- (1) Within 3 months after designation under section 4(1), the strategic development planning authority are to submit to the Scottish Ministers—
- (a) a plan showing the boundary which the authority propose as the boundary of the strategic development plan area, and
  - (b) a statement in justification of that proposal,
- with the request that a determination be made under subsection (3).
- (2) If the individual planning authorities which the strategic development planning authority comprises are not unanimous as to the boundary to be proposed, any of those individual planning authorities may, in conjunction with the submission under subsection (1), submit an alternative plan and statement under that subsection.
- (3) The Scottish Ministers may determine that the boundary of the strategic development plan area is—
- (a) a boundary proposed in a submission under subsection (1),
  - (b) any such boundary with such modifications as they think fit, or
  - (c) such other boundary as they think fit.
- (4) If before making a determination under subsection (3) the Scottish Ministers consider they require further information from the strategic development planning authority or from a planning authority of the designated group, they may request the authority in question to provide them with that information.
- (5) The Scottish Ministers are to give notice to the strategic development planning authority of any determination under subsection (3); and where the determination is under paragraph (b) or (c) of that subsection the notice is to include a statement as to their reasons for making the determination.
- (6) Subject to section 6, a determination under subsection (3) is final and conclusive.

## **6 Re-determination of boundary of strategic development plan area**

- (1) Where at any time a strategic development planning authority conclude (whether or not by virtue of a requirement under section 4(1)(a)(i)) that, because of a material change in circumstances, the boundary of their strategic development plan area is no longer appropriate, they are, within three months after so concluding, to submit to the Scottish Ministers—
- (a) a plan showing a boundary which they propose in place of the determined boundary, and
  - (b) a statement in justification of that proposal.

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- (2) Subsections (2) to (6) of section 5 apply in respect of a submission under subsection (1) of this section as they apply in respect of a submission under subsection (1) of that section.

## 7 Form and content of strategic development plan

- (1) A strategic development plan is a plan in which is set out—
- (a) a vision statement, being a broad statement of the strategic development planning authority's views as to how the development of the strategic development plan area could and should occur and as to the matters (including the matters mentioned in subsection (4)) which might be expected to affect that development,
  - (b) a spatial strategy, being a broadly based statement of proposals as to the development and use of land within the strategic development plan area,
  - (c) an analysis of the relationship of the vision statement and spatial strategy to general proposals for the development and other use of land in districts which are contiguous to any part of the strategic development plan area, being general proposals which may be expected to affect that area,
  - (d) such other matters as may be prescribed, and
  - (e) any other matter which the strategic development planning authority consider it appropriate to include.
- (2) A strategic development plan is, for the purpose of explaining or illustrating the proposals in the plan, to contain or be accompanied by—
- (a) such maps, diagrams, illustrations and descriptive matter as may be prescribed, and
  - (b) such other maps, diagrams, illustrations and descriptive matter (if any) as the strategic development planning authority think appropriate.
- (3) Diagrams, illustrations and descriptive matter which, by virtue of subsection (2), are contained in or accompany a strategic development plan are to be treated as forming part of that plan.
- (4) The matters referred to in subsection (1)(a) are—
- (a) the principal physical, economic, social and environmental characteristics of the strategic development plan area,
  - (b) the principal purposes for which land is used in that area,
  - (c) the size, composition and distribution of the population of that area,
  - (d) the infrastructure of that area (including communications, transport and drainage systems and systems for the supply of water and energy),
  - (e) how that infrastructure is used, and
  - (f) any change which the strategic development planning authority think may occur in relation to any of the matters mentioned in paragraphs (a) to (e).

## 8 Preparation of strategic development plan etc. : general

- (1) In preparing a strategic development plan or a main issues report the strategic development planning authority—
- (a) are to take into account the National Planning Framework,

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- (b) are to have regard to such information and considerations as may be prescribed, and
  - (c) may have regard to such other information and considerations as appear to them to be relevant.
- (2) The Scottish Ministers may, in making a requirement under section 4(1)(a)(i), direct that preparation of the strategic development plan is to be completed by a date specified in the requirement.

## **9 Main issues report for preparation of strategic development plan**

- (1) With a view to facilitating and informing their work in preparing a strategic development plan, a strategic development planning authority are to compile a report (a “main issues report”).
- (2) A main issues report compiled under this section is a report in which are set out—
- (a) general proposals by the authority for development in the strategic development plan area and in particular proposals as regards where the development should be carried out (and where it should not), and
  - (b) general proposals which constitute a reasonable alternative (or reasonable alternatives) to those mentioned in paragraph (a).
- (3) The report is also—
- (a) to include information sufficient to secure—
    - (i) that what is proposed can readily be understood by those persons who may be expected to desire an opportunity of making representations to the authority with respect to the report, and
    - (ii) that such representations can be meaningful, and
  - (b) to draw attention to any differences between the proposals for development mentioned in paragraphs (a) and (b) of subsection (2) and the spatial strategy set out in the authority's strategic development plan (if any such plan is for the time being current).
- (4) In compiling the report the strategic development planning authority are to seek the views of, and have regard to any views expressed by—
- (a) the key agencies,
  - (b) each planning authority the district of which is contiguous with the strategic development plan area, and
  - (c) such persons as may be prescribed.
- (5) It is the duty of a key agency to co-operate with the strategic development planning authority in the compilation of the authority's main issues report.
- (6) The strategic development planning authority are to publish their main issues report in such manner as may be prescribed; and without prejudice to the generality of this subsection the regulations in question must so far as practicable secure—
- (a) that the persons mentioned in subsection (3) are made aware that they are entitled to make such representations as are mentioned in that subsection, and
  - (b) that those persons are given an adequate opportunity to do so.
- (7) Subsection (6) is without prejudice to the right of any person whatsoever to make representations to the authority as respects the report.

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- (8) Publication under that subsection is to include specification of a date by which any representations under this section must be made.
- (9) On the report being published under that subsection, the authority are to send a copy of it to the Scottish Ministers.
- (10) In subsection (6), “ publish ” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

## **10 Preparation and publication of proposed strategic development plan**

- (1) After the date specified by virtue of subsection (8) of section 9, the strategic development planning authority are—
  - (a) having regard to such representations as timeously may have been made to them as respects their main issues report, to prepare, and to publish in such manner as was prescribed under subsection (6) of that section, a proposed strategic development plan,
  - (b) to send a copy of that document to—
    - (i) each key agency, and
    - (ii) each planning authority the district of which is contiguous with the strategic development plan area,
  - (c) to notify any person who timeously has made representations under section 9 of where a copy of that document is available for inspection (and at what reasonable times), and
  - (d) to consult, with regard to that document, the key agencies and such persons as may be prescribed.
- (2) Publication under subsection (1)(a) is to include specification of a date (being a date not less than 6 weeks after the date of publication) by which any representations with respect to the proposed strategic development plan must be made to the authority.
- (3) After the date specified by virtue of subsection (2), the strategic development planning authority—
  - (a) may modify the proposed strategic development plan so as to take account of—
    - (i) any representations timeously made to them as respects that proposed plan (or of any matters arising out of representations so made),
    - (ii) any matters arising in consultation under subsection (1)(d), and
    - (iii) any minor drafting or technical matters, and
  - (b) are to submit it (whether or not modified) to the Scottish Ministers together with—
    - (i) a note of such representations as were timeously made to the authority and of whether those representations are taken account of in the plan (and if so to what extent),
    - (ii) a report as to the extent to which the authority's actions with regard to consultation and the involvement of the public at large have conformed with (or have gone beyond the requirements of) their current participation statement, and
    - (iii) a copy of their proposed action programme for the plan.

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- (4) But if the authority consider that modifications are requisite and are such as would change the underlying aims or strategy of the proposed plan (in subsection (5) referred to as the “ original plan ”) they are not to modify it (or submit it unmodified to the Scottish Ministers) but are to prepare and publish under subsection (1) a new proposed strategic development plan.
- (5) In its application to any such new plan subsection (1) is to be construed as if references to representations made timeously as respects the main issues report (and to any person timeously making representations) included references to representations so made as respects the original plan (and to any person so making representations with respect to the original plan).
- (6) Where a proposed strategic development plan is modified under subsection (3), the modified plan is to be published in such manner as was prescribed under section 9(6).
- (7) On submitting a proposed strategic development plan under subsection (3)(b), the strategic development planning authority are to advertise, in such manner as may be prescribed, that they have done so.
- (8) Where there is a current strategic development plan, a proposed strategic development plan must be submitted under subsection (3)(b) within 4 years after the date on which that current plan was approved under section 13(1).
- (9) It is the duty of a key agency to co-operate with the strategic development planning authority in the preparation of the authority's proposed strategic development plan.

## **11 Alternative proposals**

- (1) If the individual planning authorities which a strategic development planning authority comprises are unable to agree on the content of the proposed strategic development plan to be submitted under section 10(3)(b), then the proposed plan so submitted may include alternative proposals in respect of particular matters.
- (2) Alternative proposals so submitted are to be accompanied by a statement of the reasoning behind them.

## **12 Examination of proposed strategic development plan**

- (1) On receiving a proposed strategic development plan by virtue of paragraph (b) of section 10(3), the Scottish Ministers are, if—
  - (a) representations timeously made were not taken account of (or not fully taken account of) in modifications under paragraph (a) of that section and have not been withdrawn,
  - (b) by virtue of section 11(1) the proposed plan includes alternative proposals, or
  - (c) they consider it appropriate that such a direction be made,to direct that a person appointed by them examine under this subsection the proposed plan.
- (2) But where an appointment is made by virtue of subsection (1), the appointed person is firstly to examine under this subsection the extent to which the strategic development planning authority's actings with regard to consultation and the involvement of the public at large as respects the proposed plan have conformed with (or have been

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beyond the requirements of) the participation statement of the authority which was current when the proposed plan was published under section 10(1)(a).

- (3) The Scottish Ministers may make regulations as to—
- (a) meeting general administrative costs, staff costs and overheads incurred in relation to an examination under subsection (1) or (2),
  - (b) procedures to be followed at such an examination, and
  - (c) what is to be assessed in such an examination and matters by reference to which the assessment is to be made;
- but the form the examination is to take (as for example whether it should be in public or as to whether persons who have made representations and other persons are to be heard or are to present written submissions) is to be at the discretion of the person appointed.
- (4) When they make a direction under subsection (1) the Scottish Ministers are—
- (a) to advertise its making in a local newspaper within the strategic development plan area,
  - (b) to serve notice of its making on the strategic development planning authority, and
  - (c) if it is made by virtue of paragraph (a) of subsection (1), to serve notice of its making on each of the persons making the representations in question.
- (5) On receiving notice under subsection (4)(b) as respects a direction, the strategic development planning authority are to advertise, in the public libraries within the strategic development plan area, the making of that direction.
- (6) No such examination as is mentioned in subsection (1) is to be commenced—
- (a) within 4 weeks after the direction is made, and
  - (b) where a report is submitted under subsection (1)(b) of section 12A, before a direction is given under subsection (3)(b) of that section.
- (7) On completing his examination under subsection (1) the appointed person is to—
- (a) prepare a report—
    - (i) setting out, and giving reasons for, his conclusions and recommendations (which may include recommendations for amendments to the proposed strategic development plan), and
    - (ii) as to the matters considered by him under subsection (2),
  - (b) submit it to the Scottish Ministers,
  - (c) send a copy of it to the strategic development planning authority,
  - (d) publish it, and
  - (e) serve on the persons mentioned in subsection (4)(c) notice of its submission and publication (including the means of publication).
- (8) In subsection (7)(d), “ publish ” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

## **12A Further provision as regards examination under section 12(2)**

- (1) If, having conducted an examination under subsection (2) of section 12, the appointed person is not satisfied with the actings mentioned in that subsection he is to—



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- (a) prepare a report setting out his reasons for not being satisfied and recommending that the strategic development planning authority take such further steps with regard to—
    - (i) consultation, or
    - (ii) involving the public at large,as are specified in the report,
  - (b) submit it to the Scottish Ministers, and
  - (c) send a copy of it to the authority.
- (2) The authority may, within 4 weeks after receiving that copy, make representations to the Scottish Ministers as regards the report.
- (3) The Scottish Ministers, provided that 4 weeks have elapsed since they received the report, may—
  - (a) direct the authority to take such further steps with regard to—
    - (i) consultation, or
    - (ii) involving the public at large,as are specified in the direction, or
  - (b) direct the appointed person to proceed to an examination under subsection (1) of section 12.
- (4) In giving a direction under paragraph (a) of subsection (3) the Scottish Ministers are to have regard to the appointed person's recommendations under paragraph (a) of subsection (1) and to any representations made under subsection (2).
- (5) Where such a direction is given—
  - (a) the appointed person is not to proceed to an examination under subsection (1) of section 12, and
  - (b) after the further steps specified in the direction have been taken the authority—
    - (i) may modify the proposed strategic development plan so as to take account of any representations made to them in consequence of their taking those steps (and of any minor drafting or technical matters), and
    - (ii) are to submit it (whether or not modified) to the Scottish Ministers together with a note of any representations so made and of whether those representations are taken account of in the plan (and if so to what extent) and a report as to the extent to which the authority's actions with regard to consultation and involving the public at large have conformed with (or have gone beyond the requirements of) the specification of further steps.
- (6) But if the authority consider that modifications are requisite and are such as would change the underlying aims or strategy of the proposed plan they are not to modify it (or submit it unmodified to the Scottish Ministers) but are to prepare and publish under section 10(1) a new proposed strategic development plan.
- (7) Where a proposed strategic development plan is modified under subsection (5)(b)
  - (i), the modified plan is to be published in such manner as was prescribed under section 9(6).

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- (8) On submitting a proposed strategic development plan under subsection (5)(b)(ii), the strategic development planning authority are to advertise, in such manner as may be prescribed, that they have done so.
- (9) Sections 11 and 12, this section and section 13 apply in relation to a proposed strategic development plan so submitted as they apply in relation to such a plan submitted under section 10(3)(b).
- (10) Except that for the purposes of the application provided for in subsection (9), section 12 is to be construed as if—
  - (a) in subsection (1)(a), for the words “paragraph (a) of that section” there were substituted “section 12A(5)(b)(i)”, and
  - (b) in subsection (2), for the words “the participation statement of the authority which was current when the proposed plan was published under section 10(1)(a)” there were substituted “the further steps specified in the direction under section 12A(3)(a)”.

### **13 Proposed strategic development plan: approval or rejection**

- (1) The Scottish Ministers may, after receiving—
  - (a) a proposed strategic development plan by virtue of paragraph (b) of section 10(3), and
  - (b) (if they make a direction under subsection (1) of section 12), a report prepared under subsection (7)(a) of that section,
 either approve the proposed plan (in whole or in part and with or without modifications) or reject it.
- (2) If so approved, the proposed plan is constituted (as so approved) as the strategic development plan.
- (3) Subsection (1) is subject to the following subsections.
- (4) Where the Scottish Ministers—
  - (a) modify a proposed strategic development plan which has been examined under section 12, they are, in approving the plan, to set out in the instrument by which approval is given the modifications and the reasons for making them,
  - (b) in considering a proposed strategic development plan which has not been so examined, form the intention of modifying it under subsection (1), they are—
    - (i) to publish in such manner as they think fit the modifications they intend to make and the reasons for making them, and
    - (ii) to consult with regard to the modifications the key agencies, the strategic development planning authority and such other persons (if any) as they consider appropriate.
- (5) Publication under subsection (4)(b)(i) is to include specification of a date (being a date not less than 6 weeks after the date of publication) by which any representations with respect to the intended modifications must be made to the Scottish Ministers.
- (6) Where a date is so specified, approval under subsection (1) is not to be given before that date.
- (7) The reference in subsection (1) to “modifications” is, where there has been publication under subsection (4)(b)(i), to be construed as a reference to—

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- (a) the intended modifications so published, or
  - (b) such modifications as the Scottish Ministers, having regard to any representations timeously made by virtue of subsection (5) and to any matters arising in consultation under subsection (4)(b)(ii), think fit.
- (8) The Scottish Ministers are to notify the strategic development planning authority of any representations made by virtue of subsection (5).

#### **14 Publication of and publicity for strategic development plan**

- (1) As soon as is reasonably practicable after the strategic development plan is constituted as mentioned in section 13(2), the strategic development planning authority are to—
- (a) send two copies of it to the Scottish Ministers,
  - (b) publish it,
  - (c) place a copy of it in each public library in the strategic development plan area,
  - (d) both—
    - (i) notify each person who made representations under section 10 or 13 or by virtue of section 12A, and
    - (ii) advertise, in a local newspaper,that the strategic development plan has been published (including the means of publication) and is available for inspection in those libraries.
- (2) In subsection (1)(b), “ publish ” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

#### *Local development plans*

#### **15 Form and content of local development plans**

- (1) A local development plan is a plan in which is set out, for land in the part of the district to which it relates—
- (a) a spatial strategy, being a detailed statement of the planning authority's policies and proposals as to the development and use of the land,
  - (b) such other matters as may be prescribed, and
  - (c) any other matter which the planning authority consider it appropriate to include.
- (2) Where the land is not within a strategic development plan area, a local development plan is also to set out a vision statement, that is to say a broad statement of the planning authority's views as to how the development of the land could and should occur and as to the matters (including the matters mentioned in subsection (5)) which might be expected to affect that development.
- (3) Where a local development plan contains policies or proposals for, or views as to, the occurrence of development on land owned by the planning authority, there is to be appended to the plan a schedule, in such form as may be prescribed, which identifies the land, states that it is so owned and refers to the policies, proposals or views in question.
- (4) A local development plan is, for the purpose of explaining or illustrating the proposals in the plan, to contain or be accompanied by—

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- (a) such maps, diagrams, illustrations and descriptive matter as may be prescribed, and
  - (b) such other diagrams, illustrations and descriptive matter (if any) as the planning authority think appropriate.
- (5) The matters referred to in subsection (2) are—
- (a) the principal physical, economic, social and environmental characteristics of the district,
  - (b) the principal purposes for which the land is used,
  - (c) the size, composition and distribution of the population of the district,
  - (d) the infrastructure of the district (including communications, transport and drainage systems and systems for the supply of water and energy),
  - (e) how that infrastructure is used, and
  - (f) any change which the planning authority think may occur in relation to any of the matters mentioned in paragraphs (a) to (e).

## **16 Preparation and monitoring of local development plans: general**

- (1) A planning authority are—
- (a) as soon as practicable after the coming into force of section 2 of the Planning etc. (Scotland) Act 2006 (asp 17) and thereafter—
    - (i) whenever required to do so by the Scottish Ministers, or
    - (ii) subject to sub-paragraph (i), at intervals of no more than five years, to prepare local development plans for all parts of their district, and
  - (b) to keep under review the plans so prepared.
- (2) In preparing a local development plan the planning authority—
- (a) are to take into account the National Planning Framework,
  - (b) are to have regard to such information and considerations as may be prescribed, and
  - (c) may have regard to such other information and considerations as appear to them to be relevant.
- (3) Different local development plans may be prepared for different purposes for the same part of any district.
- (4) Parts of districts for which local development plans are prepared for some purpose need not have the same boundaries as parts for which they are prepared for another purpose.
- (5) Two (or more) planning authorities may prepare a joint local development plan extending to parts of each (or all) of their districts.
- (6) Where the land to which a local development plan (or joint local development plan) relates is within a strategic development plan area—
- (a) the planning authority are in preparing the local development plan, or
  - (b) the planning authorities are in preparing the joint local development plan, to ensure that the plan prepared is consistent with the strategic development plan.
- (7) Where a planning authority fail to comply with subsection (1)(a), the Scottish Ministers may direct them to prepare a report as to the reasons for such failure and to submit that report to the Scottish Ministers.

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- (8) In carrying out their duty under paragraph (b) of subsection (1), a planning authority are in particular to monitor—
  - (a) changes in the characteristics referred to in section 15(5)(a), and
  - (b) the impact of the policies and proposals contained within the local development plans.
- (9) A planning authority are—
  - (a) from time to time, and
  - (b) in any event whenever they publish a main issues report by virtue of that paragraph,to publish a statement as to the carrying out by them of their duty under that paragraph.
- (10) In subsection (9), “ publish ” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

## **17 Main issues report for preparation of local development plan**

- (1) With a view to facilitating and informing their work in preparing a local development plan, a planning authority are to compile a report (a “main issues report”).
- (2) A main issues report compiled under this section is a report in which are set out—
  - (a) general proposals by the authority for development in their district and in particular proposals as regards where the development should be carried out (and where it should not), and
  - (b) general proposals which constitute a reasonable alternative (or reasonable alternatives) to those mentioned in paragraph (a).
- (3) The report is also—
  - (a) to include information sufficient to secure—
    - (i) that what is proposed can readily be understood by those persons who may be expected to desire an opportunity of making representations to the authority with respect to the report, and
    - (ii) that such representations can be meaningful, and
  - (b) to draw attention to any differences between the proposals for development mentioned in paragraphs (a) and (b) of subsection (2) and the spatial strategy set out in the authority's local development plan (if any such plan is for the time being current).
- (4) In compiling the report the planning authority are to seek the views of, and have regard to any views expressed by—
  - (a) the key agencies, and
  - (b) such persons as may be prescribed.
- (5) It is the duty of a key agency to co-operate with the planning authority in the compilation of the authority's main issues report.
- (6) The planning authority are to publish their main issues report in such manner as may be prescribed; and without prejudice to the generality of this subsection the regulations in question must so far as practicable secure—
  - (a) that the persons mentioned in subsection (3) are made aware that they are entitled to make such representations as are mentioned in that subsection, and
  - (b) that those persons are given an adequate opportunity to do so.

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- (7) Subsection (6) is without prejudice to the right of any person whatsoever to make representations to the authority as respects the report.
- (8) Publication under that subsection is to include specification of a date by which any representations under this section must be made.
- (9) On the report being published under that subsection, the authority are to send a copy of it to the Scottish Ministers.
- (10) In subsection (6), “ publish ” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

## **18 Preparation and publication of proposed local development plan**

- (1) After the date specified by virtue of subsection (8) of section 17, the planning authority are—
  - (a) having regard to such representations as timeously may have been made to them as respects their main issues report, to prepare, and to publish in such manner as was prescribed under subsection (6) of that section, a proposed local development plan,
  - (b) to send a copy of that proposed plan to each key agency,
  - (c) to notify any person who timeously has made representations under section 17 that the proposed plan has been published and of where a copy of it is available for inspection (and at what reasonable times),
  - (d) to consult, with regard to the proposed plan, the key agencies and such persons as may be prescribed, and
  - (e) in such circumstances as may be prescribed, to give notice—
    - (i) in such form,
    - (ii) of such matter, and
    - (iii) to such persons,
 as may be specified in the regulations in question.
- (2) Publication under subsection (1)(a) is to include specification of a date (being a date not less than 6 weeks after the date of publication) by which any representations with respect to the proposed local development plan must be made to the authority.
- (3) After the date specified by virtue of subsection (2), the planning authority may modify the proposed local development plan so as to take account of—
  - (a) any representations timeously made to them as respects that proposed plan (or of any matters arising out of representations so made),
  - (b) any matters arising in consultation under subsection (1)(d), and
  - (c) any minor drafting or technical matters.
- (4) Where the authority decide to make no modifications under subsection (3), or any modifications under that subsection are not of a kind prescribed for the purposes of subsection (5) (or mentioned in subsection (8)), the authority—
  - (a) are to submit the proposed local development plan to the Scottish Ministers together with—
    - (i) a report as to the extent to which the authority's actings with regard to consultation and the involvement of the public at large have conformed with (or have gone beyond the requirements of) the authority's current participation statement, and

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- (ii) a copy of their proposed action programme for the plan,
  - (b) are to publish the plan in such manner as may be prescribed, and
  - (c) if no request is to be made under section 19(1) are, in so publishing it, to advertise their intention to adopt it.
- (5) Where the authority make under subsection (3) modifications of a prescribed kind, the authority are—
  - (a) to publish in such manner as was prescribed under section 17(6) the proposed local development plan as modified, and
  - (b) to give notice—
    - (i) in such form,
    - (ii) of such matter, and
    - (iii) to such persons,as may be specified in the regulations in question.
- (6) Publication under subsection (5)(a) is to include specification of a date (being a date not less than 6 weeks after the date of publication) by which any representations with respect to the proposed local development plan must be made to the authority and, after that date, the authority may further modify the proposed plan so as to take account of—
  - (a) any representations timeously made to them as respects that proposed plan (or of any matters arising out of representations so made), and
  - (b) any minor drafting or technical matters.
- (7) Subsections (4) and (5) apply in respect of modifications under subsection (6) as they apply in respect of modifications under subsection (3).
- (8) But if the authority consider that modifications are requisite and are such as would change the underlying aims or strategy of the proposed plan (in subsection (9) referred to as the “ original plan ”) they are not to modify it (or submit it or publish it unmodified) but are to prepare and publish under subsection (1) a new proposed local development plan.
- (9) In its application to any such new plan subsection (1) is to be construed as if references to representations made timeously as respects the main issues report (and to any person timeously making representations) included references to representations so made as respects the original plan (and to any person so making representations with respect to the original plan).
- (10) It is the duty of a key agency to co-operate with the planning authority in the preparation of the authority's proposed local development plan.

## **19 Examination of proposed local development plan**

- (1) On submitting a proposed local development plan under paragraph (a) of section 18(4), a planning authority are, if the circumstances are as mentioned in subsection (2), to request the Scottish Ministers to make an appointment under subsection (3).
- (2) The circumstances are that representations timeously made were not taken account of (or not fully taken account of) in modifications under subsection (3) or (6) of section 18 and have not been withdrawn.
- (3) If, when a proposed development plan is submitted to the Scottish Ministers under paragraph (a) of section 18(4)—

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- (a) a request is made under subsection (1), or
  - (b) no such request is made but it appears to them that the circumstances are as mentioned in subsection (2),
- they are to appoint a person to examine under this subsection the proposed plan.
- (4) But where an appointment is made under subsection (3), the appointed person is firstly to examine under this subsection the extent to which the planning authority's actions with regard to consultation and the involvement of the public at large as respects the proposed plan have conformed with (or have been beyond the requirements of) the participation statement of the authority which was current when the proposed plan was published under section 18(1)(a).
- (5) The Scottish Ministers may make regulations as to—
- (a) meeting general administrative costs, staff costs and overheads incurred in relation to an examination under subsection (3) or (4),
  - (b) procedures to be followed at such an examination, and
  - (c) what is to be assessed in such an examination and matters by reference to which the assessment is to be made;
- but the form the examination is to take (as for example whether it should be in public or as to whether persons who have made representations, and other persons, are to be heard or are to present written submissions) is to be at the discretion of the appointed person.
- (6) When a person is appointed under subsection (3), the planning authority are—
- (a) to advertise the forthcoming examination of the proposed plan in a local newspaper and in the public libraries within the part of the authority's district to which the proposed plan relates, and
  - (b) to serve notice of that examination on each of the persons who have made the representations mentioned in subsection (2).
- (7) No such examination as is mentioned in subsection (3) is to be commenced—
- (a) within 4 weeks after the appointment is made, and
  - (b) where a report is submitted under subsection (1)(b) of section 19A, before a direction is given under subsection (3)(b) of that section.
- (8) On completing his examination under subsection (3) the appointed person is to—
- (a) prepare a report—
    - (i) setting out, and giving reasons for, his conclusions and recommendations (which may include recommendations for amendments to the proposed local development plan), and
    - (ii) as to the matters considered by him under subsection (4),
  - (b) submit it to the planning authority,
  - (c) publish it, and
  - (d) serve on the persons mentioned in paragraph (b) of subsection (6), and on any person who made representations by virtue of section 19A, notice of the report's submission and publication (including the means of publication).
- (9) In subsection (8)(c), “ publish ” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).
- (10) The planning authority are, on receiving a report submitted under subsection (8)(b)—
- (a) to make—



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- (i) (except in so far as they decline to do so, on such grounds as may be prescribed for the purposes of this sub-paragraph) such modifications, if any, to the proposed local development plan as the appointed person recommends, and
    - (ii) such other modifications to it, if any, as appear to them to be requisite having regard to the report,
  - (b) to publish the modifications made, together with the proposed plan as modified (or, if no modifications are made, to publish the proposed plan) in such manner as may be prescribed,
  - (c) in so publishing the proposed plan (whether or not modified), to advertise their intention to adopt it, and
  - (d) to notify each person who made representations under section 18 that the proposed plan has been published and of where a copy of it is available for inspection (and at what reasonable times).
- (11) But the authority may, before complying with subsection (10), secure the carrying out of an environmental assessment (within the meaning of the Environmental Assessment (Scotland) Act 2005 (asp 15)) in relation to the proposed plan as so modified; and if they do so then paragraph (a) of that subsection is to be construed as subject to the qualification that any modification made must, in the opinion of the authority, be acceptable having regard to that assessment.
- (12) The planning authority are, within 3 months after receiving a report submitted under subsection (8)(b), to send to the Scottish Ministers a copy of each of the following—
  - (a) the modifications, if any, made under sub-paragraph (i) of subsection (10)(a),
  - (b) where a modification recommended by the appointed person is not made, a statement setting out the recommendation and explaining (by reference to the grounds prescribed for the purposes of that sub-paragraph) why it is not made,
  - (c) the proposed plan (whether or not modified),
  - (d) the report,
  - (e) any environmental assessment carried out by virtue of subsection (11), and
  - (f) the advertisement mentioned in subsection (10)(c).

#### **19A Further provision as regards examination under section 19(4)**

- (1) If, having conducted an examination under subsection (4) of section 19, the appointed person is not satisfied with the actings mentioned in that subsection he is to—
  - (a) prepare a report setting out his reasons for not being satisfied and recommending that the authority take such further steps with regard to—
    - (i) consultation, or
    - (ii) involving the public at large,as are specified in the report,
  - (b) submit it to the Scottish Ministers, and
  - (c) send a copy of it to the planning authority.
- (2) The authority may, within 4 weeks after receiving that copy, make representations to the Scottish Ministers as regards the report.
- (3) The Scottish Ministers, provided that 4 weeks have elapsed since they received the report, may—
  - (a) direct the authority to take such further steps with regard to—

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- (i) consultation, or
  - (ii) involving the public at large,
  - as are specified in the direction, or
  - (b) direct the appointed person to proceed to an examination under subsection (3) of section 19.
- (4) In giving a direction under paragraph (a) of subsection (3) the Scottish Ministers are to have regard to the appointed person's recommendations under paragraph (a) of subsection (1) and to any representations made under subsection (2).
- (5) Where such a direction is given—
- (a) the appointed person is not to proceed to an examination under subsection (3) of section 19, and
  - (b) after the further steps specified in the direction have been taken the authority—
    - (i) may modify the proposed local development plan so as to take account of any representations made to them in consequence of their taking those steps (and of any minor drafting or technical matters), and
    - (ii) are to submit it (whether or not modified) to the Scottish Ministers together with a note of any representations so made and of whether those representations are taken account of in the plan (and if so to what extent) and a report as to the extent to which the authority's actions with regard to consultation and involving the public at large have conformed with (or have gone beyond the requirements of) the specification of further steps.
- (6) But if the authority consider that modifications are requisite and are such as would change the underlying aims or strategy of the proposed plan they are not to modify it (or submit it unmodified to the Scottish Ministers) but are to prepare and publish under section 18(1) a new proposed local development plan.
- (7) Where a proposed local development plan is modified under subsection (5)(b)(i), the modified plan is to be published in such manner as is prescribed under section 18(4)(b).
- (8) On submitting a proposed local development plan under subsection (5)(b)(ii), the planning authority are to advertise, in such manner as may be prescribed, that they have done so.
- (9) Section 19 and this section apply in relation to a proposed local development plan so submitted as they apply in relation to such a plan submitted under section 18(4)(a).
- (10) Except that for the purposes of the application provided for in subsection (9), section 19 is to be construed as if—
- (a) in subsection (2), for the words “subsection (3) or (6) of section 18” there were substituted “ section 19A(5)(b)(i) ”, and
  - (b) in subsection (4), for the words “the participation statement of the authority which was current when the proposed plan was published under section 18(1) (a)” there were substituted “ the further steps specified in the direction under section 19A(3)(a) ”.

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## **20 Constitution of local development plan**

- (1) On being adopted by the planning authority the proposed local development plan is constituted as the local development plan.
- (2) But subsection (1) is subject to any direction made under subsection (7) and does not apply if such adoption is in contravention of subsection (3) or (6) (the reference to subsection (3) including a reference to subsection (3) as applying by virtue of a direction made under subsection (4)).
- (3) A proposed local development plan is not to be so adopted before a period of 28 days has elapsed after the planning authority's intention to adopt it is advertised under section 18(4)(c) or 19(10)(c).
- (4) The Scottish Ministers may, as regards a particular proposed local development plan submitted to them, direct that subsection (3) is to apply as if, for the period mentioned in the subsection there were substituted such longer period as is specified in the direction.
- (5) At any time during the period mentioned in subsection (3), or as the case may be specified in a direction under subsection (4), the Scottish Ministers may, if it appears to them that the proposed plan is unsatisfactory, direct the authority to consider modifying it in such respects as are indicated in the direction.
- (6) A planning authority given a direction under subsection (5) are not to adopt the proposed plan unless—
  - (a) they satisfy the Scottish Ministers that they have made the modifications necessary to conform with the direction, or
  - (b) the Scottish Ministers withdraw the direction.
- (7) At any time before a proposed local development plan submitted to the Scottish Ministers has been adopted by the planning authority, the Scottish Ministers may direct that the proposed plan is to be constituted not on being so adopted but if and when approved by the Scottish Ministers.

## **20A Publication of and publicity for local development plan**

- (1) As soon as is reasonably practicable after the local development plan is constituted as mentioned in section 20(1), the planning authority are to—
  - (a) send two copies of it to the Scottish Ministers,
  - (b) publish it,
  - (c) place a copy of it in each public library in the part of the district to which it relates,
  - (d) both—
    - (i) notify each person who made representations under section 18 or by virtue of section 19A, and
    - (ii) advertise, in a local newspaper,  
that the local development plan has been published (including the means of publication) and is available for inspection in those libraries.
- (2) In subsection (1)(b), “ publish ” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).

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### *Development plan schemes and action programmes*

#### **20B Development plan schemes**

- (1) A development plan scheme is to be prepared by each strategic development planning authority and by each planning authority.
- (2) The authority in question is to prepare the scheme—
  - (a) whenever required to do so by the Scottish Ministers, and
  - (b) (subject to paragraph (a)) whenever the authority think it appropriate to do so but in any event within 1 year after last preparing such a plan.
- (3) A development plan scheme is a document setting out the authority's programme for preparing and reviewing their strategic development plan or as the case may be their local development plans.
- (4) Without prejudice to the generality of subsection (3), “programme” in that subsection includes, having regard to the provisions of this Part—
  - (a) proposed timetabling,
  - (b) details of what is likely to be involved at each stage of preparation or review, and
  - (c) an account (in this Part referred to as an authority's “participation statement”) of when consultation is likely to take place and with whom and of its likely form and of the steps to be taken to involve the public at large in the stages of preparation or review.
- (5) As soon as is reasonably practicable after a development plan scheme has been adopted, the authority which prepared it are to—
  - (a) send two copies of it to the Scottish Ministers,
  - (b) publish it, and
  - (c) place a copy of it in each public library in the strategic development plan area or the area of the planning authority, as the case may be.
- (6) In subsection (5)(b), “publish” includes, without prejudice to that expression's generality, publish by electronic means (as for example by means of the internet).
- (7) Regulations may make provision as to—
  - (a) the form and content of, and
  - (b) the procedures for preparing and adopting, a development plan scheme.

#### **21 Action programmes**

- (1) A strategic development planning authority who prepare a strategic development plan are to prepare an action programme for the plan.
- (2) A planning authority who prepare a local development plan are to prepare an action programme for the plan.
- (3) In preparing the action programme the authority in question are to seek the views of, and have regard to any views expressed by—
  - (a) the key agencies, and
  - (b) such persons as may be prescribed.

*Status: Point in time view as at 18/03/2011.*

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- (4) When an authority publish a proposed—
  - (a) strategic development plan under section 10(1)(a), or
  - (b) local development plan under section 18(1)(a),they are to publish a proposed action programme for the plan.
- (5) It is the duty of a key agency to co-operate with the authority in question in the preparation of the authority's action programme or proposed action programme.
- (6) An action programme is a document setting out how the authority in question propose to implement the plan to which it relates.
- (7) Regulations may make provision as to—
  - (a) the form and content of, and
  - (b) the procedures for preparing and adopting,an action programme.
- (8) The authority are to adopt and publish the action programme within 3 months after the date on which the plan to which it relates is constituted.
- (9) The authority must keep the action programme under review and must update and re-publish it—
  - (a) whenever required to do so by the Scottish Ministers, and
  - (b) (subject to paragraph (a)) whenever they think it appropriate to do so but in any event within 2 years after last publishing (or re-publishing) it.
- (10) When they publish, or re-publish, an action programme, the authority are to—
  - (a) send two copies of it to the Scottish Ministers, and
  - (b) place a copy of it in each public library—
    - (i) in the case of a strategic development planning authority, in the strategic development plan area, and
    - (ii) in the case of a planning authority, in the part of the authority's district to which the local development plan in question relates,and such publication, or re-publication, is to include by electronic means (as for example by means of the internet).

### *Supplementary guidance*

## **22 Supplementary guidance**

- (1) A strategic development planning authority may, under this subsection, adopt and issue guidance in connection with a strategic development plan and a planning authority may, under this subsection, adopt and issue guidance in connection with a local development plan (such guidance being, in either case, referred to in this Part as “supplementary guidance”).
- (2) Regulations may make provision as to—
  - (a) procedures for, and as to consultation which must precede, the adoption of, and
  - (b) the matters which may be dealt with in, supplementary guidance.

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- (3) Subject to any such regulations, the authority proposing to adopt and issue supplementary guidance are to take such steps as will in their opinion secure—
  - (a) that adequate publicity of the proposal is given in their district or as the case may be in their strategic development plan area,
  - (b) that persons who may be expected to wish to make representations to the authority about the proposal are made aware that they are entitled to do so, and
  - (c) that such persons are given an adequate opportunity of making such representations.
- (4) Such publicity as is given under subsection (3)(a) is to include intimation of a date by which any such representations require to be received by the authority.
- (5) The authority are, before adopting and issuing the supplementary guidance, to consider any such representations timeously made to them.
- (6) A copy of the proposed supplementary guidance must be submitted to the Scottish Ministers and a period of at least 28 days must then elapse before the supplementary guidance is adopted and issued.
- (7) The Scottish Ministers may, as regards a particular submission to them under subsection (6), direct that the subsection is to apply as if, for the period mentioned in it, there were substituted such longer period as is specified in the direction.
- (8) At any time before the supplementary guidance is adopted the Scottish Ministers may by notice require the authority to make such modifications to it as are specified in the notice or may direct the authority not to adopt and issue it.
- (9) Guidance may be adopted and issued other than under subsection (1)—
  - (a) by a strategic development planning authority, in connection with a strategic development plan, or
  - (b) by a planning authority, in connection with a local development plan,
 provided that the matters dealt with in that guidance are not matters for the time being specified, in regulations under subsection (2)(b), as matters which may be dealt with in supplementary guidance.

#### *Supplementary provisions*

### **23 Disregarding of representations with respect to development authorised by or under other enactments**

- (1) Where subsection (2) applies—
  - (a) neither the Scottish Ministers nor a strategic development planning authority need consider representations with respect to—
    - (i) a main issues report compiled under section 9, or
    - (ii) a proposed strategic development plan, and
  - (b) neither the Scottish Ministers nor a planning authority need consider representations with respect to—
    - (i) a main issues report compiled under section 17, or
    - (ii) a proposed local development plan.

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- (2) This subsection applies where it appears to the Scottish Ministers or the authority, as the case may be, that those representations are in substance representations with respect to things done or proposed to be done in pursuance of—
- (a) an order or scheme under section 5, 7, 9 or 12 of the Roads (Scotland) Act 1984 (c. 54) (trunk road orders, special road schemes and orders for other public roads), or
  - (b) an order under section 1 of the New Towns (Scotland) Act 1968 (c. 16) (designation of sites of new towns).

### **23A Regulations under this Part**

- (1) Regulations under this Part may extend throughout Scotland or to specified areas only and may make different provision for different cases.
- (2) Subject to the previous provisions of this Part and to any such regulations, the Scottish Ministers may give directions to any planning authority or strategic development planning authority, or to planning authorities or strategic development planning authorities generally for—
- (a) formulating the procedure for the carrying out of functions under this Part, or
  - (b) requiring them to give the Scottish Ministers such information as the Scottish Ministers may require for carrying out functions under this Part.

### **23B Default powers of the Scottish Ministers**

- (1) This section applies where—
- (a) under any of the previous sections of this Part, any strategic development plan or local development plan requires to be prepared, any main issues report requires to be compiled or any proposed strategic development plan or proposed local development plan requires to be submitted to the Scottish Ministers, or steps are required to be taken for the adoption of a proposed local development plan, and
  - (b) the Scottish Ministers are satisfied that the authority in question—
    - (i) are not, within a reasonable period, doing what is required, or
    - (ii) have not met a time limit specified in any of those provisions for doing what is required (or some part of what is required).
- (2) Where this section applies, the Scottish Ministers may—
- (a) direct the authority in question (the “defaulting authority”) to carry out that authority’s functions in relation to the matter and may specify in the direction the factors to be taken into account or objectives to be achieved by that authority in so doing, or
  - (b) prepare a strategic development plan or local development plan.
- (3) Where this section applies and the defaulting authority is a strategic development planning authority, the Scottish Ministers may authorise one of the planning authorities which the defaulting authority comprises to do what is required on behalf of the defaulting authority.
- (4) The previous sections of this Part apply, so far as applicable and with any necessary modifications, in relation to the doing of anything—
- (a) under subsection (2)(b) by the Scottish Ministers, or

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- (b) by virtue of subsection (3) by an individual planning authority, as they apply in relation to the doing of anything by the defaulting authority.
- (5) The defaulting authority—
  - (a) must on demand repay to the Scottish Ministers so much of any expenses incurred by the Scottish Ministers in connection with the doing of anything which should have been done by the defaulting authority as the Scottish Ministers certify to have been incurred in the performance of the defaulting authority's functions, and
  - (b) must repay to a planning authority who by virtue of subsection (3) do anything which should have been done by the defaulting authority, any expenses certified by the Scottish Ministers to have been reasonably incurred by the planning authority in connection with the doing of that thing.

### **23C Reviews of plans in enterprise zones**

As soon as practicable after an order has been made under paragraph 5 of Schedule 32 to the Local Government, Planning and Land Act 1980 (c. 65) (designation of enterprise zone scheme) or a notification has been given under paragraph 11 of that Schedule (modification of such a scheme)—

- (a) a strategic development planning authority for a strategic development plan area in which the enterprise zone is wholly or partly situated are, in the light of the provisions of the scheme or modified scheme, to review the strategic development plan for that area, and
- (b) a planning authority for a district in which the enterprise zone is wholly or partly situated are, in that light, to review any local development plan which relates to land situated both in the district and in the zone.

### **23D Meaning of “key agency”**

Any reference in a provision of this Part to a “key agency” is to a body which the Scottish Ministers specify as such for the purposes of that provision by regulations.

### **24 Meaning of “development plan”**

- (1) For the purposes of this Act, any other enactment relating to town and country planning and the Land Compensation (Scotland) Act 1963 (c. 51), the development plan for any strategic development plan area is to be taken as consisting—
  - (a) of the provisions of the strategic development plan for the time being in force for the area, together with—
    - (i) the Scottish Ministers' notice of approval of that plan, and
    - (ii) any supplementary guidance issued in connection with that plan, and
  - (b) of the provisions of any local development plan for the time being applicable to the area, together with—
    - (i) the planning authority's resolution of adoption of, or as the case may be the Scottish Ministers' notice of approval of, that plan, and
    - (ii) any supplementary guidance issued in connection with that plan.
- (2) For the purposes mentioned in subsection (1), the development plan for any other area (whether the whole or part of the district of a planning authority) is to be taken as consisting as mentioned in paragraph (b) of that subsection.



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- (3) A reference in subsection (1)(b) to provisions of a plan, to a notice of approval or to a resolution of adoption is, in relation to an area forming part of the district to which they are, or as the case may be it is, applicable, to be construed as a reference to so much of the provisions, notice or resolution as is applicable to the area.
- (4) A reference in subsection (1) to a notice of approval is, in relation to any plan made by the Scottish Ministers under section 23B, to be construed as a reference to a notice of the making of the plan.
- (5) This section has effect subject to Schedule 1 (old development plans).

### *General*

## **25 Status of development plan**

- (1) Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise—
  - (a) to be made in accordance with that plan, and
  - (b) if the development in question is a national development, to be made in accordance with any statement under section 3A(5) which—
    - (i) relates to that national development,
    - (ii) is expressed as applying for the purposes of development management, and
    - (iii) is to the effect that the development in question (or a development such as the development in question) could and should occur.
- (2) For the purposes of paragraph (b) of subsection (1)—
  - (a) statements in the National Planning Framework which do not fall within sub-paragraphs (i) and (ii) of the paragraph are to be treated as “material considerations” (but this paragraph is without prejudice to the generality of that expression), and
  - (b) in the event of any incompatibility between the National Planning Framework and the development plan, whichever of them is the later in date is to prevail.
- (3) For the purposes of subsection (2)(b)—
  - (a) the date of the National Planning Framework is the latest date on which it was published under section 3A(6) or (8),
  - (b) the date of a strategic development plan is the date on which it was published under section 14(1) (the date of any supplementary guidance issued being disregarded), and
  - (c) the date of a local development plan is the date on which it was constituted under section 20 (the date of any supplementary guidance issued being disregarded).]

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## PART III

### CONTROL OVER DEVELOPMENT

#### *Meaning of development*

#### 26 Meaning of “development”.

- (1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land<sup>[F5]</sup>, or the operation of a marine fish farm in the circumstances specified in section 26AA].
- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—
  - (a) the carrying out of works for the maintenance, improvement or other alteration of any building being works which—
    - (i) affect only the interior of the building, or
    - (ii) do not materially affect the external appearance of the building, and are not works for making good war damage within the meaning of the <sup>M3</sup>War Damage Act 1943 or works begun after 7th December, 1969 for the alteration of a building by providing additional space in it underground;
  - (b) the carrying out by a <sup>[F6]</sup>roads authority (as defined by section 151(1) of the Roads (Scotland) Act 1984)] on land within the boundaries of a road of any works required for the maintenance or improvement of the road <sup>[F7]</sup>but , in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment];
  - (c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any road or other land for that purpose;
  - (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;
  - (e) <sup>[F8]</sup>subject to subsection (2A),] the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;
  - (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class;
  - (g) the demolition of any description of building specified in a direction given by the Secretary of State to planning authorities generally or to a particular planning authority.

<sup>[F9]</sup>(2AA) The Scottish Ministers may in a development order specify any circumstances, or description of circumstances, in which subsection (2) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space of the building by such amount or percentage as is so specified.

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- (2AB) The development order may make different provision for different purposes.]
- [<sup>F10</sup>(2A) Development includes the carrying out of irrigation or drainage for agriculture or of any other water management project for that purpose.]
- (3) For the avoidance of doubt it is hereby declared that for the purposes of this section—
- (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;
  - (b) the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if—
    - (i) the superficial area of the deposit is extended, or
    - (ii) the height of the deposit is extended and exceeds the level of the land adjoining the site.
- (4) For the purposes of this Act building operations include—
- (a) demolition of buildings,
  - (b) rebuilding,
  - (c) structural alterations of or additions to buildings, and
  - (d) other operations normally undertaken by a person carrying on business as a builder.
- (5) For the purposes of this Act mining operations include—
- (a) the removal of material of any description—
    - (i) from a mineral-working deposit,
    - (ii) from a deposit of pulverised fuel ash or other furnace ash or clinker, or
    - (iii) from a deposit of iron, steel or other metallic slags, and
  - (b) the extraction of minerals from a disused railway embankment.
- (6) Where the placing or assembly of any [<sup>F11</sup>equipment] in any part of any [<sup>F12</sup>waters which—
- (a) are inland waters,
  - (b) not being inland waters, are landward of the baselines from which the breadth of the territorial sea adjacent to Scotland is measured, or
  - (c) are seaward of those baselines up to a distance of 12 nautical miles,]
- for the purpose of fish farming there would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the [<sup>F11</sup>equipment] resulted from carrying out engineering operations over that land; and in this [<sup>F13</sup>section]—
- <sup>F14</sup>  
...
- [<sup>F15</sup> “equipment” includes any tank, cage or other structure, or long-line, for use in fish farming;]
- “fish farming” means the breeding, rearing or keeping of fish or shellfish (which includes any kind of [<sup>F16</sup>sea urchin,] crustacean or mollusc);
- “inland waters” means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows; and
- <sup>F17</sup>  
...
- <sup>F14</sup>  
...
- [<sup>F18</sup> “nautical miles” means international nautical miles of 1,852 metres ]

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- [<sup>F19</sup>(6AA) Where the making of any material change in the use of equipment so placed or assembled for that purpose would not, apart from this subsection, involve development of the land below, this Act shall have effect as if the making of any such material change was development of that land.]
- [<sup>F20</sup>(6A) The Scottish Ministers may by order made by statutory instrument make such modifications as they consider necessary or expedient to the definitions of “equipment” and “fish farming” in subsection (6); and an order under this subsection may make different provision for different purposes and different areas.
- (6B) In subsection (6A), “modifications” includes amendments and repeals.]
- [<sup>F21</sup>(6C) The Scottish Ministers may by order make such provision as they consider necessary or expedient for the purpose of, or in connection with, the application of this Act to—
- (a) any such placing or assembly as is mentioned in subsection (6) in waters described in paragraph (b) or (c) of that subsection; or
  - (b) any material change in the use of equipment placed or assembled in those waters.
- (6D) Any order under subsection (6C) may in particular provide that a planning authority specified in the order is to be the planning authority for the purposes of such an application of this Act despite the placing or assembly being something done, or the material change of use being made, outwith the district of the authority.
- (6E) But in the application of subsections (6C) and (6D) to a case where, by virtue of paragraph (a) of section 10(1) of the National Parks (Scotland) Act 2000 (asp 10) the planning authority is a National Park authority, the reference in subsection (6D) to the district of the authority is to be construed as a reference to the National Park.
- (6F) And the Scottish Ministers may direct that subsections (6C) and (6D) are to apply to a case where—
- (a) by virtue of paragraph (b) of that section 10(1), a National Park authority is to be treated as the planning authority, or
  - (b) by virtue of paragraph (c) of that section 10(1), a National Park authority is to have certain functions in relation to planning.
- (6G) For the purposes of any such application as is provided for in—
- (a) paragraph (a) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words “planning authority specified in the order is to be” in subsection (6D) there is to be substituted “ National Park authority specified in the order is to be treated as ”,
  - (b) paragraph (b) of subsection (6F), the reference in subsection (6D) to the district of the authority is to be construed as mentioned in subsection (6E) and for the words “planning authority specified in the order is to be the planning authority” in subsection (6D) there is to be substituted “ National Park authority specified in the order is to have functions in relation to planning ”.
- (6H) Before making an order under subsection (6C), the Scottish Ministers—
- (a) must consult—
    - (i) every planning authority, and
    - (ii) the Scottish Environment Protection Agency, and

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- (b) may consult such other persons as they think fit.
- (6I) An order under subsection (6C) may (without prejudice to the generality of that subsection)—
- (a) modify any enactment, instrument or document,
  - (b) make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (c) provide for the delegation of functions,
  - (d) make different provision for different purposes and different areas.
- (6J) For the purposes of the exercise by a National Park authority of any planning functions which it has by virtue of subsections (6C) and (6D) in respect of waters described in paragraph (b) or (c) of subsection (6), any reference in section 9 of the National Parks (Scotland) Act 2000 (asp 10) (general purposes and functions of National Park authority) to the National Park itself is to be construed as including a reference to those waters.]
- (7) Without prejudice to any regulations under this Act relating to the control of advertisements, the use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this section as involving a material change in the use of that part of the building.

#### Textual Amendments

- F5** Words in s. 26(1) added (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 3(1)(a)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F6** Words in s. 26(2)(b) substituted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), **Sch. 7 para. 20(2)** (with s. 111); S.S.I. 2006/268, art. 3(d)
- F7** Words in s. 26(2)(b) inserted (1.8.1999) by [S.S.I. 1999/1](#), **reg. 47**
- F8** Words in s. 26(2)(e) inserted (30.9.2003) by [Environmental Impact Assessment \(Water Management\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/341\)](#), regs. 1, **2(a)** (with reg. 5)
- F9** S. 26(2AA)(2AB) inserted (6.2.2007 for specified purposes, 12.12.2008 for specified purposes) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 3(1)(b)**, 59(2) (with s. 3(2)(3)); S.S.I. 2007/49, art. 2, sch., S.S.I. 2008/411, art. 2(2)(3)(a)
- F10** S. 26(2A) inserted (30.9.2003) by [Environmental Impact Assessment \(Water Management\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/341\)](#), regs. 1, **2(b)** (with reg. 5)
- F11** Word in s. 26(6) substituted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), **ss. 24(2)(a)(i)**, 38(1); S.S.I. 2007/50, art. 2
- F12** Words in s. 26(6) substituted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 3(1)(e)(i)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F13** Word in s. 26(6) substituted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 3(1)(e)(ii)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F14** Words in s. 26(6) repealed (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 3(1)(e)(iii)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F15** Words in s. 26(6) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), **ss. 24(2)(a)(iii)**, 38(1); S.S.I. 2007/50, art. 2

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- F16** Words in s. 26(6) inserted (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **8(2)** (with art. 14(3))
- F17** Words in s. 26(6) repealed (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), **ss. 24(2)(a)(iv)**, 38(1); S.S.I. 2007/50, art. 2
- F18** Words in s. 26(6) added (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 3(1)(c)(iv)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F19** S. 26(6AA) inserted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 3(1)(d)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.
- F20** S. 26(6A)(6B) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), **ss. 24(2)(b)**, 38(1); S.S.I. 2007/50, art. 2
- F21** S. 26(6C)-(6J) inserted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 3(1)(e)**, 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/139, art. 2, sch.

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

- C3** S. 26(1) extended (1.8.1999) by [S.S.I. 1999/1](#), **reg. 44**
- C4** S. 26(1) applied (with modifications) (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **14(2)** (with art. 14(3))

#### Marginal Citations

- M3** 1943 c. 21.

### [<sup>F22</sup> **Marine fish farms: circumstances referred to in section 26(1)**

#### **26AA**

- (1) The circumstances to which section 26(1) refers are—
- (a) that the marine fish farm is being operated after—
    - (i) the date which is the appropriate date in respect of that fish farm, or
    - (ii) if earlier than that date, the date on which planning permission is granted, or an application for planning permission is refused, under section 31A, and
  - (b) that the operation involves the use of equipment which was placed or assembled in waters at a time when that placing or assembly did not constitute development under this Act.
- (2) For the purposes of subsection (1)(a), the appropriate date in respect of a fish farm is whichever is the later of—
- (a) a date prescribed by the Scottish Ministers for the purposes of this subsection, and
  - (b) the date on which any authorisation which—
    - (i) relates to the operation of that fish farm, and
    - (ii) is in effect at the date of commencement of section 4 of the Planning etc. (Scotland) Act 2006 (asp 17), ceases to have effect.
- (3) In this section and in section 31A—
- “authorisation” means—
- (a) a consent for fish farming issued by the Crown Estate Commissioners,

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- (b) a licence granted under section 11 of the Orkney County Council Act 1974 (c.xxx), or
  - (c) a licence granted under section 11 of the Zetland County Council Act 1974 (c.viii),
- “ equipment ” has the same meaning as in section 26(6), and
- “ marine fish farm ” means a fish farm situated in any part of any waters referred to in paragraphs (b) and (c) of section 26(6). ]

#### Textual Amendments

**F22** S. 26AA inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 4(1)**, 59(2); S.S.I. 2007/130, **art. 2(2)**, sch.

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

**C5** S. 26AA applied (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), **arts. 1(1)**, **14(2)** (with **art. 14(3)**)

### [<sup>F23</sup>26A Hierarchy of developments

- (1) For the purposes of the planning Acts, a development belongs to one of the following categories—
  - (a) the first (designated under section 3A(4)(b)), to be known as “national developments”,
  - (b) the second, to be known as “major developments”, and
  - (c) the third, to be known as “local developments”.
- (2) The Scottish Ministers are by regulations to describe classes of development other than national developments and assign each class to one or other of the categories mentioned in paragraphs (b) and (c) of subsection (1).
- (3) But the Scottish Ministers may, as respects a particular local development, direct that the development is to be dealt with as if (instead of being a local development) it were a major development.
- (4) Different provision may be made under subsection (2) for different areas.
- (5) Regulations under subsection (2) are not made unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.]

#### Textual Amendments

**F23** S. 26A inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 5**, 59(2); S.S.I. 2008/411, **art. 2(2)(3)(a)**; S.S.I. 2009/100, **art. 2**, sch.

### 27 Time when development begun.

- (1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—

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- (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
  - (b) if the development consists of a change in use, at the time when the new use is instituted;
  - (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).
- (2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.
- (3) The provisions referred to in subsection (2) are sections 52(2), 53(6), 54(4), 58, 59 and 61.
- (4) In subsection (2) “material operation” means—
- (a) any work of construction in the course of the erection of a building,
  - (b) any work of demolition of a building,
  - (c) the digging of a trench which is to contain the foundations, or part of the foundations, of a building,
  - (d) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (c),
  - [<sup>F24</sup>(da) any placing or assembly of equipment as is mentioned in subsection (6) of section 26 in waters described in paragraph (b) or (c) of that subsection,]
  - (e) any operation in the course of laying out or constructing a road or part of a road, or
  - (f) any change in the use of any land which constitutes material development.
- (5) In subsection (4)(f) “material development” means any development other than—
- (a) development for which planning permission is granted by a general development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted,
  - (b) development of a class specified in paragraph 1 or 2 of Schedule 11, and
  - (c) development of any class prescribed for the purposes of this subsection.
- (6) In subsection (5) “general development order” means a development order (within the meaning of section 30(2)) made as a general order applicable (subject to such exceptions as may be specified in it) to all land in Scotland.

#### Textual Amendments

**F24** S. 27(4)(da) inserted (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **8(3)** (with art. 14(3))



*Status: Point in time view as at 18/03/2011.*

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## *f*<sup>25</sup> *Initiation and completion of development*

### **Textual Amendments**

**F25** Ss. 27A-27C and cross-headings inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 6(1), 59(2)** (with [S.S.I. 2009/222, art. 2](#)); [S.S.I. 2008/411, art. 2\(2\)\(3\)\(a\)](#); [S.S.I. 2009/219, art. 2, sch.](#)

### **27A Notification of initiation of development**

- (1) A person who intends to carry out development for which planning permission has been given must, as soon as practicable after deciding on a date on which to initiate the development and in any event before commencing the development, give notice to the planning authority as to that date and as to such further matters as the Scottish Ministers may prescribe.
- (2) In granting planning permission for the carrying out of any development of land, a planning authority are by notice to direct the attention of the applicant to the requirements of subsection (1), setting out the terms of subsection (1) and of section 123(1) in that notice.

### **27B Notification of completion of development**

- (1) A person who completes development for which planning permission has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.
- (2) If an application to a planning authority for planning permission discloses, in the opinion of the authority, that the development in question is to be carried out in phases then any such permission granted is to be granted subject to a condition, imposed under section 37(1)(a) in respect of each phase except the last (notice of the completion of which is to be given under subsection (1)), that as soon as practicable after the phase is completed the person carrying out the development is to give notice of that completion to the planning authority.

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

**C6** [Ss. 27A-27C](#) savings for effects of 2006 asp 17 s. 6(1) (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Development Management and Appeals\) \(Saving, Transitional and Consequential Provisions\) Order 2009 \(S.S.I. 2009/222\)](#), **art. 2**

## *Display of notice while development is carried out*

### **27C Display of notice while development is carried out**

- (1) A person carrying out development of a prescribed class must until the development is completed display a notice containing prescribed information.
- (2) The Scottish Ministers may by regulations make provision as to—
  - (a) the form of the notice required by subsection (1), and
  - (b) where such a notice is to be displayed.]

*Status: Point in time view as at 18/03/2011.*

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

- C6** Ss. 27A-27C savings for effects of 2006 asp 17 s. 6(1) (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Development Management and Appeals\) \(Saving, Transitional and Consequential Provisions\) Order 2009 \(S.S.I. 2009/222\)](#), [art. 2](#)

### *Requirement for planning permission*

## **28 Development requiring planning permission.**

- (1) Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land.
- [<sup>F26</sup>(1A) Subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for planning permission etc. for development for which development consent required).]
- (2) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted.
- (3) Where by a development order planning permission to develop land has been granted subject to limitations, planning permission is not required for the use of that land which (apart from its use in accordance with that permission) is its normal use.
- (4) Where an enforcement notice has been served in respect of any development of land, planning permission is not required for the use of that land for the purpose for which (in accordance with the provisions of this Part) it could lawfully have been used if that development had not been carried out.
- (5) In determining for the purposes of subsections (2) and (3) what is or was the normal use of land, no account shall be taken of any use begun in contravention of this Part or of previous planning control.
- (6) For the purposes of this section a use of land shall be taken to have been begun in contravention of previous planning control if it was begun in contravention of Part II of the 1947 Act or Part III of the 1972 Act.
- (7) Subsection (1) has effect subject to Schedule 2 (which contains exemptions for certain uses of land on 1st July 1948).

#### Textual Amendments

- F26** S. 28(1A) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), [Sch. 2 para. 55](#) (with s. 226); [S.I. 2010/101](#), [art. 2](#) (with [art. 6](#))

## **29 Granting of planning permission: general.**

- (1) Planning permission may be granted—
  - (a) by a development order,

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- (b) by the planning authority (or, where this Part so provides, by the Secretary of State) on application to the authority in accordance with regulations or a development order,
  - (c) on the adoption or approval of a simplified planning zone scheme or alterations to such a scheme in accordance with section 49 or, as the case may be, section 53, or
  - (d) on the designation of an enterprise zone or the approval of a modified scheme under Schedule 32 to the <sup>M4</sup>Local Government Planning and Land Act 1980 in accordance with section 55 of this Act.
- (2) Planning permission may also be deemed to be granted under section 57 (development with government authorisation).
- (3) This section is without prejudice to any other provisions of this Act providing for the granting of permission.

#### Marginal Citations

**M4** 1980 c. 65.

### *Development orders*

#### **30 Development orders: general.**

- (1) The Secretary of State shall by regulations or by order provide for the granting of planning permission.
- (2) An order under this section (in this Act referred to as a “development order”) may itself grant planning permission for development specified in the order, or for development of any class so specified, and may be made either—
- (a) as a general order applicable, except so far as it otherwise provides, to all land, but which may make different provision with respect to different descriptions of land [<sup>F27</sup>and according to whether a development is a national development, a major development or a local development], or
  - (b) as a special order applicable only to such land or descriptions of land [<sup>F28</sup>, or to such categories of development,] as may be specified in the order.
- (3) In respect of development for which planning permission is not granted by a development order, regulations or an order may provide for the granting of planning permission by the planning authority (or, where this Part so provides, by the Secretary of State) on an application made to the planning authority in accordance with the regulations or the order.

#### Textual Amendments

**F27** Words in s. 30(2)(a) added (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(3)(a)**, 59(2); [S.S.I. 2009/219](#), art. 2, sch.

**F28** Words in s. 30(2)(b) inserted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(3)(b)**, 59(2); [S.S.I. 2009/219](#), art. 2, sch.

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### 31 Permission granted by development order.

- (1) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.
- (2) Without prejudice to the generality of subsection (1), where planning permission is granted by a development order for the erection, extension or alteration of any buildings, the order may require the approval of the planning authority to be obtained with respect to the design or external appearance of the buildings.
- (3) Without prejudice to the generality of subsection (1), where planning permission is granted by a development order for development of a specified class, the order may enable the Secretary of State or the planning authority to direct that the permission shall not apply either—
  - (a) in relation to development in a particular area, or
  - (b) in relation to any particular development.
- (4) Any provision of a development order by which permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of references in this Act to limitations) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that provision on more than that number of days in that period.
- (5) For the purpose of enabling development to be carried out in accordance with planning permission, or otherwise for the purpose of promoting proper development in accordance with the development plan, a development order may direct that any enactment passed before 13th August 1947, or any regulations, orders or byelaws made at any time under any such enactment—
  - (a) shall not apply to any development specified in the order, or
  - (b) shall apply to it subject to such modifications as may be so specified.

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

C7 S. 31 extended (1.8.1999) by [S.S.I. 1999/1](#), [reg. 46](#)

*[<sup>F29</sup>Planning permission in respect of operation of marine fish farm*

#### Textual Amendments

F29 S. 31A and cross-heading inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 4\(2\)](#), [59\(2\)](#); [S.S.I. 2007/130](#), [art. 2\(2\)](#), [sch.](#)

### 31A Planning permission in respect of operation of marine fish farm

- (1) This section applies to planning permission for the operation of a marine fish farm which involves the use of such equipment as is referred to in section 26AA(1)(b).
- (2) Any planning permission is to be granted by the Scottish Ministers.

*Status: Point in time view as at 18/03/2011.*

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- (3) Without prejudice to the generality of subsection (2), planning permission may be granted under that subsection as respects a class of development.
- (4) Any planning permission granted by virtue of subsection (3) is to be granted by order, the class of development in question being specified in the order.
- (5) Planning permission may be granted either unconditionally or subject to conditions or limitations.
- (6) The conditions or limitations which may be imposed include conditions or limitations specified in any authorisation which is at the time of imposition in effect in relation to the fish farm.
- (7) The principal matters to be taken into account by the Scottish Ministers in coming to a decision as to whether to grant planning permission are the likely impact of the development on—
  - (a) any European site within the meaning of regulation 10 of the Conservation (Natural Habitats & c.) Regulations 1994 ( S.I. 1994/ 2716), and
  - (b) the environment generally.
- (8) The Scottish Ministers may by regulations make provision—
  - (a) specifying those cases where an application for planning permission must be made,
  - (b) as to the form of such an application,
  - (c) specifying documents and information which require to accompany such an application,
  - (d) as to consultation in connection with such an application, and
  - (e) as to any other matters concerning procedure on such an application.]

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

- C8** S. 31A applied (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **14(2)** (with art. 14(3))

*Applications for planning permission*

**[<sup>F30</sup>32 Applications for planning permission**

- (1) Regulations or a development order may make provision as to applications for planning permission made to a planning authority or the Scottish Ministers.
- (2) Provision referred to in subsection (1) includes provision as to—
  - (a) the form and manner in which an application must be made,
  - (b) particulars of such matters as are to be included in the application,
  - (c) any documents or other materials which are to accompany the application,
  - (d) evidence to be provided in support of anything in, or relating to, the application.
- (3) The regulations or development order must—

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- (a) require that an application for planning permission of such description as is specified in the regulations or order is to be accompanied by a statement (either or both and if both then either in one document or in two)—
    - (i) about the design principles and concepts applied to the development,
    - (ii) about how issues relating to access for the disabled to the development have been dealt with,
  - (b) include provision as to the form and content of any such statement as is mentioned in paragraph (a), and
  - (c) require that an application in respect of which compliance with section 35B is required is to be accompanied by a pre-application consultation report prepared in accordance with section 35C.
- (4) Different provision may be made under this section—
- (a) for different cases or classes of case,
  - (b) for different areas, and
  - (c) according to whether a development is a national development, a major development or a local development.]

#### Textual Amendments

**F30** S. 32 substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 7(1), 59(2)**; [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**; [S.S.I. 2009/219](#), **art. 2**, **sch.**

#### *f<sup>F31</sup> Variation of application*

#### Textual Amendments

**F31** Ss. 32A, 32B and cross-heading inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 8, 59(2)** (with [S.S.I. 2009/222](#), **art. 3**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**; [S.S.I. 2009/219](#), **art. 2**, **sch.**

### **32A Variation of application other than one referred to the Scottish Ministers**

- (1) An application for planning permission (other than an application referred to the Scottish Ministers under section 46 instead of being dealt with by the planning authority) may, with the agreement of the planning authority, be varied after it is made.
- (2) And if the planning authority consider the variation to be such that there is a substantial change in the description of the development for which planning permission is sought, they are not to agree to the variation.
- (3) Without prejudice to the generality of subsection (1), regulations or a development order may make provision as to the period within which, the circumstances in which and the procedures in accordance with which an application may be varied; but in any event an application is not to be varied after there is an appeal as respects it under section 47.
- (4) The planning authority may, when an application is varied under this section, give such notice of the variation as they consider appropriate.

*Status: Point in time view as at 18/03/2011.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” (other than the first such reference in subsection (1)) were a reference to the Scottish Ministers.

### **32B Variation of application referred to the Scottish Ministers**

- (1) An application for planning permission referred to the Scottish Ministers under section 46 instead of being dealt with by the planning authority may, with the agreement of the Scottish Ministers, be varied after it is made.
- (2) And if the Scottish Ministers consider the variation to be such that there is a substantial change in the description of the development for which planning permission is sought, they are not to agree to the variation.
- (3) Without prejudice to the generality of subsection (1), regulations or a development order may make provision as to the period within which, the circumstances in which and the procedures in accordance with which an application may be varied.
- (4) The Scottish Ministers may, when an application is varied under this section, give such notice of the variation as they consider appropriate.]

### **33 Planning permission for development already carried out.**

- (1) On an application made to a planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.
- (2) Subsection (1) applies to development carried out—
- (a) without planning permission,
  - (b) in accordance with planning permission granted for a limited period, or
  - (c) without complying with some condition subject to which planning permission was granted.
- (3) Planning permission for such development may be granted so as to have effect from—
- (a) the date on which the development was carried out, or
  - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.
- [<sup>F32</sup>(4) But subsection (3) does not apply if, before the date of the application, an enforcement notice was issued in respect of the development.]

#### **Textual Amendments**

**F32** S. 33(4) added (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. [54\(4\)](#), [59\(2\)](#); S.S.I. [2009/219](#), art. 2, sch.

### **[<sup>F33</sup>33A Notice requiring application for planning permission for development already carried out**

Where there is a breach of planning control the planning authority may issue a notice—



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- (a) requiring the owner of the land in, on, over or under which the development has been carried out to make an application to them for planning permission for the development,
- (b) describing the development in a way that is sufficient to identify it,
- (c) specifying a date by which the application is to be made, and
- (d) setting out the terms of section 123(1).]

#### **Textual Amendments**

**F33** S. 33A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 9(1), 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

### *Publicity for applications*

#### **[<sup>F34</sup>34 Notice by planning authority of certain applications made to them**

- (1) A planning authority are to give notice—
  - (a) to such persons or categories of person,
  - (b) in such manner,
  - (c) for such period, and
  - (d) on such number of occasions,
 as may be prescribed in regulations or in a development order, of such applications mentioned in subsection (2) as are made to the authority.
- (2) The applications are—
  - (a) for planning permission,
  - (b) for an approval required by a development order,
  - (c) for a consent, agreement or approval required by a condition imposed on a grant of planning permission, and
  - (d) for agreement under section 75A(2).
- (3) The regulations or development order may—
  - (a) make provision in relation to the applications generally or in relation to such of those applications as are of a class or classes prescribed in the regulations or order,
  - (b) make different provision for different classes so prescribed.
- (4) No such application is to be determined until after—
  - (a) the expiry of a period which is to be so prescribed,
  - (b) any requirement imposed by virtue of this section has been satisfied, and
  - (c) any sum recoverable from the applicant in respect of costs incurred by the planning authority in giving notice under subsection (1) has been paid to the authority.
- (5) For the purposes of this section an applicant is to provide—
  - (a) to such person or persons,
  - (b) such information with respect to the application,
 as may be so prescribed.



*Status: Point in time view as at 18/03/2011.*

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- (6) A planning authority are to provide the Scottish Ministers with such information relating to the exercise by the authority of functions under this section (whether in relation to applications generally or in relation to a particular application or class of application) as the Scottish Ministers may request from them.]

#### Textual Amendments

**F34** S. 34 substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **10(1)**, 59(2) (with S.S.I. 2009/222, [art. 15](#)); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

### 35 Notice etc. of applications to owners and agricultural tenants.

- (1) Regulations or a development order shall make provision—
- (a) as to the notice of any application for planning permission to be given to any person (other than the applicant) who at the beginning of the period of 21 days ending with the date of the application was—
    - (i) the owner of, or
    - (ii) the tenant of any agricultural [<sup>F35</sup>land] any part of which was comprised in,  
any of the land to which the application relates, and
  - (b) requiring any applicant for such permission to issue a certificate as to the interests in the land to which the application relates or the purpose for which it is used,
- and provide for publicising such applications and for the form, content and service of such notices and certificates.
- (2) The regulations or order may require an applicant for planning permission to certify, in such form as may be prescribed by the regulations or the order, or to provide evidence, that any requirements of the regulations or the order have been satisfied.
- (3) Regulations or an order making any provision by virtue of this section may make different provision for different cases or different classes of development.
- (4) A planning authority shall not entertain any application for planning permission unless any requirements imposed by virtue of this section have been satisfied.
- (5) If any person—
- (a) issues a certificate which purports to comply with any requirement imposed by virtue of this section and contains a statement which he knows to be false or misleading in a material particular, or
  - (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,
- he shall be guilty of an offence.
- (6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) In this section—

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[<sup>F36</sup>“agricultural land” means land comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or comprised in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act);] and “owner” in relation to any land means any person who—

- (a) under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired period of which is not less than 7 years, or
- (b) in the case of such applications as may be prescribed by regulations or by a development order, is entitled to an interest in any mineral so prescribed,

and the reference to the interests in the land to which an application for planning permission relates includes any interest in any mineral in, on or under the land.

- (8) Proceedings for an offence under this section may be brought at any time within the period of 2 years following the commission of the offence.

#### Textual Amendments

- F35** Word in s. 35(1)(a)(ii) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 51\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with sch.)
- F36** Words in s. 35(7) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [Sch. para. 51\(b\)](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with sch.)

#### [<sup>F37</sup>35A Pre-application consultation: preliminary

- (1) Before submitting an application for planning permission for a development of a class prescribed under this section the prospective applicant is, subject to the following provisions of this section, to comply with section 35B.
- (2) The regulations in question may, in prescribing classes of development, make different provision for different cases or classes of case and for different areas.
- (3) A prospective applicant for planning permission for a development may, by notice, require the planning authority to state whether or not, in their opinion, the development is of a class prescribed under subsection (1).
- (4) But the regulations may, in prescribing a class of development, provide that subsections (3) and (5) to (9) are not to apply—
  - (a) as respects that class, or
  - (b) as respects that class in circumstances specified in the regulations.
- (5) Any notice under subsection (3) is to be in such form as may be prescribed in the regulations but must in any event contain the information mentioned in paragraphs (a) to (d) of section 35B(4).
- (6) A planning authority receiving such a notice may, if they do not consider that it contains sufficient information to enable them to provide the statement sought, request the prospective applicant to provide additional information specified by them.

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- (7) Where such a notice is given it is the duty of the planning authority to provide the requisite statement within the period of 21 days after it is given (or within such other period as may be substituted for that period by the regulations).
- (8) The period of 21 days mentioned in subsection (7) (or any other period substituted for that period) does not include any period between a request for information being made under subsection (6) and that information being provided to the planning authority
- (9) If the authority respond by stating that in their opinion the development is not of a class prescribed under subsection (1), then provided that the application for planning permission for the development in question is submitted within 12 months after the notice was given and does not differ materially from the information regarding it contained in the notice and mentioned in paragraphs (a) to (c) of section 35B(4) the prospective applicant need not comply with section 35B.
- (10) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” or “the authority” were a reference to the Scottish Ministers.

#### Textual Amendments

**F37** Ss. 35A-35C inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 11**, 59(2) (with [S.S.I. 2009/101](#), **arts. 1(1), 2**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**; [S.S.I. 2009/100](#), **art. 2**, sch.

### **35B Pre-application consultation: compliance**

- (1) The following subsections apply where compliance with this section is required by virtue of section 35A(1).
- (2) The prospective applicant is to give notice (to be known as a “proposal of application notice”) to the planning authority that an application for planning permission for the development is to be submitted.
- (3) A period of at least 12 weeks must elapse between giving the notice and submitting any such application.
- (4) A proposal of application notice is to be in such form, and have such content, as may be prescribed but must in any event contain—
  - (a) a description in general terms of the development to be carried out,
  - (b) if the site at which the development is to be carried out has a postal address, that address,
  - (c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site, and
  - (d) details as to how the prospective applicant may be contacted and corresponded with.
- (5) Regulations may—
  - (a) require that the proposal of application notice be given to persons specified in the regulations,
  - (b) specify—

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- (i) persons who are to be consulted as respects a proposed application, and
  - (ii) what form that consultation is to take.
- (6) Different provision may be made under subsection (5) for different cases or classes of case and for different areas.
- (7) The planning authority may, provided that they do so within the period of 21 days after receiving the proposal of application notice, notify the prospective applicant that they require (either or both)—
- (a) that the proposal of application notice be given to persons additional to those specified under subsection (5) (specifying in the notification who those persons are),
  - (b) that consultation additional to any required by virtue of subsection (5) be undertaken as regards the proposed development (specifying in the notification what form that consultation is to take).
- (8) In considering whether to give notification under subsection (7) the planning authority are to have regard to the nature, extent and location of the proposed development and to the likely effects, at and in the vicinity of that location, of its being carried out.
- (9) In the case of an application for planning permission made to the Scottish Ministers, this section has effect as if any reference to the “planning authority” were a reference to the Scottish Ministers.

#### Textual Amendments

**F37** Ss. 35A-35C inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 11, 59(2)** (with [S.S.I. 2009/101](#), arts. 1(1), 2); [S.S.I. 2008/411](#), art. 2(2)(3)(a); [S.S.I. 2009/100](#), art. 2, sch.

### 35C Pre-application consultation report

- (1) A person who, before submitting an application for planning permission for a development, is required to comply with section 35B and who proceeds to submit that application is to prepare a report (a “pre-application consultation report”) as to what has been done to effect such compliance.
- (2) A pre-application consultation report is to be in such form as may be prescribed.]

#### Textual Amendments

**F37** Ss. 35A-35C inserted (12.12.2008 for specified purposes, 6.4.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 11, 59(2)** (with [S.S.I. 2009/101](#), arts. 1(1), 2); [S.S.I. 2008/411](#), art. 2(2)(3)(a); [S.S.I. 2009/100](#), art. 2, sch.

### 36 Registers of applications etc.

- (1) Every planning authority shall keep, in such manner as may be prescribed by regulations or a development order, a register containing such information as may be so prescribed with respect to—

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- (a) applications for planning permission and for approval required by the regulations or order made to that authority,
  - [<sup>F38</sup>(aa) any variation, by virtue of section 32A(1), to such an application,
  - (ab) documents to which regard was had in dealing with each such application (including documents to which regard was had in considering whether to agree to such a variation),
  - (ac) material considerations to which regard was had by virtue of section 37(2),
  - (ad) any pre-application consultation report prepared under section 35C(1) and submitted with such an application,]
  - (b) the manner in which [<sup>F39</sup>each such application has been dealt with and a copy of any notice given by virtue of paragraph (d) or (e) of section 43(1) in respect of an application (or, in the case of an application in respect of which notice does not fall to be so given, a statement of the reasons on which the authority based their decision on the application)], <sup>F40</sup>...
  - [<sup>F41</sup>(ba) applications under section 242A(2) for planning permission in respect of development in the district of that authority,]
  - [<sup>F42</sup>(bb) the grant or refusal of planning permission by the Scottish Ministers under section 31A in respect of development in the district of that authority,]
  - (c) simplified planning zone schemes relating to zones in the authority's area, [<sup>F43</sup>and
  - (d) any planning obligation entered into under section 75]
- (2) The regulations or the order may make provision for the register to be kept in two or more parts, each part containing such information relating to applications mentioned in subsection (1)(a) as may be prescribed by the regulations or order.
- (3) The regulations or the order may also make provision—
- (a) for a specified part of the register to contain copies of applications [<sup>F44</sup>and variations to applications] and of any plans or drawings submitted with [<sup>F45</sup>such applications and variations and copies of documents to which regard was had in dealing with such applications and in considering whether to agree to such variations], and
  - (b) for the entry relating to any application, and everything relating to it, to be removed from that part of the register when the application (including any appeal [<sup>F46</sup>or review] arising out of it) has been finally disposed of (without prejudice to the inclusion of any different entry relating to it in another part of the register).
- (4) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

#### Textual Amendments

- F38** S. 36(1)(aa)-(ad) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 12(a)(i), 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F39** Words in s. 36(1)(b) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 12(a)(ii), 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F40** Word in s. 36(1)(b) repealed (1.4.2007) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 12(a)(iii), 59(2); S.S.I. 2007/130, art. 2(2), sch.

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- F41** S. 36(1)(ba) inserted (1.4.2007) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(a)(iv)**, 59(2); S.S.I. 2007/130, art. 2(2), sch.
- F42** S. 36(1)(bb) inserted (1.4.2007) by Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 (S.S.I. 2007/268), arts. 1(1), **8(4)** (with art. 14(3))
- F43** S. 36(1)(d) and word inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(a)(v)**, 59(2); S.S.I. 2008/411, art. 2(2)(3) (a); S.S.I. 2009/219, art. 2, sch.
- F44** Words in s. 36(3)(a) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(b)(i)**, 59(2); S.S.I. 2008/411, art. 2(2)(3) (a); S.S.I. 2009/219, art. 2, sch.
- F45** Words in s. 36(3)(a) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 12(b)(ii)**, 59(2); S.S.I. 2008/411, art. 2(2)(3) (a); S.S.I. 2009/219, art. 2, sch.
- F46** Words in s. 36(3)(b) inserted (3.8.2009) by Planning etc. (Scotland) Act 2006 (Consequential Amendments) Order 2009 (S.S.I. 2009/256), arts. 1(3), **2(2)**

### [<sup>F47</sup>36A Lists of applications

- (1) Every planning authority are, in such manner as may be prescribed by regulations or a development order, to keep a list of—
  - (a) the applications mentioned in section 36(1)(a) which are made to them (including any variations, by virtue of section 32A(1), to those applications),
  - (b) the applications mentioned in section 36(1)(ba) which are made in respect of development in their district, and
  - (c) the proposal of application notices received by them under section 35B(2).
- (2) Weekly, or at such intervals as may be so prescribed, the authority are—
  - (a) to revise the list by removing from it the entries relating to—
    - (i) such applications as have been determined, and
    - (ii) such proposal of application notices as have ceased to be current, and
  - (b) in such manner as may be so prescribed (or, if and in so far as the regulations or development order may admit, in such manner as the authority consider appropriate), to publish that revised list.
- (3) The availability of the list is to be advertised by the authority in a local newspaper at such intervals as may be so prescribed.
- (4) The regulations or development order may make provision as to how any costs incurred by the authority by virtue of this section are to be recovered from the applicants.
- (5) In this section “publish”, without prejudice to that expression's generality, may include publish by electronic means (as for example by means of the internet).
- (6) For the purposes of subsection (2)(a)(ii), a notice ceases to be current when—
  - (a) an application for planning permission is submitted for the development in question,
  - (b) the prospective applicant gives notice in writing under this paragraph to the planning authority that no application is to be submitted for the development in question, or
  - (c) 12 months have elapsed since the date on which the proposal of application notice was given.]



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#### Textual Amendments

- F47** S. 36A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 13, 59\(2\)](#) (with [S.S.I. 2009/222](#), art. 5); [S.S.I. 2008/411](#), art. 2(2)(3)(a); [S.S.I. 2009/219](#), art. 2, sch.

### *Determination of applications*

## **37 Determination of applications: general considerations.**

- (1) Where an application is made to a planning authority for planning permission—
  - (a) subject to sections [\[<sup>F48</sup>27B\(2\) and 59\(1\)\(b\)\]](#), they may grant planning permission, either unconditionally or subject to such conditions as they think fit, or
  - (b) they may refuse planning permission.
- (2) In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.
- (3) Subsection (1) has effect subject to sections 34 and 35 and to the following provisions of this Act, and to sections 59(1), 60 and 65 of the <sup>M5</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- (4) The date of the grant or refusal of—
  - (a) planning permission,
  - (b) an approval required by a development order, or
  - (c) any consent, agreement or approval required by a condition imposed on the grant of planning permission,shall be the date on which the [\[<sup>F49</sup>notice of the\]](#) planning authority's decision bears to have been signed on behalf of the authority.

#### Textual Amendments

- F48** Words in s. 37(1)(a) substituted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(5\)\(a\), 59\(2\)](#); [S.S.I. 2009/219](#), art. 2, sch.
- F49** Words in s. 37(4) inserted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(5\)\(b\), 59\(2\)](#); [S.S.I. 2009/219](#), art. 2, sch.

#### Marginal Citations

- M5** 1997 c. 9.

## **38 Consultations in connection with determination of applications.**

- (1) In determining any application [\[<sup>F50</sup>mentioned in section 34\(2\)\]](#), the planning authority shall take into account any representations relating to that application which are received by them before the expiry of any period prescribed under subsection [\[<sup>F51</sup>\(4\)\(a\)\]](#) of that section.

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- (2) Where an application for planning permission is accompanied by such a certificate as is mentioned in section 35(1)(b), regulations or a development order may—
  - (a) provide that a planning authority shall not determine an application for planning permission before the end of such period as may be prescribed;
  - (b) require a planning authority—
    - (i) to take into account in determining such an application such representations, made within such period, as may be prescribed, and
    - (ii) to give to any person whose representations have been taken into account such notice as may be prescribed of their decision.
- (3) Regulations or a development order making any provision by virtue of this section may make different provision for different cases or different classes of development.
- (4) Before a planning authority grant planning permission for the use of land as a caravan site they shall, unless they are also the authority with power to issue a site licence for that land, consult the local authority with that power.
- (5) In this section “site licence” means a licence under Part 1 of the <sup>M6</sup>Caravan Sites and Control of Development Act 1960 authorising the use of land as a caravan site.

#### Textual Amendments

- F50** Words in s. 38(1) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 10(2)(a), 59(2)** (with [S.S.I. 2009/222](#), **art. 4**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**, [S.S.I. 2009/219](#), **art. 2**, **sch.**
- F51** Word in s. 38(1) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 10(2)(b), 59(2)** (with [S.S.I. 2009/222](#), **art. 4**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**, [S.S.I. 2009/219](#), **art. 2**, **sch.**

#### Marginal Citations

- M6** 1960 c. 62.

### [<sup>F52</sup>38A Pre-determination hearings

- (1) Regulations or a development order may provide that, before determining an application for planning permission for a development of a class prescribed in the regulations or order, a planning authority are to give the applicant and any person so prescribed an opportunity of appearing before and being heard by a committee of the authority.
- (2) The procedures in accordance with which any such hearing is arranged and conducted (including, without prejudice to the generality of this subsection, procedures for ensuring relevance and avoiding repetition) and any other procedures consequent upon the hearing are to be such as the authority consider appropriate.
- (3) Any right of attendance at the hearing (other than for the purpose of appearing before and being heard by the committee) is to be such as the authority consider appropriate.
- (4) In relation to an application other than is provided for in regulations or a development order under subsection (1), a planning authority may elect to give the applicant and any other person an opportunity such as is mentioned in that subsection; and if the authority do so elect, subsections (2) and (3) apply accordingly.]



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### Textual Amendments

**F52** S. 38A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 14(1), 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

### <sup>F53</sup> 39 [F53 Declining to determine an application]

[F54(1) A planning authority may decline to determine an application (in this subsection referred to as the “current application”) for planning permission for the development of any land—

- (a) if—
  - (i) in the period of two years ending with the date on which the current application is received, the Scottish Ministers have refused a similar application referred to them under section 46 or have dismissed an appeal against the refusal of, or an appeal under section 47(2) in respect of, a similar application, and
  - (ii) in the opinion of the authority there has not, since the Scottish Ministers refused the similar application or dismissed the appeal, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (b) if—
  - (i) in that period of two years the planning authority have refused more than one similar application,
  - (ii) there has been no appeal to the Scottish Ministers against either (or as the case may be any) of those refusals, and
  - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (c) if—
  - (i) in that period of two years the planning authority have refused more than one similar application,
  - (ii) there has been an appeal to the Scottish Ministers against either (or as the case may be any) of those refusals but as at the time the current application is received no such appeal has yet been determined, and
  - (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,
- (d) if—
  - (i) in that period of two years there have been appeals under section 47(2) in respect of more than one similar application but as at the time the current application is received no such appeal has yet been determined, and
  - (ii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the appeals was made, been any significant change in the development plan (so far as material to the current application) or in any other material consideration, or

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- (e) if—
- (i) in that period of two years two similar applications have been made to the planning authority,
  - (ii) the planning authority have refused one of those applications and there has been an appeal under section 47(2) in respect of the other but as at the time the current application is received the appeal under that section has yet to be determined as has the appeal (if any) against the refusal, and
  - (iii) in the opinion of the authority there has not, since the refusal or since the appeal was made (whichever was the more recent), been any significant change in the development plan (so far as material to the current application) or in any other material consideration.
- (1A) A planning authority or the Scottish Ministers must decline to determine an application for planning permission for the development of any land if, in their opinion—
- (a) compliance with section 35B was required as respects the development, and
  - (b) there has not been such compliance.
- (1B) But before deciding whether, under subsection (1A), an application must be declined the authority or as the case may be the Scottish Ministers may request the applicant to provide such additional information as they may specify.
- (1C) Where, under subsection (1A), a planning authority or the Scottish Ministers decline to determine an application they are to advise the applicant of the reason for their being of the opinion mentioned in that subsection.
- (1D) Subsection (1A) is subject to section 35A(9).]
- (2) For the purposes of this section an application for planning permission for the development of any land shall be taken to be similar to a later application only if the development and the land to which the applications relate are in the opinion of the planning authority the same or substantially the same.
- <sup>F55</sup>(3) . . . . .

#### Textual Amendments

- F53** S. 39 heading substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 15(c), 59(2)** (with [S.S.I. 2009/222](#), **art. 6**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**, [S.S.I. 2009/219](#), **art. 2**, sch.
- F54** S. 39(1)-(1D) substituted for s. 39(1) (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 15(a), 59(2)** (with [S.S.I. 2009/222](#), **art. 6**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**, [S.S.I. 2009/219](#), **art. 2**, sch.
- F55** S. 39(3) repealed (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 15(b), 59(2)** (with [S.S.I. 2009/222](#), **art. 6**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**, [S.S.I. 2009/219](#), **art. 2**, sch.

## 40 Assessment of environmental effects.

- (1) The Secretary of State may by regulations make provision about the consideration to be given, before planning permission for development of any class specified in the regulations is granted, to the likely environmental effects of the proposed development.

*Status: Point in time view as at 18/03/2011.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The regulations—
- (a) may make the same provision as, or provision similar or corresponding to, any provision made, for the purposes of any Community obligation of the United Kingdom about the assessment of the likely effects of development on the environment, under section 2(2) of the <sup>M7</sup>European Communities Act 1972, and
  - (b) may make different provisions for different classes of development.
- (3) Where a draft of regulations made in exercise both of the power conferred by this section and the power conferred by section 2(2) of the European Communities Act 1972 is approved by resolution of each House of Parliament, no statutory instrument containing such regulations shall be subject to annulment by virtue of section 275(3).
- [<sup>F56</sup>(4) Without prejudice to subsection (1), before planning permission is granted by a planning authority in respect of anything which is development by virtue of section 26(6), the authority must consider the effect of the proposed development on the water environment.
- (5) In subsection (4), “ water environment ” has the same meaning as in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3). ]

#### Textual Amendments

**F56** S. 40(4)(5) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), **ss. 24(3)**, 38(1); S.S.I. 2007/50, art. 2

#### Marginal Citations

**M7** 1972 c. 68.

## 41 Conditional grant of planning permission.

- (1) Without prejudice to the generality of section 37(1) to (3), conditions may be imposed on the grant of planning permission under that section—
- (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;
  - (b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.
- (2) Conditions may not be imposed by a planning authority under subsection (1)(a) for regulating the development or use of any land within the area of another planning authority except with the consent of that authority.
- (3) Subject to paragraph 1(6)(a) of Schedule 3, a planning permission which is granted subject to such a condition as is mentioned in subsection (1)(b) is in this Act referred to as “planning permission granted for a limited period”.

*Status: Point in time view as at 18/03/2011.*

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- (4) Where—
  - (a) planning permission is granted for development consisting of or including the carrying out of building or other operations subject to a condition that the operations shall be commenced not later than a time specified in the condition, and
  - (b) any building or other operations are commenced after the time so specified, the commencement and carrying out of those operations do not constitute development for which that permission was granted.
- <sup>F57</sup>(5) .....
- (6) Part I of Schedule 3 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed on the grant of planning permission for development consisting of the winning and working of minerals.

**Textual Amendments**  
**F57** S. 41(5) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\), s. 59\(2\), sch.](#) (with S.S.I. 2009/222, [art. 10\(2\)\(a\)](#)); S.S.I. 2009/219, art. 2, sch.

**42 Determination of applications to develop land without compliance with conditions previously attached.**

- (1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- (2) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
  - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;
  - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- (3) Special provision may be made with respect to such applications—
  - <sup>F58</sup>(a) .....
  - (b) by a development order as regards the procedure to be followed in connection with the application.
- (4) This section does not apply if the previous permission was granted subject to a condition as to the time within which the development to which it related was to be begun, and that time has expired without the development having been begun.

**Textual Amendments**  
**F58** S. 42(3)(a) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\), s. 59\(2\), sch.](#); S.S.I. 2009/219, art. 2, sch.

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### 43 Directions etc. as to method of dealing with applications.

- (1) Provision may be made by regulations or a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by planning authorities, and in particular—
- (a) for enabling the Secretary of State to give directions restricting the grant of planning permission by the planning authority, either indefinitely or during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified;
  - [<sup>F59</sup>(aa) for enabling the Scottish Ministers to give directions to the planning authority requiring them, in respect of any such development, or in respect of development of any such class, as may be specified in the directions—
    - (i) to consider, where the authority are minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and
    - (ii) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed;]
  - (b) for authorising the planning authority, in such cases and subject to such conditions as may be prescribed by the regulations or the order, or by directions given by the Secretary of State under the regulations or the order, to grant planning permission for development which does not accord with the provisions of the development plan;
  - [<sup>F60</sup>(bb) for enabling the planning authority, in the course of their consideration of an application, to require from the applicant particulars, documents, materials or evidence which they consider they require to enable them to deal with the application (being particulars, documents, materials or evidence additional to any which, by virtue of section 32(2), as the case may be, was included in, accompanied or was provided in support of anything in, or relating to, the application);]
  - (c) for requiring the planning authority, before granting or refusing planning permission for any development, to consult such authorities or persons as may be prescribed by the regulations or the order or by directions given by the Secretary of State under the regulations or the order;
  - (d) for requiring the planning authority to give to any applicant for planning permission, within such time as may be prescribed by the regulations or the order, such notice as may be so prescribed as to the manner in which his application has been dealt with;
  - (e) for requiring the planning authority to give any applicant for any consent, agreement or approval required by a condition imposed on a grant of planning permission notice of their decision on his application, within such time as may be so prescribed;
  - (f) for requiring [<sup>F61</sup>, or enabling directions to be made requiring, the planning authority to give to the Scottish Ministers and to such other persons as may be prescribed by or under the regulations, order or directions], such information as may be so prescribed with respect to applications for planning permission made to the authority, including information as to the manner in which any such application has been dealt with.

[<sup>F62</sup>(1A) Any notice given by virtue of paragraph (d) or (e) of subsection (1)—

*Status: Point in time view as at 18/03/2011.*

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- (a) is to include a statement of—
    - (i) the terms of the planning authority's decision,
    - (ii) any conditions to which that decision is subject, and
    - (iii) the reasons on which the authority based that decision, and
  - (b) may include such other information as may be prescribed by the regulations or the order.]
- (2) Paragraphs (d) and (f) of subsection (1) shall apply in relation to applications for an approval required by regulations under this Act or a development order as they apply in relation to applications for planning permission.
- [<sup>F63</sup>(3) Paragraphs (a) and (f) of that subsection shall apply in relation to applications under section 75A(2) as they apply in relation to applications for planning permission.
- (4) For the purposes of the application provided for in subsection (3), the reference in paragraph (a) of subsection (1) to restricting the grant of planning permission is to be construed as a reference to restricting the giving of any agreement under subsection (2) of section 75A or the making of any determination under subsection (4) of that section.]

#### Textual Amendments

- F59** S. 43(1)(aa) inserted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(i)**, 59(2); S.S.I. 2007/130, art. 2(1)
- F60** S. 43(1)(bb) inserted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(ii)**, 59(2); S.S.I. 2007/130, art. 2(1)
- F61** Words in s. 43(1)(f) substituted (1.3.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(a)(iii)**, 59(2); S.S.I. 2007/130, art. 2(1)
- F62** S. 43(1A) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(b)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.
- F63** S. 43(3)(4) added (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 16(c)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

#### [<sup>F64</sup>43A Local developments: schemes of delegation

- (1) A planning authority are—
- (a) as soon as practicable after the coming into force of section 17 of the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), and thereafter—
    - (i) whenever required to do so by the Scottish Ministers, or
    - (ii) subject to sub-paragraph (i), at such intervals as may be provided for in regulations under this section,
 to prepare a scheme (to be known as a “scheme of delegation”) by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by them for the purposes of this section instead of by them, and
  - (b) to keep under review the scheme so prepared.

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- (2) Other than for the purposes of subsections (8) to (16) or section 47, the determination of any person so appointed is to be treated as that of the authority.
- (3) References in subsection (1) to a development do not include references to a development of a class mentioned in section 38A(1).
- (4) Without prejudice to subsection (1)(a)(ii), regulations under this section may make provision as to—
  - (a) the form and content of, and
  - (b) the procedures for preparing and adopting, a scheme of delegation.
- (5) Where an application for planning permission falls to be determined by a person so appointed, sections 37(1) to (3), 38, 39, 41(1) and (2) and 42 and Part 1 of Schedule 3 apply, with any necessary modifications (including, in the case of that Part, the modification mentioned in subsection (18)), as they apply to an application which falls to be determined by the planning authority.
- (6) The planning authority may, if they think fit, decide themselves to determine an application which would otherwise fall to be determined by a person so appointed.
- (7) Any such decision must include a statement of the reasons for which it has been taken; and a copy of the decision is to be served on the applicant.
- (8) Where a person so appointed—
  - (a) refuses an application for planning permission or for consent, agreement or approval,
  - (b) grants it subject to conditions, or
  - (c) has not determined it within such period as may be prescribed by regulations or a development order,the applicant may require the planning authority to review the case.
- (9) Where a requirement to review is made by virtue of paragraph (c) of subsection (8), the person so appointed is, for the purposes of the review, to be deemed to have decided to refuse the application.
- (10) Regulations or a development order may make provision as to the form and procedures of any review conducted by virtue of subsection (8).
- (11) Without prejudice to the generality of subsection (10), the regulations or order may—
  - (a) make different provision for different cases or classes of case,
  - (b) make different provision for different stages of a case,
  - (c) make provision in relation to oral or written submissions and to documents in support of such submissions,
  - (d) make provision in relation to time limits (including a time limit for requiring the review), and
  - (e) require the planning authority to give to the person who has required the review such notice as may be prescribed by the regulations or the order as to the manner in which that review has been dealt with.
- (12) Any notice given by virtue of paragraph (e) of subsection (11)—
  - (a) is to include a statement of—



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- (i) the terms in which the planning authority have decided the case reviewed, and
  - (ii) the reasons on which the authority based that decision, and
  - (b) may include such other information as may be prescribed by the regulations or the order.
- (13) The provision which may be made by virtue of subsections (10) and (11) includes provision as to—
- (a) the making of oral submissions, or as to any failure to make such submissions or to lodge documents in support of such submissions, or
  - (b) the lodging of, or as to any failure to lodge, written submissions or documents in support of such submissions,
- and, subject to section 43B, as to what matters may be raised in the course of the review.
- (14) The provision which may be made by virtue of subsections (10) and (11) includes provision that the manner in which the review, or any stage of the review, is to be conducted (as for example whether oral submissions are to be made or written submissions lodged) is to be at the discretion of the planning authority.
- (15) The planning authority may uphold, reverse or vary a determination reviewed by them by virtue of subsection (8).
- (16) Subject to subsection (17) and except as provided under section 239, the decision of a planning authority in a case reviewed under this section is final.
- (17) Where a requirement to review is made by virtue of paragraph (c) of subsection (8) and the planning authority have not conducted the review within such period as may be prescribed by regulations or a development order, the authority are to be deemed to have decided to refuse the application and section 47(1) is to apply accordingly.
- (18) The modification is that, in paragraph 1(6) of Schedule 3, for paragraph (b) there is substituted—
- “(b) is to be regarded for the purposes of section 43A as a condition imposed by a decision of the appointed person, and may accordingly be the subject of a review under subsection (8) of that section.”.

#### Textual Amendments

**F64** Ss. 43A, 43B inserted (12.12.2008 for specified purposes, 6.4.2009 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 17, 59\(2\)](#) (with [S.S.I. 2009/222](#), art. 7(1)(b)(2)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/100](#), art. 2, sch., [S.S.I. 2009/219](#), art. 2, sch.

#### 43B Matters which may be raised in a review under section 43A(8)

- (1) In a review under section 43A(8), a party to the proceedings is not to raise any matter which was not before the appointed person at the time the determination reviewed was made unless that party can demonstrate—
- (a) that the matter could not have been raised before that time, or
  - (b) that its not being raised before that time was a consequence of exceptional circumstances.



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- (2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—
- (a) the provisions of the development plan, or
  - (b) any other material consideration.]

#### Textual Amendments

**F64** Ss. 43A, 43B inserted (12.12.2008 for specified purposes, 6.4.2009 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 17, 59(2)** (with [S.S.I. 2009/222](#), art. 7(1)(b)(2)); [S.S.I. 2008/411](#), art. 2(2)(3)(a), [S.S.I. 2009/100](#), art. 2, sch., [S.S.I. 2009/219](#), art. 2, sch.

#### 44 Effect of planning permission.

- (1) Without prejudice to the provisions of this Part as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it.
- (2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used.
- (3) If no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.

#### <sup>F65</sup>45 Duty to draw attention to certain provisions for benefit of disabled.

.....

#### Textual Amendments

**F65** [S. 45](#) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), **sch.**; [S.S.I. 2009/219](#), art. 2, sch.

*Secretary of State's powers in relation to planning applications and decisions*

#### 46 Call-in of applications by Secretary of State.

- (1) The Secretary of State may give directions requiring any such applications as are mentioned in section 34(2) to be referred to him instead of being dealt with by planning authorities.

[<sup>F66</sup>(1A) A direction under subsection (1) may be withdrawn or modified by a subsequent direction.]

- (2) A direction under this section—
- (a) may be given either to a particular planning authority or to planning authorities generally, and
  - (b) may relate either to a particular application or to applications of a class specified in the direction.

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- (3) Any application in respect of which a direction under [F67subsection (1)] has effect shall be referred to the Secretary of State.
- (4) F68 ... where an application is referred to the Secretary of State under this section—
- (a) sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 and paragraphs 2 to 6 of Schedule 3 shall apply, with any necessary modifications, as they apply to an application which falls to be determined by the planning authority, and
  - (b) regulations or a development order may apply, with or without modifications, to an application so referred any requirements imposed by the regulations or order by virtue of section 34 or 35.
- F69(5) .....
- F69(6) .....
- (7) The decision of the Secretary of State on any application referred to him under this section shall be final.

#### Textual Amendments

- F66** S. 46(1A) inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 18(a)**, 59(2) (with [S.S.I. 2009/222](#), **art. 8**); [S.S.I. 2007/130](#), art. 2(2), sch.
- F67** Words in s. 46(3) substituted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 18(b)**, 59(2) (with [S.S.I. 2009/222](#), **art. 8**); [S.S.I. 2007/130](#), art. 2(2), sch.
- F68** Words in s. 46(4) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), **sch.** (with [S.S.I. 2009/222](#), **art. 8**); [S.S.I. 2009/219](#), art. 2, sch.
- F69** S. 46(5)(6) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), **sch.** (with [S.S.I. 2009/222](#), **art. 8**); [S.S.I. 2009/219](#), art. 2, sch.

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

- C9** S. 46 applied (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(7)(a)**
- C10** S. 46(1)-(4) modified (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(3)(a)** (with art. 3(4)(5)(6))

## 47 Right to appeal against planning decisions and failure to take such decisions.

- (1) Where a planning authority—
- (a) refuse an application for planning permission or grant it subject to conditions,
  - (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions, or
  - (c) refuse an application for any approval of that authority required under a development order or grant it subject to conditions,
- the applicant may appeal to the Secretary of State[F70against the decision].
- [F71(1A) But subsection (1) does not apply in relation to any such action on the part of a planning authority as is mentioned in section 237(3A).]
- (2) A person who has made such an application may also appeal to the Secretary of State if the planning authority have not given to the applicant—
- (a) notice of their decision on the application,

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- (b) notice that they have exercised their power under section 39 to decline to determine the application, or
  - (c) notice that the application has been referred to the Secretary of State in accordance with directions given under section 46,
- within such period as may be prescribed by regulations or a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.
- (3) Any appeal under this section shall be made by notice served within such time and in such manner as may be prescribed by regulations or a development order.
  - (4) The time prescribed for the service of such a notice must not be less than—
    - (a) 28 days from the date of the notification of the decision, or
    - (b) in the case of an appeal under subsection (2), 28 days from the end of the period prescribed as mentioned in subsection (2) or, as the case may be, the extended period mentioned in that subsection.
  - (5) For the purposes of the application of sections 48(1) and 218(1)(b) and paragraph 2(2)(c) of Schedule 16 in relation to an appeal under subsection (2), the authority shall be deemed to have decided to refuse the application in question.

#### Textual Amendments

- F70** Words in s. 47(1) added (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 19\(1\)\(a\), 59\(2\)](#) (with [S.S.I. 2009/222](#), [art. 9\(2\)\(a\)](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/219](#), [art. 2](#), [sch.](#)
- F71** S. 47(1A) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 19\(1\)\(b\), 59\(2\)](#) (with [S.S.I. 2009/222](#), [art. 9\(2\)\(a\)](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/219](#), [art. 2](#), [sch.](#)

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

- C11** S. 47 modified (1.8.1999) by [S.S.I. 1999/1](#), [reg. 45](#)
- C12** S. 47 applied (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(Transitional Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/269\)](#), [arts. 1\(1\), 3\(7\)](#)

#### [<sup>F72</sup>47A Matters which may be raised in an appeal under section 47(1)]

- (1) In an appeal under section 47(1), a party to the proceedings is not to raise any matter which was not before the planning authority at the time the decision appealed against was made unless that party can demonstrate—
  - (a) that the matter could not have been raised before that time, or
  - (b) that its not being raised before that time was a consequence of exceptional circumstances.
- (2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—
  - (a) the provisions of the development plan, or
  - (b) any other material consideration.]

*Status: Point in time view as at 18/03/2011.*

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### Textual Amendments

**F72** S. 47A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 19(2), 59(2) (with S.S.I. 2009/222, art. 9(1)(b)); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

## 48 Determination of appeals.

- (1) On an appeal under section 47 the Secretary of State may—
- (a) allow or dismiss the appeal, or
  - (b) reverse or vary any part of the decision of the planning authority (whether the appeal relates to that part of it or not),
- and may deal with the application as if it had been made to him in the first instance.

<sup>F73</sup>(2) .....

- (3) If the Secretary of State proposes to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, he shall give notice of his intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations about his proposals.

<sup>F74</sup>(4) .....

- (5) <sup>F75</sup>... in relation to an appeal to the Secretary of State under section 47—
- (a) sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 and Part I of Schedule 3 shall apply, with any necessary modifications, as they apply in relation to an application for planning permission which falls to be determined by the planning authority, and
  - (b) regulations or a development order may apply, with or without modifications, to such an appeal any requirements imposed by the regulations or order by virtue of section 34 or 35.

- (6) The decision of the Secretary of State on such an appeal shall be final.

- (7) If, before or during the determination of such an appeal in respect of an application for planning permission to develop land, the Secretary of State forms the opinion that, having regard to the provisions of sections 37 and 41(1) and (2), any regulations made under this Act in that regard and of any development order and any directions given under such regulations or order, planning permission for that development—

- (a) could not have been granted by the planning authority, or
  - (b) could not have been granted otherwise than subject to the conditions imposed,
- he may decline to determine the appeal or to proceed with the determination.

- (8) If at any time before or during the determination of an appeal under section 47 it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may—

- (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal, and
- (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.

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- (9) Schedule 4 applies to appeals under section 47, including appeals under that section as applied by or under any other provision of this Act.

#### Textual Amendments

- F73** S. 48(2) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with S.S.I. 2009/222, [art. 9\(2\)\(b\)](#)); S.S.I. 2009/219, art. 2, sch.
- F74** S. 48(4) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with S.S.I. 2009/222, [art. 9\(2\)\(b\)](#)); S.S.I. 2009/219, art. 2, sch.
- F75** Words in s. 48(5) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with S.S.I. 2009/222, [art. 9\(2\)\(b\)](#)); S.S.I. 2009/219, art. 2, sch.

### *Simplified planning zones*

#### **49 Simplified planning zones.**

- (1) A simplified planning zone is an area in respect of which a simplified planning zone scheme is in force.
- (2) The adoption or approval of a simplified planning zone scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission—
  - (a) for development specified in the scheme, or
  - (b) for development of any class so specified.
- (3) Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme.

#### **50 Making of simplified planning zone schemes.**

- (1) Every planning authority shall consider, as soon as practicable after 1st October 1987, the question for which part or parts of their district a simplified planning zone scheme is desirable, and then shall keep that question under review.
- (2) If as a result of their original consideration or of any such review a planning authority decide that it is desirable to prepare a scheme for any part of their district they shall do so; and a planning authority may at any time decide—
  - (a) to make a simplified planning zone scheme,
  - (b) to alter a scheme adopted by them, or
  - (c) with the consent of the Secretary of State, to alter a scheme approved by him.
- (3) Schedule 5 has effect with respect to the making and alteration of simplified planning zone schemes and other related matters.

#### **51 Simplified planning zone schemes: conditions and limitations on planning permission.**

- (1) The conditions and limitations on planning permission which may be specified in a simplified planning zone scheme may include—
  - (a) conditions or limitations in respect of all development permitted by the scheme or in respect of particular descriptions of development so permitted, and

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- (b) conditions or limitations requiring the consent, agreement or approval of the planning authority in relation to particular descriptions of permitted development.
- (2) Different conditions or limitations may be specified for different cases or classes of case.
- (3) Nothing in a simplified planning zone scheme shall affect the right of any person—
  - (a) to do anything not amounting to development, or
  - (b) to carry out development for which planning permission is not required or for which permission has been granted otherwise than by the scheme.
- (4) No limitation or restriction subject to which permission has been granted otherwise than under the scheme shall affect the right of any person to carry out development for which permission has been granted under the scheme.

## **52 Duration of simplified planning zone scheme.**

- (1) A simplified planning zone scheme shall take effect on the date of its adoption or approval and shall cease to have effect at the end of the period of 10 years beginning with that date.
- (2) When the scheme ceases to have effect planning permission under it shall also cease to have effect except in a case where the development authorised by it has been begun.

## **53 Alteration of simplified planning zone scheme.**

- (1) This section applies where alterations to a simplified planning zone scheme are adopted or approved.
- (2) The adoption or approval of alterations providing for the inclusion of land in the simplified planning zone has effect to grant in relation to that land, or such part of it as is specified in the scheme, planning permission for development so specified or of any class so specified.
- (3) The adoption or approval of alterations providing for the grant of planning permission has effect to grant such permission in relation to the simplified planning zone, or such part of it as is specified in the scheme, for development so specified or development of any class so specified.
- (4) The adoption or approval of alterations providing for the withdrawal or relaxation of conditions, limitations or restrictions to which planning permission under the scheme is subject has effect to withdraw or relax the conditions, limitations or restrictions immediately.
- (5) The adoption or approval of alterations providing for—
  - (a) the exclusion of land from the simplified planning zone,
  - (b) the withdrawal of planning permission, or
  - (c) the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject,
 has effect to withdraw permission, or to impose the conditions, limitations or restrictions, with effect from the end of the period of 12 months beginning with the date of the adoption or approval.

*Status: Point in time view as at 18/03/2011.*

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- (6) The adoption or approval of alterations to a scheme does not affect planning permission under the scheme in any case where the development authorised by it has been begun.

#### **54 Exclusion of certain descriptions of land or development.**

- (1) The following descriptions of land may not be included in a simplified planning zone—
- (a) land in a conservation area;
  - (b) land in a National Scenic Area;
  - (c) land identified in the development plan for the area as part of a green belt;
  - [<sup>F76</sup>(d) land in a site of special scientific interest;
  - (e) land in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect;]
- (2) Where land included in a simplified planning zone becomes land of a description mentioned in subsection (1), that subsection does not have effect to exclude it from the zone.
- (3) The Secretary of State may by order provide that no simplified planning zone scheme shall have effect to grant planning permission—
- (a) in relation to an area of land specified in the order or to areas of land of a description so specified, or
  - (b) for development of a description specified in the order.
- (4) An order under subsection (3) has effect to withdraw such planning permission under a simplified planning zone scheme already in force with effect from the date on which the order comes into force, except in a case where the development authorised by the permission has been begun.

#### **Textual Amendments**

**F76** S. 54(1)(d)(e) substituted for s. 54(1)(d) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004](#) (asp 6), s. 59(2), [Sch. 7 para. 12\(1\)](#) (with s. 55(2)); S.S.I. 2004/495, art. 2

#### *Enterprise zone schemes*

#### **55 Planning permission for development in enterprise zones.**

- (1) An order designating an enterprise zone under Schedule 32 to the <sup>M8</sup>Local Government, Planning and Land Act 1980 shall (without more) have effect on the date on which the order designating the zone takes effect to grant planning permission for development specified in the scheme or for development of any class so specified.
- (2) The approval of a modified scheme under paragraph 11 of that Schedule shall (without more) have effect on the date on which the modifications take effect to grant planning permission for development specified in the modified scheme or for development of any class so specified.



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- (3) Planning permission so granted shall be subject to such conditions or limitations as may be specified in the scheme or modified scheme or, if none are specified, shall be unconditional.
- (4) Subject to subsection (5), where planning permission is so granted for any development or class of development the enterprise zone authority may direct that the permission shall not apply in relation to—
  - (a) a specified development,
  - (b) a specified class of development, or
  - (c) a specified class of development in a specified area within the enterprise zone.
- (5) An enterprise zone authority shall not give a direction under subsection (4) unless—
  - (a) they have submitted it to the Secretary of State, and
  - (b) he has notified them that he approves of their giving it.
- (6) If the scheme or the modified scheme specifies, in relation to any development it permits, matters which will require approval by the enterprise zone authority, the permission shall have effect accordingly.
- (7) The Secretary of State may by regulations make provision as to—
  - (a) the procedure for giving a direction under subsection (4), and
  - (b) the method and procedure relating to the approval of matters specified in a scheme or modified scheme as mentioned in subsection (6).
- (8) Such regulations may modify any provision of the planning Acts or any instrument made under them or may apply any such provision or instrument (with or without modification) in making any such provision as is mentioned in subsection (7).
- (9) Nothing in this section prevents planning permission being granted in relation to land in an enterprise zone otherwise than by virtue of this section (whether the permission is granted in pursuance of an application made under this Part<sup>F77</sup>, under section 242A] or by a development order).
- (10) Nothing in this section prejudices the right of any person to carry out development apart from this section.

#### Textual Amendments

**F77** Words in s. 55(9) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004](#) (Commencement No.2 and Consequential Provisions) (Scotland) Order 2006 (S.S.I. 2006/243), arts. 1(1), 4(2)

#### Marginal Citations

**M8** 1980 c. 65.

## 56 Effect on planning permission of modification or termination of scheme.

- (1) Modifications to an enterprise zone scheme do not affect planning permission under the scheme in any case where the development authorised by it has been begun before the modifications take effect.



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- (2) When an area ceases to be an enterprise zone, planning permission under the scheme shall cease to have effect except in a case where the development authorised by it has been begun.

#### *Deemed planning permission*

### **57 Development with government authorisation.**

- (1) Where the authorisation of a government department is required by virtue of an enactment in respect of development to be carried out by a local authority, or by statutory undertakers who are not a local authority, that department may, on granting that authorisation, direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.
- (2) On granting a consent under section 36 or 37 of the <sup>M9</sup>Electricity Act 1989 in respect of any operation or change of use that constitutes development, the Secretary of State may direct that planning permission for that development and any ancillary development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.
- [<sup>F78</sup>(2A) On making an order under section 1 of the Transport and Works (Scotland) Act 2007 which includes provision for development, the Scottish Ministers may direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.]
- [<sup>F79</sup>(2B) On—
  - (a) confirming a flood protection scheme under paragraph 7(4) of schedule 2 to the Flood Risk Management (Scotland) Act 2009 (asp 6) in respect of any operation which would constitute development, or
  - (b) a local authority confirming such a scheme under paragraph 4(1) or 9(1) of that schedule,the Scottish Ministers must direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.]
- (3) The provisions of this Act (except Part XI) shall apply in relation to any planning permission deemed to be granted by virtue of a direction under this section as if it had been granted by the Secretary of State on an application referred to him under section 46.
- (4) For the purposes of this section development is authorised by a government department if—
  - (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment,
  - (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development,
  - (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose,
  - (d) authority is given by the department—
    - (i) for the borrowing of money for the purpose of the development, or

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- (ii) for the application for that purpose of any money not otherwise so applicable, or
- (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants,
- and references in this section to the authorisation of a government department shall be construed accordingly.
- (5) In subsection (2) “ancillary development”, in relation to development consisting of the extension of a generating station, does not include any development which is not directly related to the generation of electricity by that station; and in this subsection “extension” and “generating station” have the <sup>M10</sup>same meanings as in Part I of the Electricity Act 1989.

#### Textual Amendments

- F78** S. 57(2A) inserted (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), ss. **15(1)**, 30(4); [S.S.I. 2007/516](#), art. 2
- F79** S. 57(2B) inserted (24.12.2010) by [Flood Risk Management \(Scotland\) Act 2009 \(asp 6\)](#), ss. **65**, 97(1) (with s. 91); [S.S.I. 2010/401](#), art. 3(c)

#### Marginal Citations

- M9** 1989 c. 29.
- M10** 1989 c. 29.

### *Duration of planning permission*

#### **F80** 58 [F80 Duration of planning permission]

- [F81(1) Subject to subsection (2), a planning [F81] permission to which this section applies, whether granted or deemed to be granted, lapses on the expiration of a period of 3 years (beginning with the date on which the permission is granted or as the case may be deemed to be granted) unless the development to which the permission relates is begun before that expiration.
- (2) The authority concerned may, in granting any such planning permission (or as the case may be in making a direction under section 57), direct that subsection (1) is not to apply as respects the permission but that the permission is to lapse on the expiration of a period, whether longer or shorter than 3 years, specified in the direction (under this section) unless the development to which the permission relates is begun before that expiration.
- (3) For the purposes of [sections 43A(8)(b) and] 47(1)(a), (3) and (4)(a)—
- (a) any such direction, or
- (b) the effect of subsection (1) as that subsection applies in consequence of the authority electing not to make such a direction,
- is to be treated as a condition subject to which the application is granted.
- (3A) A period specified under subsection (2) is to be a period—
- (a) beginning as mentioned in subsection (1), and

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- (b) which the authority concerned consider appropriate having regard to the provisions of the development plan and to any other material considerations.]
- (4) [<sup>F82</sup>This section applies to every planning permission with the exception of]—
- (a) any planning permission granted by a development order,
  - (b) any planning permission for any development carried out before the grant of planning permission,
  - (c) any planning permission granted for a limited period,
  - [<sup>F83</sup>(ca) any planning permission granted before the date on which section 20 of the Planning etc. (Scotland) Act 2006 came into force,]
  - (d) any planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste which is granted (or deemed to be granted) subject to a condition that the development to which it relates must be begun before the expiration of a specified period after—
    - (i) the completion of other development consisting of the winning and working of minerals already being carried out by the applicant for the planning permission, or
    - (ii) the cessation of depositing of mineral waste already being carried out by the applicant for the planning permission,
  - (e) any planning permission granted by an enterprise zone scheme,
  - (f) any planning permission granted by a simplified planning zone scheme, or
  - (g) any [<sup>F84</sup>planning permission in principle], within the meaning of section 59.

#### Textual Amendments

- F80** S. 58 heading substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 20(2), 59(2) (with S.S.I. 2009/222, art. 10(2)(b)); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I.2009/219, art. 2, sch.
- F81** S. 58(1)-(3A) substituted for (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 20(1)(a), 59(2) (as amended (2.8.2009) by S.S.I. 2009/256, arts. 1(2), 5(2)) (with S.S.I. 2009/222, art. 10(2)(b)); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I.2009/219, art. 2, sch.
- F82** Words in s. 58(4) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 20(1)(b)(i), 59(2) (with S.S.I. 2009/222, art. 10(2)(b)); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I.2009/219, art. 2, sch.
- F83** S. 58(4)(ca) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 20(1)(b)(ii), 59(2) (with S.S.I. 2009/222, art. 10(2)(b)); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I.2009/219, art. 2, sch.
- F84** Words in s. 58(4)(g) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 20(1)(b)(iii), 59(2) (with S.S.I. 2009/222, art. 10(2)(b)); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I.2009/219, art. 2, sch.

#### [<sup>F85</sup>59 Planning permission in principle

- (1) “Planning permission in principle” is planning permission (granted in accordance with the provisions of regulations or a development order)—
- (a) in respect of the carrying out of building, engineering, mining or other operations in, on, over or under land, and

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- (b) subject to a condition, imposed under section 37(1)(a), that the development in question will not be begun until certain matters (which may, but need not be, particularised in the application) have been approved by the planning authority or as the case may be the Scottish Ministers.
- (2) Application for the approval mentioned in subsection (1)(b)—
- (a) must be made before whichever is latest of the following—
    - (i) the expiration of 3 years from the date of the grant of the permission,
    - (ii) the expiration of 6 months from the date on which an earlier application for the requisite approval was refused, and
    - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed, and
  - (b) may be made for—
    - (i) different matters, and
    - (ii) different parts of the development,
 at different times.
- (3) But, in relation to any matter, only one application may be made by virtue of sub-paragraphs (ii) and (iii) of subsection (2)(a) after the expiration of the 3 year period mentioned in sub-paragraph (i) of that subsection.
- (4) Subject to subsection (5), a planning permission in principle lapses on the expiration of 2 years from the requisite approval being obtained (or, in the case of approval of different matters on different dates, from the requisite approval for the last such matter being obtained) unless the development to which the permission relates is begun before that expiration.
- (5) Where a planning permission in principle is to be granted, the authority concerned with the terms of the permission may direct that (either or both)—
- (a) subsections (2)(a)(i) and (3) are to apply as respects the permission with the substitution, for the period of 3 years referred to in each of those subsections,
  - (b) subsection (4) is to apply as respects the permission with the substitution, for the period of 2 years referred to in that subsection,
- of such other periods respectively (whether longer or shorter) as they consider appropriate.
- (6) For the purposes of sections 43A(8)(b) and 47(1)(a), (3) and (4)(a)—
- (a) any such direction, or
  - (b) the effect of subsection (4) as that subsection applies in consequence of the authority electing not to make such a direction,
- is to be treated as a condition subject to which the application is granted.
- (7) A direction under subsection (5) may provide for the substitution of different periods for different parts of the development (or for no substitution to be made for some part of the development).
- (8) In considering whether to exercise their powers under subsections (5) and (7), the authority is to have regard to the provisions of the development plan and to any other material considerations.]

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### Textual Amendments

**F85** S. 59 substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 21, 59(2)** (as amended (2.8.2009) by [S.S.I. 2009/256](#), arts. 1(2), 5(2)) (with [S.S.I. 2009/222](#), **art. 11**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**, [S.S.I. 2009/219](#), **art. 2**, **sch.**

## 60 Provisions supplementary to sections 58 and 59.

- (1) The authority referred to in section [<sup>F86</sup>58(2) and (3A)(b)] and 59(5) is—
- (a) the planning authority or the Secretary of State, in the case of planning permission granted by them,
  - (b) in the case of planning permission deemed to be granted under section 57(1), the department on whose direction planning permission is deemed to be granted,
  - (c) in the case of planning permission deemed to be granted under section 57(2), the Secretary of State, and
  - (d) in the case of planning permission granted on an appeal determined under paragraph 1 or 5 of Schedule 4 by a person appointed by the Secretary of State to determine the appeal, that person.
- (2) For the purposes of section 59, a <sup>F87</sup>... matter shall be treated as finally approved—
- (a) when an application for approval is granted, <sup>F88</sup>...
  - (b) in a case where the application is made to the planning authority and on an appeal to the Secretary of State against the authority's decision on the application the Secretary of State or a person mentioned in subsection (1)(d) grants the approval, when the appeal is determined<sup>F89</sup>, or
  - (c) in a case where the application is determined by a person appointed by virtue of a scheme of delegation and on a review of the case under section 43A(8) the planning authority grant the approval, on the date of the notice of the decision given by virtue of section 43A(11)(e)]

<sup>F90</sup>(3) .....

<sup>F90</sup>(4) .....

### Textual Amendments

**F86** Words in s. 60(1) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 22(1)(a), 59(2)**; [S.S.I. 2008/411](#), **art. 2(2)(3)(a)** (with [S.S.I. 2009/222](#), **art. 10(2)(c)**); [S.S.I. 2009/219](#), **art. 2**, **sch.**

**F87** Word in s. 60(2) repealed (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 22(1)(b), 59(2)** (with [S.S.I. 2009/222](#), **art. 10(2)(c)**); [S.S.I. 2008/411](#), **art. 2(2)(3)(a)**; [S.S.I. 2009/219](#), **art. 2**, **sch.**

**F88** Word in s. 60(2) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Consequential Amendments\) Order 2009 \(S.S.I. 2009/256\)](#), arts. 1(3), **2(3)(a)**

**F89** S. 60(2)(c) and word inserted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Consequential Amendments\) Order 2009 \(S.S.I. 2009/256\)](#), arts. 1(3), **2(3)(b)**

*Status: Point in time view as at 18/03/2011.*

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**F90** S. 60(3)(4) repealed (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 22(1)(c), 59(2) (with S.S.I. 2009/222, art. 10(2)(c)); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

## 61 Termination of planning permission by reference to time limit: completion notices.

- (1) This section applies where—
- <sup>F91</sup>(a) a development to which a planning permission relates has been begun but not completed by the date on which the permission would have lapsed had the development not been begun,]
  - (b) development has been begun in accordance with planning permission under a simplified planning zone scheme but has not been completed by the time the area ceases to be a simplified planning zone, or
  - (c) development has been begun in accordance with planning permission under an enterprise zone scheme but has not been completed by the time the area ceases to be an enterprise zone.
- (2) If the planning authority are of the opinion that the development will not be completed within a reasonable period, they may serve a notice (“a completion notice”) stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice.
- (3) The period so specified must not be less than 12 months after the notice takes effect.
- (4) A completion notice shall be served—
- (a) on the owner of the land,
  - (b) on the occupier of the land, and
  - (c) on any other person who in the opinion of the planning authority will be affected by the notice.
- (5) The planning authority may withdraw a completion notice at any time before the expiration of the period specified in it as the period at the expiration of which the planning permission is to cease to have effect.
- (6) If they do so they shall immediately give notice of the withdrawal to every person who was served with the completion notice.

### Textual Amendments

**F91** S. 61(1)(a) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 22(2), 59(2) (with S.S.I. 2009/222, art. 10(2)(d)); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

## 62 Effect of completion notice.

- (1) A completion notice shall not take effect unless and until it is confirmed by the Secretary of State.
- (2) In confirming a completion notice the Secretary of State may substitute some longer period for that specified in the notice as the period at the expiration of which the planning permission is to cease to have effect.

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- (3) If, within such period as may be specified in a completion notice (which must not be less than 28 days from its service) any person on whom the notice is served so requires, the Secretary of State, before confirming the notice, shall give him and the planning authority an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (4) If a completion notice takes effect, the planning permission referred to in it shall become invalid at the expiration of the period specified in the notice (whether the original period specified under section 61(2) or a longer period substituted by the Secretary of State under subsection (2)).
- (5) Subsection (4) shall not affect any permission so far as development carried out under it before the end of the period mentioned in that subsection is concerned.

### **63 Power of Secretary of State to serve completion notice.**

- (1) If it appears to the Secretary of State that it is expedient that a completion notice should be served in respect of any land, he may himself serve such a notice under section 61.
- (2) A completion notice served by the Secretary of State shall have the same effect as if it had been served by the planning authority.
- (3) The Secretary of State shall not serve such a notice without consulting the planning authority.
- (4) The provisions of this Act relating to completion notices apply, so far as relevant, to a completion notice served by the Secretary of State as they apply to a completion notice served by a planning authority, but with the substitution for any reference in those provisions to the planning authority of a reference to the Secretary of State, and any other necessary modifications.

#### *Variation, revocation and modification of planning permission*

### **64 Power to vary planning permission.**

Notwithstanding any other provision of this Part, a planning authority may, at the request of the grantee or a person acting with his consent, vary any planning permission granted by them, if it appears to them that the variation sought is not material.

### **65 Power to revoke or modify planning permission.**

- (1) If it appears to the planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part [<sup>F92</sup>or section 242A], the authority may by order revoke or modify the permission to such extent as they consider expedient.
- (2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.
- (3) The power conferred by this section may be exercised—
  - (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;

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- (b) where the permission relates to a change of the use of any land, at any time before the change has taken place.
- (4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has previously been carried out.
- (5) Part II of Schedule 3 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed by an order under this section revoking or modifying permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials.

#### Textual Amendments

- F92** Words in s. 65(1) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004](#) (Commencement No.2 and Consequential Provisions) (Scotland) Order 2006 (S.S.I. 2006/243), arts. 1(1), 4(3)

#### 66 Procedure for section 65 orders: opposed cases.

- (1) Except as provided in section 67, an order under section 65 shall not take effect unless it is confirmed by the Secretary of State.
- (2) Where a planning authority submit such an order to the Secretary of State for confirmation, they shall serve notice on—
  - (a) the owner of the land affected,
  - (b) the lessee and the occupier of the land affected, and
  - (c) any other person who in their opinion will be affected by the order.
- (3) The notice shall specify the period within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) If within that period such a person so requires, the Secretary of State shall, before he confirms the order, give such an opportunity both to that person and to the planning authority.
- (5) The period referred to in subsection (3) must not be less than 28 days from the service of the notice.
- (6) The Secretary of State may confirm an order submitted to him under this section without modification or subject to such modifications as he considers expedient.

#### 67 Procedure for section 65 orders: unopposed cases.

- (1) This section applies where—
  - (a) the planning authority have made an order under section 65, and
  - (b) the owner, the lessee and the occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to it.



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- (2) Where this section applies, instead of submitting the order to the Secretary of State for confirmation the authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement must specify—
  - (a) subject to subsection (4), the period within which persons affected by the order may give notice to the Secretary of State that they wish to have an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose, and
  - (b) subject to subsection (5), the period at the expiration of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this section without being confirmed by the Secretary of State.
- (3) The authority shall also serve notice to the same effect on the persons mentioned in subsection (1)(b).
- (4) The period referred to in subsection (2)(a) must not be less than 28 days from the date the advertisement first appears.
- (5) The period referred to in subsection (2)(b) must not be less than 14 days from the expiration of the period referred to in subsection (2)(a).
- (6) The authority shall send a copy of any advertisement published under subsection (2) to the Secretary of State not more than 3 days after the publication.
- (7) If—
  - (a) no person claiming to be affected by the order has given notice to the Secretary of State under subsection (2)(a) within the period referred to in that subsection, and
  - (b) the Secretary of State has not directed within that period that the order be submitted to him for confirmation,the order shall take effect at the expiry of the period referred to in subsection (2)(b), without being confirmed by the Secretary of State as required by section 66(1).
- (8) This section does not apply to—
  - (a) an order revoking or modifying a planning permission granted or deemed to have been granted by the Secretary of State under this Part<sup>F93</sup>, section 242A] or Part VI, or
  - (b) an order modifying any conditions to which a planning permission is subject by virtue of section 58 or 59.

#### Textual Amendments

**F93** Words in s. 67(8)(a) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), 4(4)

## 68 Revocation and modification of planning permission by the Secretary of State.

- (1) If it appears to the Secretary of State that it is expedient that an order should be made under section 65, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the planning authority and confirmed by the Secretary of State.

*Status: Point in time view as at 18/03/2011.*

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- (3) The Secretary of State shall not make such an order without consulting the planning authority.
- (4) Where the Secretary of State proposes to make such an order he shall serve notice on the planning authority.
- (5) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which the authority may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) If within that period the authority so require, the Secretary of State shall, before making the order, give the authority such an opportunity.
- (7) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the planning authority of any order under section 65, its confirmation by the Secretary of State and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of subsection (1), its making by him and the service of copies of it.
- (8) Part II of Schedule 3 shall have effect in relation to orders made by the Secretary of State by virtue of subsection (1) as it has effect in relation to orders made by the planning authority under section 65.

#### *References to Planning Inquiry Commissions*

### **69 Power to refer certain planning questions to Planning Inquiry Commission.**

- (1) The Secretary of State may constitute a Planning Inquiry Commission to inquire into and report on any matter referred to them under subsection (2) in the circumstances mentioned in subsection (3).
- (2) The matters that may be referred to a Planning Inquiry Commission are—
  - (a) an application for planning permission which the Secretary of State has under section 46 directed to be referred to him instead of being dealt with by a planning authority;
  - (b) an appeal under section 47 (including that section as applied by or under any other provision of this Act);
  - (c) a proposal that a government department should give a direction under section 57(1) that planning permission shall be deemed to be granted for development by a local authority or by statutory undertakers which is required by any enactment to be authorised by that department;
  - (d) a proposal that development should be carried out by or on behalf of a government department.
- (3) Any of those matters may be referred to a Planning Inquiry Commission under this section if it appears expedient to the responsible Minister or Ministers that the question whether the proposed development should be permitted to be carried out should be the subject of a special inquiry on either or both of the following grounds—
  - (a) that there are considerations of national or regional importance which are relevant to the determination of that question and require evaluation, but a proper evaluation of them cannot be made unless there is a special inquiry for the purpose;

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- (b) that the technical or scientific aspects of the proposed development are of so unfamiliar a character as to jeopardise a proper determination of that question unless there is a special inquiry for the purpose.
- (4) Schedule 6, which contains further provisions as to Planning Inquiry Commissions, and as to the meaning of “the responsible Minister or Ministers” in subsection (3) and in that Schedule, shall have effect.

## **70 Power to refer certain planning questions to Joint Planning Inquiry Commission.**

- (1) The Ministers may constitute a Joint Planning Inquiry Commission to inquire into and report on any matter referred to them under subsection (2).
- (2) The matters that may be referred to a Joint Planning Inquiry Commission are the matters which may, under section 101 of the <sup>M11</sup>Town and Country Planning Act 1990 or section 69 of this Act, be referred to a Planning Inquiry Commission but which appear to the Ministers to involve considerations affecting both Scotland and England.
- (3) In subsections (1) and (2) “the Ministers” means the Secretaries of State for the time being having general responsibility in planning matters in relation to Scotland and in relation to England acting jointly.
- (4) Schedule 7, which contains further provisions as to Joint Planning Inquiry Commissions, shall have effect.

### **Marginal Citations**

**M11** 1990 c. 8.

### *Other controls over development*

## **71 Orders requiring discontinuance of use or alteration or removal of buildings or works.**

- (1) If, having regard to the development plan and to any other material considerations, it appears to a planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—
  - (a) that any use of land should be discontinued or that any conditions should be imposed on the continuance of a use of land, or
  - (b) that any buildings or works should be altered or removed,they may by order—
  - (i) require the discontinuance of that use, or
  - (ii) impose such conditions as may be specified in the order on the continuance of it, or
  - (iii) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works,as the case may be.

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- (2) An order under this section may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order.
- (3) Section 65 shall apply in relation to any planning permission granted by an order under this section as it applies in relation to planning permission granted by the planning authority on an application made under this Part [<sup>F94</sup>or section 242A].
- (4) The planning permission which may be granted by an order under this section includes planning permission, subject to such conditions as may be specified in the order, for development carried out before the date on which the order was submitted to the Secretary of State under this section.
- (5) Planning permission for such development may be granted so as to have effect from—
  - (a) the date on which the development was carried out, or
  - (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period.
- (6) Where the requirements of an order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the planning 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 displacement.
- (7) In the case of planning permission granted by an order under this section, the authority referred to in sections [<sup>F95</sup>58(2) and (3A)(b)] and 59(5) is the planning authority making the order.
- (8) The previous provisions of this section do not apply to the use of any land for development consisting of the winning or working of minerals or involving the deposit of refuse or waste materials except as provided in Schedule 8, and in that Schedule—
  - (a) Part I shall have effect for the purpose of making provision as respects land which is or has been so used, and
  - (b) Part II shall have effect as respects the registration of old mining provisions.

#### Textual Amendments

- F94** Words in s. 71(3) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004](#) (Commencement No.2 and Consequential Provisions) (Scotland) Order 2006 (S.S.I. 2006/243), arts. 1(1), 4(5)
- F95** Words in s. 71(7) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006](#) (asp 17), ss. 22(3), 59(2) (with S.S.I. 2009/222, art. 10(2)(e)); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

## 72 Confirmation by Secretary of State of section 71 orders.

- (1) An order under section 71 shall not take effect unless it is confirmed by the Secretary of State, either without modification or subject to such modifications as he considers expedient.
- (2) Where a planning authority submit an order to the Secretary of State for his confirmation under this section, they shall serve notice—
  - (a) on the owner of the land affected,

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- (b) on the lessee and the occupier of that land, and
  - (c) on any other person who in their opinion will be affected by the order.
- (3) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (4) If within that period such a person so requires, the Secretary of State shall, before confirming the order, give such an opportunity both to that person and to the planning authority.
- (5) Where an order under section 71 has been confirmed by the Secretary of State, the planning authority shall serve a copy of the order on the owner, the lessee and occupier of the land to which the order relates.

### **73 Power of the Secretary of State to make section 71 orders.**

- (1) If it appears to the Secretary of State that it is expedient that an order should be made under section 71, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the planning authority and confirmed by the Secretary of State.
- (3) The Secretary of State shall not make such an order without consulting the planning authority.
- (4) Where the Secretary of State proposes to make such an order he shall serve notice on the planning authority.
- (5) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which the authority may require the Secretary of State to give them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) If within that period the authority so require, the Secretary of State shall, before making the order, give the authority such an opportunity.
- (7) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the planning authority of any order under section 71, its confirmation by the Secretary of State and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of subsection (1), its making by him and the service of copies of it.

### **74 Review of mineral planning permissions.**

- (1) Schedule 9 (which makes provision as respects the review of old mineral planning permissions) and Schedule 10 (which makes provision as respects the periodic review of mineral planning permissions) shall have effect.
- (2) Without prejudice to the generality of sections 30 and 31, a development order may make, in relation to any planning permission which is granted by a development order for minerals development, provision similar to any provision made by Schedule 9 or 10.

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- (3) In this section and those Schedules “minerals development” means development consisting of the winning and working of minerals, or involving the depositing of mineral waste.

### **[<sup>F96</sup>75 Planning obligations**

- (1) A person may, in respect of land in the district of a planning authority—
- (a) by agreement with that authority, or
  - (b) unilaterally,
- enter into an obligation (referred to in this section and in sections 75A to 75C as a “planning obligation”) restricting or regulating the development or use of the land, either permanently or during such period as may be specified in the instrument by which the obligation is entered into (referred to in this section and in those sections as the “relevant instrument”).
- (2) Without prejudice to the generality of subsection (1), the reference in that subsection to restricting or regulating the development or use of land includes—
- (a) requiring operations or activities specified in the relevant instrument to be carried out in, on, under or over the land, or
  - (b) requiring the land to be used in a way so specified.
- (3) A planning obligation may—
- (a) be unconditional or subject to conditions,
  - (b) require the payment—
    - (i) of a specified amount or an amount determined in accordance with the relevant instrument, or
    - (ii) of periodical sums either indefinitely or for such period as may be specified in that instrument, and
  - (c) contain such incidental and consequential provisions as—
    - (i) in the case of an agreement, appear to the planning authority to be necessary or expedient for the purposes of the agreement, or
    - (ii) in the case of a unilateral obligation, appear to the person entering into the obligation to be necessary or expedient for the purposes of that obligation.
- (4) Without prejudice to the generality of subsection (3)(a), the relevant instrument may provide for the postponement of the effectiveness of the planning obligation to a date specified in the instrument (whether the specification is of a fixed date or of a date determinable by reference to the occurrence of an event).
- (5) A relevant instrument to which the owner of the land is party may be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and if the instrument is so recorded or registered then the planning obligation is (unless the instrument provides that only the person entering into that obligation is to be bound by it) enforceable at the instance of the planning authority—
- (a) against the owner of the land in so far as the obligation comprises a requirement mentioned in subsection (2) or (3)(b), and
  - (b) against—
    - (i) the owner or tenant of the land, or
    - (ii) any other person having the use of the land,

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in so far as the obligation comprises any other requirement.

- (6) But no such obligation is enforceable against a third party who has acquired right to the land (whether or not that person has completed title) prior to the relevant instrument being so recorded or registered.
- (7) If there is a breach of a requirement, in a planning obligation, to carry out any operations in, on, under or over the land to which the obligation relates, the planning authority may—
  - (a) enter the land and carry out the operations, and
  - (b) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by them in doing so.
- (8) Before a planning authority exercise their power under subsection (7)(a) they are to give any person against whom the planning obligation is enforceable not less than twenty-one days' notice of their intention to do so.
- (9) A person wilfully obstructing someone who is acting in the exercise of a power under subsection (7)(a) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) In this section, “owner” means a person who has right to the land to which the planning obligation relates whether or not that person has completed title; but if, in relation to the land (or, if the land is held *pro indiviso*, in relation to any *pro indiviso* share in the land) more than one person comes within that description of owner, then “owner” means such person as has most recently acquired such right.
- (11) But where a heritable creditor is in lawful possession of security subjects which comprise the land, then “owner” includes the heritable creditor.
- (12) For the purposes of subsection (5) it is immaterial whether the person who is owner of the land when the relevant instrument is recorded or registered was owner when the obligation was entered into.

#### Textual Amendments

**F96** Ss. 75-75C substituted for s. 75 (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 23, 59\(2\)](#) (with [S.S.I. 2010/431](#), [arts. 1\(1\), 3](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#); [S.S.I. 2010/400](#), [art. 3](#), [sch.](#)

### 75A Modification and discharge of planning obligations

- (1) A planning obligation may not be modified or discharged except—
  - (a) by agreement, by virtue of subsection (2), between the planning authority and a person against whom that obligation is enforceable, or
  - (b) in accordance with this section and section 75B.
- (2) A person against whom a planning obligation is enforceable may apply to the planning authority for their agreement that the obligation—
  - (a) have effect subject to such modifications as may be specified in the application, or
  - (b) be discharged.

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- (3) An application under subsection (2)(a) is not to specify a modification imposing an obligation on any non-applicant against whom the planning obligation is enforceable.
- (4) On an application under subsection (2), the authority may determine that the planning obligation—
  - (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (5) The authority are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to a planning obligation the relevant instrument in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be so registered.
- (8) Where the determination is under subsection (4)(c), the planning obligation is enforceable as modified—
  - (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
  - (b) in any other case, from the date on which notice is given under subsection (5).
- (9) Regulations may make provision with respect to—
  - (a) the form and content of an application under subsection (2),
  - (b) the publication of notice of any such application,
  - (c) procedures for considering any representations made with respect to any such application, and
  - (d) the form and content of any notice given under subsection (5).
- (10) In relation to any application referred to the Scottish Ministers by virtue of subsections (1) to (3) of section 46, the references in subsections (4) and (5) (above) to the authority are to be construed as references to the Scottish Ministers.

#### Textual Amendments

**F96** Ss. 75-75C substituted for s. 75 (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 23, 59(2) (with S.S.I. 2010/431, arts. 1(1), 3); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

## 75B Appeals

- (1) Where a planning authority—
  - (a) fail to comply with section 75A(5), or
  - (b) determine that a planning obligation is to continue to have effect without modification,
 the applicant may appeal to the Scottish Ministers.



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- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the planning obligation is to continue to have effect without modification.
- (3) Any appeal under subsection (1) is to be made by notice served—
  - (a) within such period, and
  - (b) in such manner,as may be prescribed.
- (4) On an appeal under subsection (1) the Scottish Ministers may determine that the planning obligation—
  - (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (5) The Scottish Ministers are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to a planning obligation the relevant instrument in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be so registered.
- (8) Where the determination is under subsection (4)(c), the planning obligation is enforceable as modified—
  - (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
  - (b) in any other case, from the date on which notice is given under subsection (5).
- (9) Regulations may make provision with respect to the form and content of any notice—
  - (a) served under subsection (3), or
  - (b) given under subsection (5).
- (10) Except as provided under section 239, the determination of an appeal by the Scottish Ministers under this section is final.
- (11) Schedule 4 applies to appeals under this section, including appeals under this section as applied by regulations under any other provisions of this Act.

#### Textual Amendments

**F96** Ss. 75-75C substituted for s. 75 (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 23, 59\(2\)](#) (with [S.S.I. 2010/431](#), [arts. 1\(1\), 3](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#); [S.S.I. 2010/400](#), [art. 3](#), [sch.](#)

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## 75C Planning obligations: continuing liability of former owner etc.

- (1) In so far as a planning obligation comprises an appropriate requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by that obligation (unless the relevant instrument provides that he does cease to be so bound).
- (2) The relevant instrument may provide that, in so far as a planning obligation comprises any other requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by that obligation.
- (3) For the purposes of this section, an “appropriate requirement” is a requirement mentioned in subsection (2) or (3)(b) of section 75 which is due for performance.
- (4) A person who becomes an owner of land the development or use of which is subject to a planning obligation enforceable as is mentioned in section 75(5) is, unless the relevant instrument otherwise provides, severally liable with any former owner of the land for any appropriate requirement for which the former owner is liable.
- (5) But if that person incurs expenditure in the performance of any appropriate requirement for which a former owner is liable, he may recover an amount equal to that expenditure from the former owner.
- (6) In this section, “owner” has the same meaning as in section 75.]

### Textual Amendments

**F96** Ss. 75-75C substituted for s. 75 (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 23, 59(2) (with S.S.I. 2010/431, arts. 1(1), 3); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

## [<sup>F97</sup>75D Good neighbour agreements

- (1) A person may, by agreement with a community body, enter into an obligation governing operations or activities relating to the development or use of land, either permanently or during such period as may be specified in the agreement.
- (2) A body is a community body for the purposes of subsection (1) if—
  - (a) it is the community council for an area in which is situated any part of the land to which the agreement relates, or
  - (b) it has been notified by the planning authority for the area in which is situated the land to which the agreement relates that, in the opinion of the authority, it is—
    - (i) a body which falls within subsection (3), or
    - (ii) a trust which falls within subsection (4).
- (3) A body falls within this subsection if—
  - (a) its members have a substantial connection with the land to which the agreement relates, and
  - (b) the object, or function, of the body (or, as the case may be, one of its objects or functions) is to preserve or enhance the amenity of the neighbourhood in which is situated any part of the land to which the agreement relates.
- (4) A trust falls within this subsection if—

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- (a) its trustees have a substantial connection with the land to which the agreement relates, and
  - (b) the object, or function, of the trust (or, as the case may be, one of its objects or functions) is to preserve or enhance the amenity of the neighbourhood in which is situated any part of the land to which the agreement relates.
- (5) An agreement entered into under subsection (1) may be referred to as a “good neighbour agreement”.
- (6) Without prejudice to the generality of subsection (1), an obligation entered into under that subsection may—
- (a) require operations or activities specified in the agreement to be carried out in, on, under or over the land, or
  - (b) require the land to be used in a way so specified.
- (7) The obligation—
- (a) may be unconditional or subject to conditions,
  - (b) may require the provision to the community body of information regarding the development and use of the land to which the agreement relates, and
  - (c) is not to require the payment of money.
- (8) Without prejudice to the generality of subsection (7)(a), the agreement may provide for the postponement of the effectiveness of the obligation to a date specified in the agreement (whether the specification is of a fixed date or of a date determinable by reference to the occurrence of an event).
- (9) A good neighbour agreement to which the owner of the land is party may be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and if the agreement is so recorded or registered then the obligation is (unless the agreement provides that only the person entering into that obligation is to be bound by it) enforceable at the instance of the community body—
- (a) against the owner of the land in so far as the obligation comprises a requirement mentioned in subsection (6), and
  - (b) against—
    - (i) the owner or tenant of the land, or
    - (ii) any other person having the use of the land,in so far as the obligation comprises any other requirement.
- (10) But no such obligation is enforceable against a third party who has acquired right to the land (whether or not that person has completed title) prior to the agreement being so recorded or registered.
- (11) In this section, “owner” has the same meaning as in section 75.
- (12) For the purposes of subsection (9) it is immaterial whether the person who is owner of the land when the agreement is recorded or registered was owner when the obligation was entered into.

#### Textual Amendments

**F97** Ss. 75D-75G inserted (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 24, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

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## **75E Good neighbour agreements: modification and discharge of obligations**

- (1) An obligation entered into under section 75D(1) may not be modified or discharged except—
  - (a) by agreement between the community body and the person against whom the obligation is enforceable, or
  - (b) in accordance with this section and section 75F.
- (2) Where the community body and the person against whom the obligation is enforceable are unable to reach agreement regarding the modification or discharge of the obligation, either may apply to the planning authority for the area in which is situated the land to which the agreement relates.
- (3) An application under subsection (2) is one seeking the determination of the planning authority as to whether the obligation is—
  - (a) to have effect subject to such modifications as may be specified in the application, or
  - (b) to be discharged.
- (4) An application under subsection (2) is not to specify a modification imposing an obligation on any non-applicant.
- (5) On an application under subsection (2), the authority may determine that the obligation—
  - (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (6) The authority are to give notice of their determination to the applicant within such period as is prescribed.
- (7) This subsection applies where—
  - (a) there is agreement such as is mentioned in subsection (1)(a), or
  - (b) a determination is made under subsection (5)(b) or (c),
 concerning an obligation the agreement in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (8) Where subsection (7) applies, the modification or discharge does not take effect until the date on which—
  - (a) the agreement under subsection (1)(a), or
  - (b) the notice given under subsection (6),
 is so recorded or as the case may be so registered.
- (9) Regulations may make provision with respect to—
  - (a) the form and content of an application under subsection (2),
  - (b) the publication of notice of any such application,
  - (c) procedures for considering any representations made with respect to any such application, and
  - (d) the form and content of any notice given under subsection (6).

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### Textual Amendments

**F97** Ss. 75D-75G inserted (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 24, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

## 75F Good neighbour agreements: appeals

- (1) Where the planning authority—
  - (a) fail to comply with subsection (6) of section 75E, or
  - (b) make a determination under subsection (5) of that section,either of the parties referred to in subsection (1)(a) of that section may appeal to the Scottish Ministers.
- (2) For the purposes of an appeal under subsection (1)(a), it is to be assumed that the authority have determined that the obligation is to continue to have effect without modification.
- (3) Any appeal under subsection (1) is to be made by notice served—
  - (a) within such period, and
  - (b) in such manner,as may be prescribed.
- (4) On an appeal under subsection (1) the Scottish Ministers may determine that the obligation—
  - (a) is to continue to have effect without modification,
  - (b) is discharged, or
  - (c) is to have effect subject to the modifications specified in the application.
- (5) The Scottish Ministers are to give notice of their determination to the applicant within such period as is prescribed.
- (6) This subsection applies where a determination under subsection (4)(b) or (c) relates to an obligation the agreement in relation to which has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- (7) Where subsection (6) applies, the determination does not take effect until the date on which notice given under subsection (5) is so recorded or as the case may be is so registered.
- (8) Where the determination is under subsection (4)(c), the obligation is enforceable as modified—
  - (a) in a case where subsection (6) applies, from the date mentioned in subsection (7), and
  - (b) in any other case, from the date on which notice is given under subsection (5).
- (9) Regulations may make provision with respect to the form and content of any notice—
  - (a) served under subsection (3), or
  - (b) given under subsection (5).
- (10) Except as provided under section 239, the determination of an appeal by the Scottish Ministers under this section is final.

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- (11) Schedule 4 applies to appeals under this section, including appeals under this section as applied by regulations under any other provisions of this Act.

**Textual Amendments**

**F97** Ss. 75D-75G inserted (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 24, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

**75G Good neighbour agreements: continuing liability of former owner etc.**

- (1) In so far as the obligation comprises an appropriate requirement, an owner of land does not, by virtue of ceasing to be such an owner, cease to be bound by that obligation (unless the good neighbour agreement provides that he does cease to be so bound).
- (2) The agreement may provide that, in so far as the obligation comprises any other requirement, an owner of land does not, by virtue only of ceasing to be such an owner, cease to be bound by the obligation.
- (3) For the purposes of this section, an “appropriate requirement” is a requirement mentioned in section 75D(6) which is due for performance.
- (4) A person who becomes an owner of land the development or use of which is subject to an obligation enforceable as is mentioned in section 75D(9) is, unless the agreement otherwise provides, severally liable with any former owner of the land for any appropriate requirement for which the former owner is liable.
- (5) But if that person incurs expenditure in the performance of any appropriate requirement for which a former owner is liable, he may recover an amount equal to that expenditure from the former owner.
- (6) In this section, “owner” has the same meaning as in section 75.]

**Textual Amendments**

**F97** Ss. 75D-75G inserted (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 24, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2010/400, art. 3, sch.

**PART IV**

COMPENSATION FOR EFFECTS OF CERTAIN ORDERS, NOTICES ETC.

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

- C13** Pt. IV applied (with modifications) by S.I. 1994/2716, reg. 82D(2) (as inserted (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(Consequential and Transitional Provisions\) Order 2007 \(S.S.I. 2007/517\)](#), arts. 1(1), 3(4))
- C14** Pt. IV applied (with modifications) (1.4.2010) by [The Conservation of Habitats and Species Regulations 2010 \(S.I. 2010/490\)](#), regs. 1(2), 89(1)-(3), 93(1)-(3)(with reg. 125)

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**C15** Pt. IV applied (with modifications) (1.4.2010) by [The Management of Extractive Waste \(Scotland\) Regulations 2010 \(S.S.I. 2010/60\)](#), regs. 1(1), **31(3)** (with arts. 4, 5)

*Compensation for revocation or modification of planning permission*

**76 Compensation where planning permission revoked or modified.**

- (1) Where planning permission is revoked or modified by an order under section 65, then if, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land—
  - (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,the planning authority shall pay that person compensation in respect of that expenditure, loss or damage.
- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.
- (3) Subject to subsection (2), no compensation shall be paid under this section in respect of—
  - (a) any work carried out before the grant of the permission which is revoked or modified, or
  - (b) any other loss or damage arising out of anything done or omitted to be done before the grant of that permission (other than loss or damage consisting of depreciation of the value of an interest in land).
- (4) In calculating for the purposes of this section the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted—
  - (a) subject to the condition set out in Schedule 12, for any development of a class specified in paragraph 1 of Schedule 11;
  - (b) for any development of a class specified in paragraph 2 of Schedule 11.
- (5) In this Part any reference to an order under section 65 includes a reference to an order under the provisions of that section as applied by section 71(3) and paragraph 1(2) of Schedule 8.

**77 Compensation for refusal or conditional grant of planning permission formerly granted by development order.**

- (1) Where—
  - (a) planning permission granted by a development order is withdrawn (whether by the revocation or amendment of the order or by the issue of directions under powers conferred by the order), and
  - (b) on an application made under Part III [<sup>F98</sup>or section 242A] planning permission for development formerly permitted by that order is refused or is granted subject to conditions other than those imposed by that order,



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section 76 shall apply as if the planning permission granted by the development order—

- (i) had been granted by the planning authority under Part III [<sup>F99</sup>or section 242A], and
  - (ii) had been revoked or modified by an order under section 65.
- (2) Where planning permission granted by a development order is withdrawn by revocation or amendment of the order, this section applies only if the application referred to in subsection (1)(b) is made before the end of the period of 12 months beginning with the date on which the revocation or amendment came into operation.
- (3) This section does not apply in relation to planning permission for the development of operational land of statutory undertakers.
- (4) Regulations may provide that subsection (1) shall not apply where planning permission granted by a development order for demolition of buildings or any description of buildings is withdrawn by the issue of directions under powers conferred by the order.

#### **Textual Amendments**

- F98** Words in s. 77(1)(b) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), [4\(6\)\(a\)](#)
- F99** Words in s. 77(1)(i) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), [4\(6\)\(b\)](#)

## **78 Apportionment of compensation for depreciation.**

- (1) Where compensation which becomes payable under section 76 includes compensation for depreciation of an amount exceeding £20, the planning authority—
- (a) if it appears to them to be practicable to do so, shall apportion the amount of the compensation for depreciation between different parts of the land to which the claim for that compensation relates, and
  - (b) shall give particulars of any such apportionment to the claimant and to any other person entitled to an interest in land which appears to the authority to be substantially affected by the apportionment.
- (2) In carrying out an apportionment under subsection (1)(a), the planning authority shall—
- (a) divide the land into parts, and
  - (b) distribute the compensation for depreciation between those parts, according to the way in which different parts of the land appear to the authority to be differently affected by the order or, in a case falling within section 77, the relevant planning decision, in consequence of which the compensation is payable.
- (3) Regulations shall make provision—
- (a) for enabling the claimant or any other person to whom notice of the planning authority's apportionment has been given in accordance with subsection (1), or who establishes that he is entitled to an interest in land which is substantially



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- affected by such an apportionment, if he wishes to dispute the apportionment, to require it to be referred to the Lands Tribunal,
- (b) for enabling the claimant and any other person mentioned in paragraph (a) to be heard by the Tribunal on any reference under this section of that apportionment, and
  - (c) for requiring the Tribunal, on any such reference, either to confirm or vary the apportionment and to notify the parties of the decision.
- (4) On a reference to the Lands Tribunal by virtue of subsection (3), subsections (1) and (2), so far as they relate to the making of an apportionment, shall apply with the substitution, for references to the planning authority, of references to the Lands Tribunal.
- (5) In this section—
- “compensation for depreciation” means so much of any compensation payable under section 76 as is payable in respect of loss or damage consisting of depreciation of the value of an interest in land, and
- “relevant planning decision” means the planning decision by which planning permission is refused, or is granted subject to conditions other than those previously imposed by the development order.

## **79 Registration of compensation for depreciation.**

- (1) Where compensation which becomes payable under section 76 includes compensation for depreciation of an amount exceeding £20, the planning authority shall—
- (a) have a notice in the prescribed form stating that such compensation has become payable, specifying the land to which the compensation relates, the amount of the compensation for depreciation and any apportionment of it under section 78, recorded in the appropriate Register of Sasines or registered in the Land Register of Scotland, and
  - (b) send a copy of the notice to the Secretary of State.
- (2) In relation to compensation for depreciation specified in a notice recorded or, as the case may be, registered under subsection (1), references in this Part to so much of the compensation as is attributable to a part of the land to which the notice relates shall be construed in accordance with the following provisions, that is to say—
- (a) if the notice does not include an apportionment under section 78, the amount of the compensation shall be treated as distributed rateably according to area over the land to which the notice relates;
  - (b) if the notice includes such an apportionment, the compensation shall be treated as distributed in accordance with that apportionment as between the different parts of the land by reference to which the apportionment is made; and so much of the compensation as, in accordance with the apportionment, is attributed to a part of the land shall be treated as distributed rateably according to area over that part of the land.

## **80 Recovery of compensation on subsequent development.**

- (1) No person shall carry out any development to which this section applies, on land in respect of which a notice (in this Part referred to as a “compensation notice”) is recorded or, as the case may be, registered under section 79(1), until such amount, if

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any, as is recoverable under this section in respect of the compensation specified in the notice has been paid or secured to the satisfaction of the Secretary of State.

- (2) Subject to the following provisions of this section, this section applies to any development—
  - (a) which is development of a residential, commercial or industrial character and consists wholly or mainly of the construction of houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination thereof,
  - (b) which consists in the winning and working of minerals, or
  - (c) to which, having regard to the probable value of the development, it is in the opinion of the Secretary of State reasonable that this section should apply.
- (3) This section shall not apply to any development by virtue of subsection (2)(c) if, on an application made to him for the purpose, the Secretary of State has certified that, having regard to the probable value of the development, it is not in his opinion reasonable that this section should apply to it.
- (4) Where the compensation specified in the compensation notice became payable in respect of the imposition of conditions on the granting of permission to develop land, this section shall not apply to the development for which that permission was granted.
- (5) This section does not apply to any development—
  - (a) of a class specified in paragraph 1 of Schedule 11 which is carried out in accordance with the condition set out in Schedule 12, or
  - (b) of a class specified in paragraph 2 of Schedule 11.
- (6) This section does not apply in a case where the compensation under section 76 specified in a compensation notice became payable in respect of an order modifying planning permission, and the development is in accordance with that permission as modified by that order.

## **81 Amount recoverable, and provisions for payment or remission.**

- (1) Subject to the following provisions of this section, the amount recoverable under section 80 in respect of the compensation specified in a compensation notice—
  - (a) if the land on which the development is to be carried out (in this subsection referred to as “the development area”) is identical with, or includes (with other land) the whole of, the land comprised in the compensation notice, shall be the amount of compensation specified in that notice;
  - (b) if the development area forms part of the land comprised in the compensation notice, or includes part of that land together with other land not comprised in that notice, shall be so much of the amount of the compensation specified in that notice as is attributable to land comprised in that notice and falling within the development area.
- (2) Where, in the case of any land in respect of which a compensation notice has been recorded or registered, the Secretary of State is satisfied, having regard to the probable value of any proper development of that land, that no such development is likely to be carried out unless he exercises his powers under this subsection, he may, in the case of any particular development, remit the whole or any part of any amount otherwise recoverable under section 80.

*Status: Point in time view as at 18/03/2011.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Where, in connection with the development of any land, an amount becomes recoverable under section 80 in respect of the compensation specified in a compensation notice, then, except where, and to the extent that, payment of that amount has been remitted under subsection (2) above, no amount shall be recoverable under section 80 in respect of that compensation, in so far as it is attributable to that land, in connection with any subsequent development thereof.
- (4) No amount shall be recoverable under section 80 in respect of any compensation by reference to which a sum has become recoverable by the Secretary of State under section 257.
- (5) An amount recoverable under section 80 in respect of any compensation—
  - (a) shall be payable to the Secretary of State,
  - (b) shall be so payable either as a single capital payment or as a series of instalments of capital and interest combined, or as a series of other annual or periodical payments, of such amounts, and payable at such times, as the Secretary of State may direct, after taking into account any representations made by the person by whom the development is to be carried out, and
  - (c) except where the amount is payable as a single capital payment, shall be secured by that person to the satisfaction of the Secretary of State (whether by heritable or other security, personal bond or otherwise).
- (6) If any person initiates any development to which section 80 applies in contravention of subsection (1) of that section, the Secretary of State may serve a notice on him specifying the amount appearing to the Secretary of State to be the amount recoverable under that section in respect of the compensation in question, and requiring him to pay that amount to the Secretary of State within such period, not being less than 3 months after the service of the notice, as may be specified in the notice.
- (7) Where, after a compensation notice in respect of any land has been recorded or, as the case may be, registered—
  - (a) any amount recoverable under this section in respect of the compensation specified in the notice, or any part of such amount, has been paid to the Secretary of State, or
  - (b) circumstances arise under which by virtue of any provision of this Act no amount is so recoverable in respect of the land specified in the notice or any part of that land,

the Secretary of State shall cause to be recorded in the appropriate Register of Sasines or, as the case may be, registered in the Land Register of Scotland, a notice of that fact, specifying the land to which such fact relates and, in the case of any notice of the fact that part only of such amount has been so paid, stating whether the balance has been secured to the satisfaction of the Secretary of State or has been remitted by him under subsection (2) of this section, and shall send a copy of it to the planning authority.

## **82 Provisions for payment or remission of amount recoverable under section 80.**

- (1) Subject to subsection (2), any sum recovered by the Secretary of State under section 80 shall be paid to the planning authority who paid the compensation to which that sum relates.
- (2) Subject to subsection (3), in paying any such sum to the planning authority, the Secretary of State shall deduct from it the amount of any grant paid by him under Part XIII in respect of that compensation.

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- (3) If the sum recovered by the Secretary of State under section 80—
- (a) is an instalment of the total sum recoverable, or
  - (b) is recovered by reference to development of part of the land in respect of which the compensation was payable,
- any deduction to be made under subsection (2) shall be a deduction of such amount as the Secretary of State may determine to be the proper proportion of the amount referred to in that subsection.

### **83 Compensation in respect of orders under section 71 etc.**

- (1) This section shall have effect where an order is made under section 71 or paragraph 1 of Schedule 8—
- (a) requiring a use of land to be discontinued,
  - (b) imposing conditions on the continuance of it, or
  - (c) requiring any buildings or works on land or, in the case of an order under paragraph 1 of Schedule 8, any plant or machinery to be altered or removed.
- (2) If, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that any person has suffered damage in consequence of the order—
- (a) by depreciation of the value of an interest to which he is entitled in the land, or
  - (b) by being disturbed in his enjoyment of the land,
- that authority shall pay to that person compensation in respect of that damage.
- (3) Without prejudice to subsection (2), any person who carries out any works in compliance with the order shall be entitled, on a claim made as mentioned in that subsection, to recover from the planning authority compensation in respect of any expenses reasonably incurred by him in that behalf.
- (4) Any compensation payable to a person under this section by virtue of such an order as is mentioned in subsection (1) shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.

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

- C16** S. 83 modified (conditionally) (25.1.1999) by [S.I. 1998/2914, regs. 1, 5](#)  
 S. 83 modified (25.1.1999) by [S.I. 1998/2914, regs. 1, 6](#)

### **84 Special basis for compensation in respect of certain orders affecting mineral working.**

Schedule 13 shall have effect for the purpose of making special provision as respects the payment of compensation in certain circumstances where an order under section 65 modifies planning permission for development consisting of the winning and working of minerals or an order is made under paragraph 1, 3, 5 or 6 of Schedule 8.

### **85 Power to make provision for determination of claims.**

- (1) Regulations shall make provision—

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- (a) for requiring claims for compensation to be determined by the Secretary of State in such manner as may be prescribed;
  - (b) for regulating the practice and procedure to be followed in connection with the determination of such claims;
  - (c) for requiring the Secretary of State on determining any such claim—
    - (i) to give notice of his determination to the claimant and to any other person who has made and not withdrawn a claim for compensation in respect of the same planning decision, and
    - (ii) if his determination includes an apportionment, to give particulars of the apportionment to any other person entitled to an interest in land appearing to the Secretary of State to be an interest substantially affected by the apportionment;
  - (d) for requiring the Secretary of State to pay any compensation determined under this section to the person entitled to it.
- (2) Subject to subsection (3), provision shall be made by such regulations—
- (a) for enabling the claimant or any other person to whom notice of the Secretary of State's determination has been given in accordance with subsection (1), if he wishes to dispute the determination, to require it to be referred to the Lands Tribunal;
  - (b) for enabling the claimant and any other person to whom particulars of an apportionment included in that determination have been so given, or who establishes that he is entitled to an interest in land which is substantially affected by such an apportionment, if he wishes to dispute the apportionment, to require it to be referred to the Lands Tribunal;
  - (c) for enabling the claimant and every other person to whom notice of any determination or apportionment has been given as mentioned in paragraph (a) or (b) to be heard by the Tribunal on any reference under this section of that determination or, as the case may be, of that apportionment; and
  - (d) for requiring the Tribunal, on any such reference, either to confirm or to vary the Secretary of State's determination or the apportionment, as the case may be, and to notify the parties of the decision of the Tribunal.
- (3) Where on a reference to the Lands Tribunal under this section it is shown that an apportionment—
- (a) relates wholly or partly to the same matters as a previous apportionment, and
  - (b) is consistent with that previous apportionment in so far as it relates to those matters,
- the Tribunal shall not vary the apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.

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

- C17 S. 85 extended (27.5.1997) by 1997 c. 9, ss. 79(1), 83(2) (with s. 45(4))  
S. 85 modified (27.5.1997) by 1997 c. 10, ss. 14(1)(5), 31, 40(2) (with ss. 9(3), 10(5), 38(6))  
S. 85 applied (27.5.1997) by 1997 c. 10, ss. 36, 40(2) (with ss. 9(3), 10(5), 38(6))

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## 86 Lands Tribunal to determine claims if not otherwise provided.

- (1) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under this Part shall be referred to and determined by the Lands Tribunal.
- (2) In relation to the determination of any such question, the provisions of sections 9 and 11 of the <sup>M12</sup>Land Compensation (Scotland) Act 1963 shall apply, subject to any necessary modifications and to the provisions of any regulations made under this Act.

### Modifications etc. (not altering text)

- C18** S. 86 modified (27.5.1997) by 1997 c. 10, ss. 14(1)(5), 31, 40(2) (with ss. 9(3), 10(5), 38(6))  
 S. 86 applied (27.5.1997) by 1997 c. 10, ss. 35(3), 40(2) (with ss. 9(3), 10(5), 38(6))

### Marginal Citations

- M12** 1963 c. 51.

## *Supplementary provisions*

## 87 General provisions as to compensation for depreciation under this Part.

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 12 of the <sup>M13</sup>Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (2) This section applies to any compensation which, under the provisions of this Part, is payable in respect of depreciation of the value of an interest in land.
- (3) In relation to the assessment of compensation payable under section 76, the value of any interest may be a minus quantity.
- (4) Where an interest in land is subject to a heritable security—
  - (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the security;
  - (b) a claim for any such compensation may be made by any creditor in a heritable security over the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no compensation to which this section applies shall be payable in respect of the interest of the creditor in the heritable security (as distinct from the interest which is subject to the security); and
  - (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the heritable security shall be paid to the creditor in the security, or, if there is more than one such creditor, to the creditor whose security ranks first, and shall in either case be applied by him as if it were proceeds of sale by him under the powers competent to creditors in heritable securities.

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

**C19** S. 87 modified (27.5.1997) by 1997 c. 10, ss. 14(1),(5), 31, 40(2) (with ss. 9(3), 10(5), 38(6))

**Marginal Citations**

**M13** 1963 c. 51.

**PART V**

**RIGHTS OF OWNERS ETC. TO REQUIRE PURCHASE OF INTERESTS**

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

**C20** Pt. V excluded (1.4.2007) by Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 (S.S.I. 2007/268), arts. 1(1), 3(2)(b) (with art. 14(3))

**CHAPTER I**

**INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS**

*Service of purchase notices*

**88 Circumstances in which purchase notices may be served.**

(1) This section applies where—

- (a) on an application for planning permission to develop any land, permission is refused or is granted subject to conditions,
- (b) by an order under section 65 planning permission in respect of any land is revoked, or is modified by the imposition of conditions, or
- (c) an order is made under section 71 or paragraph 1 of Schedule 8 in respect of any land.

(2) If—

- (a) in the case mentioned in subsection (1)(a) or (b), any owner or lessee of the land claims that the conditions mentioned in subsection (3) are satisfied with respect to it, or
- (b) in the case mentioned in subsection (1)(c), any person entitled to an interest in land in respect of which the order is made claims that the conditions mentioned in subsection (4) are satisfied with respect to it,

he may, within the prescribed time and in the prescribed manner, serve on the planning authority in whose district the land is situated a notice (in this Act referred to as “a purchase notice”) requiring that authority to purchase his interest in the land in accordance with this Chapter.

(3) The conditions mentioned in subsection (2)(a) are—

- (a) that the land has become incapable of reasonably beneficial use in its existing state,

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- (b) in a case where planning permission was granted subject to conditions or was modified by the imposition of conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions, and
  - (c) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been granted or for which the planning authority or the Secretary of State has undertaken to grant planning permission.
- (4) The conditions mentioned in subsection (2)(b) are—
- (a) that by reason of the order the land is incapable of reasonably beneficial use in its existing state, and
  - (b) that it cannot be rendered capable of reasonably beneficial use by the carrying out of any development for which planning permission has been granted, whether by that order or otherwise.
- (5) For the purposes of subsection (1)(a) and any claim arising in the circumstances mentioned in that subsection, the [<sup>F100</sup>provisions of] sections 58 and 59 shall be disregarded.
- (6) A person on whom a repairs notice has been served under section 43 of the <sup>M14</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 shall not be entitled to serve a purchase notice in the circumstances mentioned in subsection (1)(a) in respect of the building in question—
- (a) until the expiration of 3 months beginning with the date of the service of the repairs notice, and
  - (b) if during that period the compulsory acquisition of the building is begun in the exercise of powers under section 42 of that Act, unless and until the compulsory acquisition is discontinued.
- (7) For the purposes of subsection (6) a compulsory acquisition—
- (a) is started when the notice required by paragraph 3(b) of Schedule 1 to the <sup>M15</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 is served, and
  - (b) is discontinued—
    - (i) in the case of acquisition by the Secretary of State, when he decides not to make the compulsory purchase order, and
    - (ii) in any other case, when the order is withdrawn or the Secretary of State decides not to confirm it.
- (8) No purchase notice shall be served in respect of an interest in land while the land is incapable of reasonably beneficial use by reason only of such an order as is mentioned in subsection (1)(c), except by virtue of a claim under subsection (2)(b).

#### Textual Amendments

**F100** Words in s. 88(5) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. [22\(4\)](#), [59\(2\)](#) (with [S.S.I. 2009/222](#), [art. 10\(2\)\(f\)](#)); [S.S.I. 2008/411](#), art. [2\(2\)\(3\)\(a\)](#); [S.S.I. 2009/219](#), art. 2, sch.



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

- C21** S. 88 savings for effects of 2006 asp 17 s. 22 (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Development Management and Appeals\) \(Saving, Transitional and Consequential Provisions\) Order 2009 \(S.S.I. 2009/222\)](#), **art. 10(2)(f)**

#### **Marginal Citations**

- M14** 1997 c. 9.  
**M15** 1947 c. 42.

### **[<sup>F101</sup>88A Purchase notices: Crown land**

- (1) A purchase notice may be served in respect of Crown land only as mentioned in this section.
- (2) The owner of a private interest in Crown land must not serve a purchase notice unless—
  - (a) he first offers to dispose of his interest to the appropriate authority on equivalent terms, and
  - (b) the offer is refused by the appropriate authority.
- (3) The appropriate authority may serve a purchase notice in relation to the following land—
  - (a) land belonging to Her Majesty in right of her private estates,
  - (b) land which forms part of the Crown Estate.
- (4) An offer is made on equivalent terms if the price payable for the interest is equal to (and, in default of agreement, determined in the same manner as) the compensation which would be payable in respect of it if it were acquired in pursuance of a purchase notice.
- (5) Expressions used in this section and in Part 12 (Crown Land) must be construed in accordance with that Part.]

#### **Textual Amendments**

- F101** S. 88A inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), **Sch. 5 para. 1** (with s. 111); [S.S.I. 2006/268](#), art. 3(f)

### **89 Circumstances in which land incapable of reasonably beneficial use.**

Where, for the purpose of determining whether the conditions specified in section 88(3) or (4) are satisfied in relation to any land, any question arises as to what is or would in any particular circumstances be a reasonably beneficial use of that land, then, in determining that question for that purpose, no account shall be taken of any prospective development other than any development specified in paragraph 1 or 2 of Schedule 11.

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### *Duties of authorities on service of purchase notice*

#### **90 Action by planning authority on whom purchase notice is served.**

- (1) The planning authority on whom a purchase notice is served shall serve on the owner or lessee by whom the purchase notice was served a notice (a “response notice”) stating—
  - (a) that the planning authority are willing to comply with the purchase notice,
  - (b) that another local authority or statutory undertakers specified in the response notice have agreed to comply with it in their place, or
  - (c) that for reasons so specified the planning authority are not willing to comply with the purchase notice and have not found any other local authority or statutory undertakers who will agree to comply with it in their place, and that they have sent the Secretary of State a copy of the purchase notice and of the response notice.
- (2) A response notice must be served before the end of the period of 3 months beginning with the date of service of the purchase notice.
- (3) Where the planning authority on whom a purchase notice is served by an owner or lessee have served a response notice on him in accordance with subsection (1)(a) or (b), the planning authority or, as the case may be, the other local authority or statutory undertakers specified in the response notice shall be deemed—
  - (a) to be authorised to acquire the interest of the owner or lessee compulsorily in accordance with the relevant provisions, and
  - (b) to have served a notice to treat in respect of it on the date of service of the response notice.
- (4) Where the planning authority propose to serve such a response notice as is mentioned in subsection (1)(c), they must first send the Secretary of State a copy—
  - (a) of the proposed response notice, and
  - (b) of the purchase notice.
- (5) Where the planning authority on whom a purchase notice is served by an owner or lessee do not serve a response notice on him before the end of the period mentioned in subsection (2)—
  - (a) the purchase notice shall be deemed to be confirmed at the end of that period, and
  - (b) subsection (3) shall apply as if the authority had served a response notice on him on the last day of that period.
- (6) A notice to treat which is deemed to have been served by virtue of subsection (3) (b) or (5)(b) may not be withdrawn under section 39 of the <sup>M16</sup>Land Compensation (Scotland) Act 1963.

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

**C22** S. 90: power to modify conferred (27.5.1997) by 1980 c. 65, **Sch. 30 Pt. II para. 1** (as replaced (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 31(12)**)

#### **Marginal Citations**

**M16** 1963 c. 51.

*Status: Point in time view as at 18/03/2011.*

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## **91 Procedure on reference of purchase notice to Secretary of State.**

- (1) Where a copy of a purchase notice is sent to the Secretary of State under section 90(4), he shall consider whether to confirm the notice or to take other action under section 92 in respect of it.
- (2) Before confirming a purchase notice or taking such other action, the Secretary of State shall give notice of his proposed action—
  - (a) to the person who served the purchase notice,
  - (b) to the planning authority on whom it was served, and
  - (c) if the Secretary of State proposes to substitute any other local authority or statutory undertakers for the planning authority on whom the notice was served, to them.
- (3) A notice under subsection (2) shall specify the period (which must not be less than 28 days from its service) within which any of the persons, authorities or statutory undertakers on whom it is served may require the Secretary of State to give them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) If within that period any of those persons, authorities or statutory undertakers so require, the Secretary of State shall, before he confirms the purchase notice or takes any other action under section 92 in respect of it, give each of them such an opportunity.
- (5) If, after any of those persons, authorities or statutory undertakers have appeared before and been heard by the appointed person, or the persons, authorities and undertakers concerned have agreed to dispense with a hearing, it appears to the Secretary of State to be expedient to take action under section 92 otherwise than in accordance with the notice given by him, the Secretary of State may take that action accordingly.

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

**C23** S. 91(2)(c): power to modify conferred (27.5.1997) by 1980 c. 65, **Sch. 30 Pt. II para. 2** (as replaced (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 31(12)**)

## **92 Action by Secretary of State in relation to purchase notice.**

- (1) Subject to the following provisions of this section and to section 93(3), if the Secretary of State is satisfied that the conditions specified in subsection (3) or, as the case may be, subsection (4) of section 88 are satisfied in relation to a purchase notice, he shall confirm the notice.
- (2) If it appears to the Secretary of State to be expedient to do so, he may, instead of confirming the purchase notice—
  - (a) in the case of a notice served on account of the refusal of planning permission, grant planning permission for the development in question;
  - (b) in the case of a notice served on account of planning permission for development being granted subject to conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of that development;

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- (c) in the case of a notice served on account of the revocation of planning permission by an order under section 65, cancel the order;
  - (d) in the case of a notice served on account of the modification of planning permission by such an order by the imposition of conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of the development in respect of which the permission was granted; or
  - (e) in the case of a notice served on account of the making of an order under section 71 or paragraph 1 of Schedule 8, revoke the order or, as the case may be, amend the order so far as appears to him to be required in order to prevent the land from being rendered incapable of reasonably beneficial use by the order.
- (3) If it appears to the Secretary of State that the land, or any part of the land, to which the purchase notice relates could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out of any other development for which planning permission ought to be granted, he may, instead of confirming the purchase notice or, as the case may be, of confirming it so far as it relates to that part of the land, direct that, if an application for planning permission for that development is made, it must be granted.
- (4) If it appears to the Secretary of State to be expedient that another local authority or statutory undertakers should acquire the interest of the owner or lessee for the purpose of any of their functions, he may, if he confirms the notice, modify it, in relation to either the whole or any part of the land to which the purchase notice relates, by substituting another local authority or statutory undertakers for the planning authority on whom the notice was served.
- (5) Any reference in section 91 to the taking of action by the Secretary of State under this section includes a reference to the taking by him of a decision not to confirm the purchase notice either on the grounds that any of the conditions referred to in subsection (1) are not satisfied or by virtue of section 93.

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

**C24** S. 92(4): power to modify conferred (27.5.1997) by 1980 c. 65, **Sch. 30 Pt. II para. 3** (as replaced (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 31(12)**)

**93 Power to refuse to confirm purchase notice where land has restricted use by virtue of previous planning permission.**

- (1) This section applies where a purchase notice is served in respect of land which consists in whole or in part of land which has a restricted use by virtue of an existing planning permission.
- (2) For the purposes of this section, land is to be treated as having a restricted use by virtue of an existing planning permission if it is part of a larger area in respect of which planning permission has previously been granted (and has not been revoked) and either—
  - (a) it remains a condition of the planning permission (however expressed) that that part shall remain undeveloped or be preserved or laid out in a particular way as amenity land in relation to the remainder, or

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- (b) the planning permission was granted on an application which contemplated (expressly or by necessary implication) that the part should not be comprised in the development for which planning permission was sought, or should be preserved or laid out as mentioned in paragraph (a).
- (3) Where a copy of the purchase notice is sent to the Secretary of State under section 90(4), although satisfied that the land has become incapable of reasonably beneficial use in its existing state, he need not confirm the notice under section 92(1) if it appears to him that the land having a restricted use by virtue of an existing planning permission ought, in accordance with that permission, to remain undeveloped or, as the case may be, remain or be preserved or laid out as amenity land in relation to the remainder of the large area for which that planning permission was granted.

#### **94 Effect of Secretary of State's action in relation to purchase notice.**

- (1) Where the Secretary of State confirms a purchase notice—
- (a) the planning authority on whom the purchase notice was served, or
  - (b) if under section 92(4) the Secretary of State modified the purchase notice by substituting another local authority or statutory undertakers for that planning authority, that other authority or those undertakers,
- shall be deemed to be authorised to acquire the interest of the owner or lessee compulsorily in accordance with the relevant provisions, and to have served a notice to treat in respect of it on such date as the Secretary of State may direct.
- (2) If, before the end of the relevant period, the Secretary of State has neither—
- (a) confirmed the purchase notice, nor
  - (b) taken any such action in respect of it as is mentioned in section 92(2) or (3), nor
  - (c) notified the owner or lessee by whom the notice was served that he does not propose to confirm the notice,
- the notice shall be deemed to be confirmed at the end of that period, and the authority on whom the notice was served shall be deemed to be authorised as mentioned in subsection (1) and to have served a notice to treat in respect of the owner's interest at the end of that period.
- (3) Subject to subsection (4), for the purposes of subsection (2) the relevant period is the period of 6 months beginning with the date on which a copy of the purchase notice was sent to the Secretary of State.
- (4) The relevant period does not run if the Secretary of State has before him at the same time both—
- (a) a copy of the purchase notice sent to him under section 90(4), and
  - (b) a notice of appeal under section 47, 130 or 154 of this Act or under section 18 or 35 of the <sup>M17</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (appeals against refusal of listed building consent, etc. and appeals against listed building enforcement notices) or under section 19 of the <sup>M18</sup>Planning (Hazardous Substances) (Scotland) Act 1997 (appeals against decisions and failure to take decisions relating to hazardous substances) relating to any of the land to which the purchase notice relates.
- (5) Where—

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- (a) the Secretary of State has notified the owner or lessee by whom a purchase notice has been served of a decision on his part to confirm, or not to confirm, the notice, and
  - (b) that decision is quashed under Part XI,
- the purchase notice shall be treated as cancelled, but the owner or lessee may serve a further purchase notice in its place.
- (6) The reference in subsection (5) to a decision to confirm, or not to confirm, the purchase notice includes—
- (a) any decision not to confirm the notice in respect of any part of the land to which it relates, and
  - (b) any decision to grant any permission, or give any direction, instead of confirming the notice, in respect of any part (or the whole) of the land to which it relates.
- (7) For the purposes of determining whether a further purchase notice under subsection (5) was served within the period prescribed for the service of purchase notices, the planning decision in consequence of which the notice was served shall be treated as having been made on the date on which the decision of the Secretary of State was quashed.
- (8) A notice to treat which is deemed to have been served by virtue of subsection (1) or (2) may not be withdrawn under section 39 of the <sup>M19</sup>Land Compensation (Scotland) Act 1963.

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

**C25** S. 94(1)(b): power to modify conferred (27.5.1997) by 1980 c. 65, **Sch. 30 Pt. II para. 4** (as replaced (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 31(12)**)

**Marginal Citations**

**M17** 1997 c. 9.

**M18** 1997 c. 10.

**M19** 1963 c. 51.

*Compensation*

**95 Special provisions as to compensation where purchase notice served.**

- (1) Where compensation is payable by virtue of section 76 in respect of expenditure incurred in carrying out any work on land, any compensation payable in respect of the acquisition of an interest in the land in pursuance of a purchase notice shall be reduced by an amount equal to the value of those works.
- (2) Where—
- (a) the Secretary of State directs under section 92(3) that, if an application for it is made, planning permission must be granted for the development of any land, and
  - (b) on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that the permitted development value of

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- the interest in that land in respect of which the purchase notice was served is less than its Schedule 11 value,
- the planning authority shall pay the person entitled to that interest compensation of an amount equal to the difference.
- (3) If the planning permission mentioned in subsection (2)(a) would be granted subject to conditions for regulating the design or external appearance, or the size or height of buildings, or for regulating the number of buildings to be erected on the land, the Secretary of State may direct that in assessing any compensation payable under subsection (2) those conditions must be disregarded, either altogether or to such extent as may be specified in the direction.
- (4) The Secretary of State may give a direction under subsection (3) only if it appears to him to be reasonable to do so having regard to the local circumstances.
- (5) Sections 86 and 87 shall have effect in relation to compensation under subsection (2) as they have effect in relation to compensation to which those sections apply.
- (6) In this section—
- “permitted development value”, in relation to an interest in land in respect of which a direction is given under section 92(3), means the value of that interest calculated with regard to that direction, but on the assumption that no planning permission would be granted otherwise than in accordance with that direction, and
- “Schedule 11 value”, in relation to such an interest, means the value of that interest calculated on the assumption that planning permission would be granted—
- (a) subject to the conditions set out in Schedule 12, for any development of a class specified in paragraph 1 of Schedule 11, and
- (b) for any development of a class specified in paragraph 2 of Schedule 11.
- (7) Where a purchase notice in respect of an interest in land is served in consequence of an order under section 71 or paragraph 1 of Schedule 8, then if—
- (a) that interest is acquired in accordance with this Chapter, or
- (b) compensation is payable in respect of that interest under subsection (2),
- no compensation shall be payable in respect of that order under section 83.

*Special provisions for requiring purchase of whole of partially affected agricultural unit*

## **96 Counter-notice requiring purchase of remainder of agricultural unit.**

- (1) This section applies where—
- (a) an acquiring authority is deemed under this Chapter to have served notice to treat in respect of any agricultural land on a person (“the claimant”) who has a greater interest in the land than as tenant for a year or from year to year (whether or not he is in occupation of the land), and
- (b) the claimant has such an interest in other agricultural land (“the unaffected area”) comprised in the same agricultural unit as that to which the notice relates.
- (2) Where this section applies the claimant may serve on the acquiring authority a counter-notice—



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- (a) claiming that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit, and
  - (b) requiring the acquiring authority to purchase his interest in the whole of the unaffected area.
- (3) Subject to subsection (4), “other relevant land” in subsection (2) means—
- (a) land which is comprised in the same agricultural unit as the land to which the notice to treat relates and in which the claimant does not have such an interest as is mentioned in subsection (1), and
  - (b) land which is comprised in any other agricultural unit occupied by the claimant on the date on which the notice to treat is deemed to have been served and in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year.
- (4) Where a notice to treat has been served or is deemed under this Chapter or Schedule 15 to have been served in respect of any of the unaffected area or in respect of other relevant land as defined in subsection (3), then, unless and until the notice to treat is withdrawn, this section and section 97 shall have effect as if that land did not form part of the unaffected land or, as the case may be, did not constitute other relevant land.
- (5) Where a counter-notice is served under subsection (2) the claimant shall also serve a copy of it on any other person who has an interest in the unaffected area (but failure to comply with this subsection shall not invalidate the counter-notice).
- (6) A counter-notice under subsection (2) and any copy of that notice required to be served under subsection (5) must be served within the period of 2 months beginning with the date on which the notice to treat is deemed to have been served.
- (7) This section is without prejudice to the rights conferred by sections 91 and 92 of the <sup>M20</sup>Lands Clauses Consolidation (Scotland) Act 1845 (provisions as to divided land).

**Marginal Citations**

**M20** 1845 c. 19.

**97 Effect of counter-notice under section 96.**

- (1) If the acquiring authority do not within the period of 2 months beginning with the date of service of a counter-notice under section 96 agree in writing to accept the counter-notice as valid, the claimant or the authority may, within 2 months after the end of that period, refer it to the Lands Tribunal.
- (2) On such a reference the Lands Tribunal shall determine whether the claim in the counter-notice is justified and declare the counter-notice valid or invalid accordingly.
- (3) Where a counter-notice is accepted as valid under subsection (1) or declared to be valid under subsection (2), the acquiring authority shall be deemed—
  - (a) to be authorised to acquire compulsorily the interest of the claimant in the land to which the requirement in the counter-notice relates under the same provision of this Chapter as they are authorised to acquire the other land in the agricultural unit in question, and



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- (b) to have served a notice to treat in respect of that land on the date on which notice to treat is deemed to have been served under that provision.
- (4) A claimant may withdraw a counter-notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the counter-notice has been determined by the Lands Tribunal or at any time before the end of 6 weeks beginning with the date on which it is determined.
- (5) Where a counter-notice is withdrawn by virtue of subsection (4) any notice to treat deemed to have been served in consequence of it shall be deemed to have been withdrawn.
- (6) Without prejudice to subsection (5), a notice to treat deemed to have been served by virtue of this section may not be withdrawn under section 39 of the <sup>M21</sup>Land Compensation (Scotland) Act 1963.
- (7) The compensation payable in respect of the acquisition of an interest in land in pursuance of a notice to treat deemed to have been served by virtue of this section shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) of the <sup>M22</sup>Land Compensation (Scotland) Act 1973.
- (8) Where by virtue of this section the acquiring authority become or will become entitled to a lease of any land but not to the interest of the lessor—
- (a) the authority shall offer to renounce the lease to the lessor on such terms as the authority consider reasonable,
- (b) the question of what is reasonable may be referred to the Lands Tribunal by the authority or the lessor and, if at the expiration of the period of 3 months after the date of the offer mentioned in paragraph (a) the authority and the lessor have not agreed on the question and that question has not been referred to the Tribunal by the lessor, it shall be so referred by the authority, and
- (c) if that question is referred to the Tribunal, the lessor shall be deemed—
- (i) to have accepted the renunciation of the lease at the expiry of one month after the date of the determination of the Tribunal or on such other date as the Tribunal may direct, and
- (ii) to have agreed with the authority on the terms of surrender which the Tribunal has held to be reasonable.
- (9) For the purposes of subsection (8) any terms as to renunciation contained in the lease shall be disregarded.
- (10) Where the lessor—
- (a) refuses to accept any sum payable to him by virtue of subsection (8), or
- (b) refuses or fails to make out his title to the satisfaction of the acquiring authority,
- they may pay into the bank within the meaning of section 3 of the <sup>M23</sup>Lands Clauses Consolidation (Scotland) Act 1845 any such sum payable to the lessor and sections 75, 76, 77 and 79 of that Act shall apply to that sum with the necessary modifications.
- (11) Where an acquiring authority who become entitled to the lease of any land as mentioned in subsection (8) are a body incorporated by or under any enactment, the corporate powers of the authority shall, if they would not otherwise do so, include the power to farm that land.

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#### **Marginal Citations**

- M21** 1963 c. 51.  
**M22** 1973 c. 56.  
**M23** 1845 c. 19.

### **98 Provisions supplemental to sections 96 and 97.**

- (1) Sections 96 and 97 apply in relation to the acquisition of interests in land by government departments which possess compulsory purchase powers as they apply in relation to the acquisition of interests in land by authorities who are not government departments.
- (2) In sections 96 and 97—
- “acquiring authority” has the same meaning as in the <sup>M24</sup>Land Compensation (Scotland) Act 1963;
  - “agricultural” and “agricultural land” have the meaning given in section 86 of the <sup>M25</sup>Agriculture (Scotland) Act 1948 and references to the farming of land include references to the carrying on in relation to the land of any agricultural activities;
  - “agricultural unit” has the meaning given in section 122(1); and
  - “government departments which possess compulsory purchase powers” means government departments being authorities possessing compulsory purchase powers within the meaning of the <sup>M26</sup>Land Compensation (Scotland) Act 1963.

#### **Marginal Citations**

- M24** 1963 c. 51.  
**M25** 1948 c. 45.  
**M26** 1963 c. 51.

### *Supplemental*

### **99 Interpretation of Chapter I.**

- (1) In this Chapter—
- “the relevant provisions” means—
    - (a) the provisions of Part VIII, or
    - (b) in the case of statutory undertakers, any statutory provision (however expressed) under which they have power, or may be authorised, to purchase land compulsorily for the purposes of their undertaking; and
 “statutory undertakers” includes [<sup>F102</sup>electronic communications code operators and former PTOs].
- (2) In the case of a purchase notice served by such a person as is mentioned in subsection (2)(b) of section 88, references in this Chapter to the owner or lessee of the land include references to that person unless the context otherwise requires.

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### Textual Amendments

**F102** Words in s. 99(1) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 13(3)**

### Modifications etc. (not altering text)

**C26** S. 99: power to modify definition of “relevant provisions” conferred (27.5.1997) by [1980 c. 65](#), **Sch. 30 Pt. II para. 5** (as replaced (27.5.1997) by [1997 c. 11](#), ss. 4, 6(2), **Sch. 2 para. 31(12)**)

## CHAPTER II

### INTERESTS AFFECTED BY PLANNING PROPOSALS: BLIGHT

### Modifications etc. (not altering text)

**C27** Pt. V Ch. II applied (11.8.2004) by [Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 \(asp 10\)](#), **s. 34(2)** (with s. 33)

**C28** Pt. V Ch. II applied (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\)](#), **s. 74(2)** (with s. 75)

**C29** Pt. V Ch. II applied (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\)](#), **s. 75(2)** (with ss. 76, 84)

**C30** Pt. V Ch. II applied (24.7.2006) by [Waverley Railway \(Scotland\) Act 2006 \(asp 13\)](#), **s. 41(2)** (with ss. 50(2), 51)

**C31** Pt. V Ch. II applied (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), **s. 50(2)** (with ss. 48, 59)

**C32** Pt. V Ch. II modified (3.2.2011) by [Forth Crossing Act 2011 \(asp 2\)](#), **ss. 72, 80(2)** (with ss. 69, 78); [S.S.I. 2011/38](#), art. 2, sch.

### *Preliminary*

#### **100 Scope of Chapter II.**

- (1) This Chapter shall have effect in relation to land falling within any paragraph of Schedule 14 (land affected by planning proposals of public authorities etc.); and in this Chapter such land is referred to as “blighted land”.
- (2) Subject to the provisions of sections 112 and 113, an interest qualifies for protection under this Chapter if—
  - (a) it is an interest in a hereditament or part of a hereditament and on the relevant date it satisfies one of the conditions mentioned in subsection (3), or
  - (b) it is an interest in an agricultural unit or part of an agricultural unit and on the relevant date it is the interest of an owner-occupier of the unit;and in this Chapter such an interest is referred to as “a qualifying interest”.
- (3) The conditions mentioned in subsection (2)(a) are—
  - (a) that the annual value of the hereditament does not exceed such amount as may be prescribed for the purposes of this paragraph by an order made by the Secretary of State, and the interest is the interest of an owner-occupier of the hereditament, or

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- (b) that the interest is the interest of a resident owner-occupier of the hereditament.
- (4) The Secretary of State may by regulations substitute for any reference in this Chapter to “annual value” or “hereditament” such other reference as he may consider appropriate; and such regulations may make such supplemental or consequential amendments of this Act or any other enactment whether passed before or after this Act as the Secretary of State thinks fit.
- (5) In this section “the relevant date”, in relation to an interest, means the date of service of a notice under section 101 in respect of it.
- [<sup>F103</sup>(5A) In the application of subsections (3)(a) and (4) in relation to land to which paragraph 17 or 18 of Schedule 14 applies, references to the Scottish Ministers are to be read as references to the Secretary of State.]
- (6) In this Chapter “blight notice” means a notice served under section 101.

#### Textual Amendments

**F103** S. 100(5A) inserted (6.4.2009 for specified purposes, 1.3.2010 in so far as not already in force) by [Planning Act 2008 \(c. 29\)](#), [ss. 176\(3\), 241\(8\)](#) (with [s. 226](#)); [S.I. 2009/400, art. 4\(a\)](#), [S.I. 2010/101, art. 5](#) (with [art. 6](#))

### *Blight notices*

#### **101 Notice requiring purchase of blighted land.**

- (1) Where the whole or part of a hereditament or agricultural unit is comprised in blighted land and a person claims that—
- (a) he is entitled to a qualifying interest in that hereditament or unit,
  - (b) he has made reasonable endeavours to sell that interest or the land falls within paragraph 14<sup>[F104]</sup>, 15 or 17] of Schedule 14 and <sup>[F105]</sup>(except in the case of land falling within paragraph 17 by virtue of paragraph 17(2)(c)) the powers of compulsory acquisition remain exercisable, and
  - (c) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land,
- he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, this Chapter.
- (2) Subject to subsection (3), subsection (1) shall apply in relation to an interest in part of a hereditament or unit as it applies in relation to an interest in the whole of a hereditament or unit.
- (3) Subsection (2) shall not enable any person—
- (a) if he is entitled to an interest in the whole of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of his interest in part of a hereditament or unit, or

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- (b) if he is entitled to an interest only in part of a hereditament or agricultural unit, to make or serve any such claim or notice in respect of his interest in less than the whole of that part.
- (4) In this Chapter—
- (a) subject to section 112(1), “the claimant”, in relation to a blight notice, means the person who served that notice, and
  - (b) any reference to the interest of the claimant, in relation to a blight notice, is a reference to the interest which the notice requires the appropriate authority to purchase as mentioned in subsection (1).
- (5) Where the claimant is a crofter or cottar, this section shall have effect as if—
- (a) in subsection (1)(b) for the word “sell” there were substituted the word “assign”,
  - (b) in subsection (1)(c) for the words from “sell that interest” to “to sell” there were substituted the words “assign his interest except at a price substantially lower than that for which he might reasonably have been expected to assign it”, and
  - (c) in subsections (1) and (4) for the word “purchase” there were substituted the words “take possession of”.

#### Textual Amendments

- F104** Words in s. 101(1)(b) substituted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), **ss. 176(4)(a)**, 241(8) (with s. 226); [S.I. 2010/101](#), art. 5 (with art. 6)
- F105** Words in s. 101(1)(b) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), **ss. 176(4)(b)**, 241(8) (with s. 226); [S.I. 2010/101](#), art. 5 (with art. 6)

## 102 Counter-notice objecting to blight notice.

- (1) Where a blight notice has been served in respect of a hereditament or an agricultural unit, the appropriate authority may serve on the claimant a counter-notice in the prescribed form objecting to the notice.
- (2) A counter-notice under subsection (1) may be served at any time before the end of the period of 2 months beginning with the date of service of the blight notice.
- (3) Such a counter-notice shall specify the grounds on which the appropriate authority object to the blight notice (being one or more of the grounds specified in subsection (4) or, as relevant, in section 110(1), 112(5) or 113(5)).
- (4) Subject to the following provisions of this section, the grounds on which objection may be made in a counter-notice to a notice served under section 101 are—
  - (a) that no part of the hereditament or agricultural unit to which the notice relates is comprised in blighted land;
  - (b) that the appropriate authority (unless compelled to do so by virtue of this Chapter) do not propose to acquire any part of the hereditament, or in the case of an agricultural unit any part of the affected area, in the exercise of any relevant powers;
  - (c) that the appropriate authority propose in the exercise of relevant powers to acquire a part of the hereditament or, in the case of an agricultural unit, a part of the affected area specified in the counter-notice, but (unless compelled to

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- do so by virtue of this Chapter) do not propose to acquire any other part of that hereditament or area in the exercise of any such powers;
- (d) in the case of land falling within paragraph 1 or 10 but not 11, 12 or 13 of Schedule 14, that the appropriate authority (unless compelled to do so by virtue of this Chapter) do not propose to acquire in the exercise of any relevant powers any part of the hereditament or, in the case of an agricultural unit, any part of the affected area during the period of 15 years from the date of the counter-notice or such longer period from that date as may be specified in the counter-notice;
- (e) that, on the date of service of the notice under section 101, the claimant was not entitled to an interest in any part of the hereditament or agricultural unit to which the notice relates;
- (f) that (for reasons specified in the counter-notice) the interest of the claimant is not a qualifying interest;
- (g) that the conditions specified in paragraphs (b) and (c) of section 101(1) are not fulfilled.
- (5) Where the appropriate enactment confers power to acquire rights in or over land, subsection (4) shall have effect as if—
- (a) in paragraph (b) after the word “acquire” there were inserted the words “ or to acquire any rights in or over ”,
- (b) in paragraph (c) for the words “do not propose to acquire” there were substituted the words “ propose neither to acquire, nor to acquire any right in or over ”, and
- (c) in paragraph (d) after the words “affected area” there were inserted “ or to acquire any right in or over any part of it ”.
- (6) An objection may not be made on the grounds mentioned in paragraph (d) of subsection (4) if it may be made on the grounds mentioned in paragraph (b) of that subsection.
- (7) An objection may not be made on the grounds mentioned in paragraphs (b) or (c) of subsection (4) in a counter-notice to a blight notice served by virtue of paragraphs 8 or 9 of Schedule 14.
- <sup>F106</sup>[<sup>F106</sup>(7A) An objection may not be made on the ground mentioned in paragraph (b) of subsection (4) in a counter-notice to a blight notice served by virtue of paragraph 18 of Schedule 14.]
- (8) In this section, “relevant powers”, in relation to blighted land falling within any paragraph of Schedule 14, means any powers under which the appropriate authority are or could be authorised—
- (a) to acquire that land or any rights in or over it compulsorily as being land falling within such paragraph, or
- (b) to acquire that land or any rights in or over it compulsorily for any of the relevant purposes;
- and “the relevant purposes”, in relation to any such land, means the purposes for which, in accordance with the circumstances by virtue of which that land falls within the paragraph in question, it is liable to be acquired or is indicated as being proposed to be acquired.

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### Textual Amendments

**F106** S. 102(7A) inserted (6.4.2009 for specified purposes, 1.3.2010 in so far as not already in force) by [Planning Act 2008 \(c. 29\)](#), ss. [176\(5\)](#), [241\(8\)](#) (with s. 226); S.I. 2009/400, art. 4(a), S.I. 2010/101, art. 5 (with art. 6)

## 103 Further counter-notice where certain proposals have come into force.

- (1) Where—
  - (a) an appropriate authority have served a counter-notice objecting to a blight notice in respect of any land falling within—
    - (i) paragraph 1 of Schedule 14 by virtue of paragraph 1(4),
    - (ii) paragraph 2 of that Schedule by virtue of paragraph 2(2), or
    - (iii) paragraph 11 of that Schedule, and
  - (b) the relevant plan or alterations or, as the case may be, the relevant order or scheme comes into force (whether in its original form or with modifications),  
the appropriate authority may serve on the claimant, in substitution for the counter-notice already served, a further counter-notice specifying different grounds of objection.
- (2) Such a further counter-notice shall not be served—
  - (a) at any time after the end of the period of 2 months beginning with the date on which the relevant plan or alterations or, as the case may be, the relevant order or scheme come into force, or
  - (b) if the objection in the counter-notice already served has been withdrawn or the Lands Tribunal has already determined whether or not to uphold that objection.

## 104 Reference of objection to Lands Tribunal: general.

- (1) Where a counter-notice has been served under section 102 objecting to a blight notice, the claimant may require the objection to be referred to the Lands Tribunal.
- (2) Such a reference may be required under subsection (1) at any time before the end of the period of 2 months beginning with the date of service of the counter-notice.
- (3) On any such reference, if the objection is not withdrawn, the Lands Tribunal shall consider—
  - (a) the matters set out in the notice served by the claimant, and
  - (b) the grounds of the objection specified in the counter-notice,and, subject to subsection (4), unless it is shown to the satisfaction of the Tribunal that the objection is not well-founded, the Tribunal shall uphold the objection.
- (4) An objection on the grounds mentioned in section 102(4)(b), (c) or (d) shall not be upheld by the Tribunal unless it is shown to the satisfaction of the Tribunal that the objection is well-founded.
- (5) If the Tribunal determines not to uphold the objection, the Tribunal shall declare that the notice to which the counter-notice relates is a valid notice.

*Status: Point in time view as at 18/03/2011.*

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- (6) If the Tribunal upholds the objection, but only on the grounds mentioned in section 102(4)(c), the Tribunal shall declare that the notice is a valid notice in relation to the part of the hereditament, or in the case of an agricultural unit the part of the affected area, specified in the counter-notice as being the part which the appropriate authority propose to acquire as mentioned in that notice, but not in relation to any other part of the hereditament or affected area.
- (7) In a case falling within subsection (5) or (6), the Tribunal shall give directions specifying the date on which notice to treat (as mentioned in section 105) or, in a case where the claimant is a crofter or cottar, notice of entry (as mentioned in that section) is to be deemed to have been served.
- (8) This section shall have effect in relation to a further counter-notice served by virtue of section 103(1) as it has effect in relation to the counter-notice for which it is substituted.

## **105 Effect of valid blight notice.**

- (1) Subsection (2) applies where a blight notice has been served and either—
  - (a) no counter-notice objecting to that notice is served in accordance with this Chapter, or
  - (b) where such a counter-notice has been served, the objection is withdrawn or, on a reference to the Lands Tribunal, is not upheld by the Tribunal.
- (2) Where this subsection applies, the appropriate authority shall be deemed—
  - (a) to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in the hereditament, or in the case of an agricultural unit the interest of the claimant in so far as it subsists in the affected area, and
  - (b) to have served a notice to treat in respect of it on the date mentioned in subsection (3).
- (3) The date referred to in subsection (2)—
  - (a) in a case where, on a reference to the Lands Tribunal, the Tribunal determines not to uphold the objection, is the date specified in directions given by the Tribunal in accordance with section 104(7), and
  - (b) in any other case, is the date on which the period of 2 months beginning with the date of service of the blight notice comes to an end.
- (4) Subsection (5) applies where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 102(4)(c) and either—
  - (a) the claimant, without referring that objection to the Lands Tribunal, and before the time for so referring it has expired—
    - (i) gives notice to the appropriate authority that he accepts the proposal of the authority to acquire the part of the hereditament or affected area specified in the counter-notice, and
    - (ii) withdraws his claim as to the remainder of that hereditament or area, or
  - (b) on a reference to the Lands Tribunal, the Tribunal makes a declaration in accordance with section 104(6) in respect of that part of the hereditament or affected area.
- (5) Where this subsection applies, the appropriate authority shall be deemed—



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- (a) to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the part of the hereditament or affected area specified in the counter-notice (but not in so far as it subsists in any other part of that hereditament or area), and
  - (b) to have served a notice to treat in respect of it on the date mentioned in subsection (6).
- (6) The date referred to in subsection (5)—
- (a) in a case falling within paragraph (a) of subsection (4), is the date on which notice is given in accordance with that paragraph, and
  - (b) in a case falling within paragraph (b) of that subsection, is the date specified in directions given by the Lands Tribunal in accordance with section 104(7).
- (7) Where the claimant is a crofter or cottar, this section applies as if in subsections (2) and (5) for the words from “acquire” to “in respect of it” there were substituted the words “require the crofter or cottar to give up possession of the land occupied by him and to have served a notice of entry in respect thereof under paragraph 3 of Schedule 2 to the<sup>M27</sup> Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947”.

#### Marginal Citations

M27 1947 c. 42.

### 106 Effect on powers of compulsory acquisition of counter-notice disclaiming intention to acquire.

- (1) Subsection (2) shall have effect where the grounds of objection specified in a counter-notice served under section 102 consist of or include the grounds mentioned in paragraph (b) or (d) of subsection (4) of that section and either—
- (a) the objection on the grounds mentioned in that paragraph is referred to and upheld by the Lands Tribunal, or
  - (b) the time for referring that objection to the Lands Tribunal expires without its having been so referred.
- (2) If—
- (a) a compulsory purchase order has been made under the appropriate enactment in respect of land which consists of or includes the whole or part of the hereditament or agricultural unit to which the counter-notice relates, or
  - (b) the land in question falls within paragraph 14 of Schedule 14,
- any power conferred by that order or, as the case may be, by special enactment for the compulsory acquisition of the interest of the claimant in the hereditament or agricultural unit or any part of it shall cease to have effect.
- (3) Subsection (4) shall have effect where the grounds of objection specified in a counter-notice under section 102 consist of or include the grounds mentioned in paragraph (c) of subsection (4) of that section and either—
- (a) the objection on the grounds mentioned in that paragraph is referred to and upheld by the Lands Tribunal, or
  - (b) the time for referring that objection to the Lands Tribunal expires without its having been so referred;

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and in subsection (4) any reference to “the part of the hereditament or affected area not required” is a reference to the whole of that hereditament or area except the part specified in the counter-notice as being the part which the appropriate authority propose to acquire as mentioned in the counter-notice.

- (4) If—
- (a) a compulsory purchase order has been made under the appropriate enactment in respect of land which consists of or includes any of the part of the hereditament or affected area not required, or
  - (b) the land in question falls within paragraph 14 of Schedule 14,
- any power conferred by that order or, as the case may be, by the special enactment for the compulsory acquisition of the interest of the claimant in any land comprised in the part of the hereditament or affected area not required shall cease to have effect.
- (5) Where the claimant is a crofter or cottar, this section shall have effect as if in subsections (2) and (4) for the words from “or, as the case may be, by” to “claimant in” there were substituted the words “to require the crofter or cottar to give up possession of”.

#### **107 Withdrawal of blight notice.**

- (1) Subject to subsection (3), the claimant may withdraw a blight notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the notice has been determined by the Lands Tribunal or, if there has been such a determination, at any time before the end of the period of 6 weeks beginning with the date of the determination.
- (2) Where a blight notice is withdrawn by virtue of subsection (1) any notice to treat deemed to have been served in consequence of it shall be deemed to have been withdrawn.
- (3) A claimant shall not be entitled by virtue of subsection (1) to withdraw a notice after the appropriate authority have exercised a right of entering and taking possession of land in pursuance of a notice to treat deemed to have been served in consequence of that notice.
- (4) No compensation shall be payable in respect of the withdrawal of a notice to treat which is deemed to have been withdrawn by virtue of subsection (2).

#### *Compensation*

#### **108 Special provisions as to compensation for acquisition in pursuance of blight notice.**

- (1) Where—
  - (a) an interest in land is acquired in pursuance of a blight notice, and
  - (b) the interest is one in respect of which a compulsory purchase order is in force under section 1 of the <sup>M28</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, as applied by section 42 of the <sup>M29</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, containing a direction for minimum compensation under section 45 of that Act of 1997,

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the compensation payable for the acquisition shall be assessed in accordance with that direction and as if the notice to treat deemed to have been served in respect of the interest under section 105 had been served in pursuance of the compulsory purchase order.

(2) Where—

- (a) an interest in land is acquired in pursuance of a blight notice, and
- (b) the interest is one in respect of which a compulsory purchase order is in force under section 1 of the said Act of 1947 as applied by paragraph 5 of Schedule 8 to the <sup>M30</sup>Housing (Scotland) Act 1987 (acquisition of land for housing action areas),

the compensation payable for the acquisition shall be assessed in accordance with paragraph 12(2) and (3) of that Schedule and as if the notice to treat deemed to have been served in respect of the interest under section 105 had been served in pursuance of the compulsory purchase order.

(3) The compensation payable in respect of the acquisition by virtue of section 111 of an interest in land comprised in—

- (a) the unaffected area of an agricultural unit, or
- (b) if the appropriate authority have served a counter-notice objecting to the blight notice on the grounds mentioned in section 102(4)(c), so much of the affected area of the unit as is not specified in the counter-notice,

shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) of the <sup>M31</sup>Land Compensation (Scotland) Act 1973.

(4) In subsection (3) the reference to “the appropriate authority” shall be construed as if the unaffected area of an agricultural unit were part of the affected area.

#### Marginal Citations

- M28 1947 c. 42.
- M29 1997 c. 9.
- M30 1987 c. 26.
- M31 1973 c. 56.

*Special provisions for requiring purchase of whole of partially affected agricultural units*

### 109 Inclusion in blight notice of requirement to purchase part of agricultural unit unaffected by blight.

(1) This section applies where—

- (a) a blight notice is served in respect of an interest in the whole or part of an agricultural unit, and
- (b) on the date of service that unit or part contains land (“the unaffected area”) which is not blighted land as well as land (“the affected area”) which is such land.

(2) Where this section applies the claimant may include in the blight notice—

- (a) a claim that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit, and

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- (b) a requirement that the appropriate authority shall purchase his interest in the whole of the unit or, as the case may be, in the whole of the part of it to which the notice relates.
- (3) Subject to section 110(4), “other relevant land” in subsection (2) means—
  - (a) if the blight notice is served only in respect of part of the land comprised in the agricultural unit, the remainder of it, and
  - (b) land which is comprised in any other agricultural unit occupied by the claimant on the date of service and in respect of which he is then entitled to an owner’s interest as defined in section 119(4).
- (4) Where a blight notice to which this section applies is served by a crofter or cottar, subsection (2) shall have effect as if for paragraph (b) there were substituted the following paragraph—
  - “(b) a requirement that the appropriate authority shall take possession of the whole of the unit or, as the case may be, the whole of the part of it to which the notice relates.”

#### **110 Objection to section 109 notice.**

- (1) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of section 109 shall include the ground that the claim made in the notice is not justified.
- (2) Objection shall not be made to a blight notice served by virtue of section 109 on the grounds mentioned in section 102(4)(c) unless it is also made on the grounds mentioned in subsection (1).
- (3) The Lands Tribunal shall not uphold an objection to a notice served by virtue of section 109 on the grounds mentioned in section 102(4)(c) unless it also upholds the objection on the grounds mentioned in subsection (1).
- (4) Where objection is made to a blight notice served by virtue of section 109 on the ground mentioned in subsection (1) and also on those mentioned in section 102(4)(c), the Lands Tribunal, in determining whether or not to uphold the objection, shall treat that part of the affected area which is not specified in the counter-notice as included in “other relevant land” as defined in section 109(3).
- (5) If the Lands Tribunal upholds an objection but only on the ground mentioned in subsection (1), the Tribunal shall declare that the blight notice is a valid notice in relation to the affected area but not in relation to the unaffected area.
- (6) If the Lands Tribunal upholds an objection both on the ground mentioned in subsection (1) and on the grounds mentioned in section 102(4)(c) (but not on any other grounds) the Tribunal shall declare that the blight notice is a valid notice in relation to the part of the affected area specified in the counter-notice as being the part which the appropriate authority propose to acquire as mentioned in that notice but not in relation to any other part of the affected area or in relation to the unaffected area.
- (7) In a case falling within subsection (5) or (6), the Lands Tribunal shall give directions specifying a date on which notice to treat (as mentioned in sections 105 and 111) is to be deemed to have been served.
- (8) Section 104(6) shall not apply to any blight notice served by virtue of section 109.

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## **111 Effect of section 109 notice.**

- (1) In relation to a blight notice served by virtue of section 109—
  - (a) subsection (2) of section 105 shall have effect as if for the words “or in the case of an agricultural unit the interest of the claimant in so far as it subsists in the affected area” there were substituted the words “or agricultural unit”, and
  - (b) subsections (4) and (5) of that section shall not apply.
- (2) Where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 110(1), then if either—
  - (a) the claimant, without referring that objection to the Lands Tribunal and before the time for so referring it has expired, gives notice to the appropriate authority that he withdraws his claim as to the unaffected area, or
  - (b) on a reference to the Tribunal, the Tribunal makes a declaration in accordance with section 110(5),

the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the affected area (but not in so far as it subsists in the unaffected area), and to have served a notice to treat in respect of it on the date mentioned in subsection (3).
- (3) The date referred to in subsection (2)—
  - (a) in a case falling within paragraph (a) of that subsection, is the date on which notice is given in accordance with that paragraph, and
  - (b) in a case falling within paragraph (b) of that subsection, is the date specified in directions given by the Tribunal in accordance with section 110(7).
- (4) Where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 110(1) and also on the grounds mentioned in section 102(4)(c), then if either—
  - (a) the claimant, without referring that objection to the Lands Tribunal and before the time for so referring it has expired—
    - (i) gives notice to the appropriate authority that he accepts the proposal of the authority to acquire the part of the affected area specified in the counter-notice, and
    - (ii) withdraws his claim as to the remainder of that area and as to the unaffected area, or
  - (b) on a reference to the Tribunal, the Tribunal makes a declaration in accordance with section 110(6) in respect of that part of the affected area,

the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the part of the affected area specified in the counter-notice (but not in so far as it subsists in any other part of that area or in the unaffected area) and to have served a notice to treat in respect of it on the date mentioned in subsection (5).
- (5) The date referred to in subsection (4)—
  - (a) in a case falling within paragraph (a) of that subsection, is the date on which notice is given in accordance with that paragraph, and
  - (b) in a case falling within paragraph (b) of that subsection, is the date specified in directions given by the Tribunal in accordance with section 110(7).

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- (6) In relation to a blight notice served by virtue of section 109 references to “the appropriate authority” and “the appropriate enactment” shall be construed as if the unaffected area of an agricultural unit were part of the affected area.
- (7) Where the claimant is a crofter or cottar this section shall have effect as if—
- (a) in subsections (2) and (4), for the words from “acquire compulsorily” to “interest” and for the words “to treat in respect of it” there were substituted respectively the words “take possession compulsorily of the land” and the words “of entry in respect of that land under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947”, and
  - (b) in subsection (4)(a)(i), for the word “acquire” there were substituted the words “take possession of”.

*Successors, heritable creditors and partnerships*

**112 Powers of successors in respect of blight notice.**

- (1) In relation to any time after the death of a person who has served a blight notice, sections 102(1), 103(1), 104(1), 105(4) and (5), 107(1) and 111(2) and (4) shall apply as if any reference in them to the claimant were a reference to the person who, on the claimant’s death, has succeeded to his interest in the hereditament or agricultural unit in question.
- (2) Where the whole or part of a hereditament or agricultural unit is comprised in blighted land and a person claims that—
- (a) he is the personal representative of a person (“the deceased”) who at the date of his death was entitled to an interest in that hereditament or unit,
  - (b) the interest was one which would have been a qualifying interest if a notice under section 101 had been served in respect of it on that date,
  - (c) he has made reasonable endeavours to sell that interest,
  - (d) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land, and
  - (e) one or more individuals are (to the exclusion of any body corporate) beneficially entitled to that interest,
- he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, this Chapter.
- (3) Subject to subsection (4), subsection (2) shall apply in relation to an interest in part of a hereditament or agricultural unit as it applies in relation to an interest in the whole of a hereditament or agricultural unit.
- (4) Subsection (3) shall not enable any person—
- (a) if the deceased was entitled to an interest in the whole of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of the deceased’s interest in part of the hereditament or unit, or

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- (b) if the deceased was entitled to an interest only in part of the hereditament or agricultural unit, to make or serve any such claim or notice in respect of the deceased's interest in less than the whole of that part.
- (5) Subject to sections 102(6) and (7) and 110(2) and (3), the grounds on which objection may be made in a counter-notice under section 102 to a notice under this section are those specified in paragraphs (a) to (c) of subsection (4) of that section and, in a case to which it applies, the grounds specified in paragraph (d) of that subsection and also the following grounds—
- (a) that the claimant is not the personal representative of the deceased or that, on the date of the deceased's death, the deceased was not entitled to an interest in any part of the hereditament or agricultural unit to which the notice relates;
  - (b) that (for reasons specified in the counter-notice) the interest of the deceased is not such as is specified in subsection (2)(b);
  - (c) that the conditions specified in subsection (2)(c), (d) or (e) are not satisfied.

### **113 Power of heritable creditor to serve blight notice.**

- (1) Where the whole or part of a hereditament or agricultural unit is comprised in blighted land and a person claims that—
- (a) he is entitled as heritable creditor (by virtue of a power which has become exercisable) to sell an interest in the hereditament or unit, giving immediate vacant possession of the land,
  - (b) he has made reasonable endeavours to sell that interest or the land falls within paragraph 14 or 15 of Schedule 14 and the powers of compulsory acquisition remain exercisable, and
  - (c) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land,
- then, subject to the provisions of this section, he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, this Chapter.
- (2) Subject to subsection (3), subsection (1) shall apply in relation to an interest in part of a hereditament or agricultural unit as it applies in relation to an interest in the whole of a hereditament or agricultural unit.
- (3) Subsection (2) shall not enable a person—
- (a) if his interest as heritable creditor is in the whole of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of any interest in part of the hereditament or agricultural unit, or
  - (b) if his interest as heritable creditor is only in part of a hereditament or agricultural unit, to make or serve any such notice or claim in respect of any interest in less than the whole of that part.
- (4) Notice under this section shall not be served unless the interest which the heritable creditor claims he has the power to sell—
- (a) could be the subject of a notice under section 101 served by the person entitled to it on the date of service of the notice under this section, or

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- (b) could have been the subject of such a notice served by that person on a date not more than 6 months before the date of service of the notice under this section.
- (5) Subject to sections 102(6) and (7) and 110(2) and (3), the grounds on which objection may be made in a counter-notice under section 102 to a notice under this section are those specified in paragraphs (a) to (c) of subsection (4) of that section and, in a case to which it applies, the grounds specified in paragraph (d) of that subsection and also the following grounds—
- (a) that, on the date of service of the notice under this section, the claimant had no interest as heritable creditor in any part of the hereditament or agricultural unit to which the notice relates;
  - (b) that (for reasons specified in the counter-notice) the claimant had not on that date the power referred to in subsection (1)(a);
  - (c) that the conditions specified in subsection (1)(b) and (c) are not fulfilled;
  - (d) that (for reasons specified in the counter-notice) neither of the conditions specified in subsection (4) was, on the date of service of the notice under this section, satisfied with regard to the interest referred to in that subsection.

#### **114 Prohibition on service of simultaneous notices under sections 101, 112 and 113.**

- (1) No notice shall be served under section 101 or 112 in respect of a hereditament or agricultural unit, or any part of it, at a time when a notice already served under section 113 is outstanding with respect to it, and no notice shall be served under section 113 at a time when a notice already served under section 101 or 112 is outstanding with respect to the relevant hereditament, agricultural unit or part.
- (2) For the purposes of subsection (1), a notice shall be treated as outstanding with respect to a hereditament, agricultural unit or part—
  - (a) until it is withdrawn in relation to the hereditament, agricultural unit or part, or
  - (b) in a case where an objection to the notice has been made by a counter-notice under section 102, until either—
    - (i) the period of 2 months specified in section 104 elapses without the claimant having required the objection to be referred to the Lands Tribunal under that section, or
    - (ii) the objection, having been so referred, is upheld by the Tribunal with respect to the hereditament, agricultural unit or part.

#### **115 Special provisions as to partnerships.**

- (1) This section shall have effect for the purposes of the application of this Chapter to a hereditament or agricultural unit occupied for the purposes of a partnership firm.
- (2) Occupation for the purposes of the firm shall be treated as occupation by the firm, and not as occupation by any one or more of the partners individually, and the definitions of “owner-occupier” in section 119(1) and (2) shall apply in relation to the firm accordingly.
- (3) If, after the service by the firm of a blight notice, any change occurs (whether by death or otherwise) in the constitution of the firm, any proceedings, rights or obligations consequential upon that notice may be carried on or exercised by or against, or, as the case may be, shall be incumbent upon, the partners for the time being constituting the firm.



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- (4) Nothing in this Chapter shall be construed as indicating an intention to exclude the operation of the definition of “person” in Schedule 1 to the <sup>M32</sup>Interpretation Act 1978 (by which, unless the contrary intention appears, “person” includes any body of persons corporate or unincorporate) in relation to any provision of this Chapter.
- (5) Subsection (2) shall not affect the definition of “resident owner-occupier” in section 119(3).

#### Marginal Citations

M32 1978 c. 30.

### *Miscellaneous and supplementary provisions*

#### **116 Power of Secretary of State to acquire land affected by orders relating to new towns etc. where blight notice served.**

- (1) Where a blight notice has been served in respect of land falling within paragraph 5, 6 or 7 of Schedule 14, then until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation is established for the urban development area the Secretary of State shall have power to acquire compulsorily any interest in the land in pursuance of the blight notice served by virtue of the paragraph that applies.
- (2) Where the Secretary of State acquires an interest under subsection (1), then—
  - (a) if the land is or becomes land within paragraph 6 or, as the case may be, paragraph 7(b) of Schedule 14, the interest shall be transferred by him to the development corporation established for the new town or, as the case may be, the urban development corporation established for the urban development area, and
  - (b) in any other case, the interest may be disposed of by him in such manner as he thinks fit.
- (3) The <sup>M33</sup>Land Compensation (Scotland) Act 1963 shall have effect in relation to the compensation payable in respect of the acquisition of an interest by the Secretary of State under subsection (1) as if—
  - (a) the acquisition were by a development corporation under the <sup>M34</sup>New Towns (Scotland) Act 1968 or, as the case may be, by an urban development corporation under Part XVI of the <sup>M35</sup>Local Government, Planning and Land Act 1980,
  - (b) in the case of land within paragraph 5 of Schedule 14, the land formed part of an area designated as the site of a new town by an order which has come into operation under section 1 of the New Towns (Scotland) Act 1968, and
  - (c) in the case of land within paragraph 7(a) of Schedule 14, the land formed part of an area designated as an urban development area by an order under section 134 of the <sup>M36</sup>Local Government, Planning and Land Act 1980 which has come into operation.
- (4) Where a blight notice to which subsection (1) relates has been served by a crofter or cottar the preceding subsections shall have effect as if there were substituted—

*Status: Point in time view as at 18/03/2011.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) in subsection (1), for the words “acquire compulsorily any interest in the land” the words “take possession of any land occupied by the crofter or cottar”,
- (b) in subsection (2), for the words “acquires an interest” and “interest” the words “takes possession” and “possession” respectively, and
- (c) in subsection (3), for the words from “acquisition of” to “acquisition were” the words “taking of possession of land by the Secretary of State under subsection (1) as if the taking of possession were”.

#### Marginal Citations

- M33** 1963 c. 51.
- M34** 1968 c. 16.
- M35** 1980 c. 65.
- M36** 1980 c. 65.

### [<sup>F107</sup> 116A Power of Secretary of State to acquire land identified in national policy statements where blight notice served

Where a blight notice has been served in respect of land falling within paragraph 18 of Schedule 14, the Secretary of State has power to acquire compulsorily any interest in the land in pursuance of the blight notice served by virtue of that paragraph.]

#### Textual Amendments

- F107** S. 116A inserted (6.4.2009 for specified purposes, 1.3.2010 in so far as not already in force) by [Planning Act 2008 \(c. 29\)](#), ss. [176\(6\)](#), [241\(8\)](#) (with s. 226); S.I. 2009/400, art. 4(a), S.I. 2010/101, art. 5 (with art. 6)

### 117 Saving for claimant’s right to sell whole hereditament, etc.

- (1) The provisions of sections 102(4)(c), 104(6), 105(4) and (5) and 106(3) and (4) relating to hereditaments shall not affect—
  - (a) the right of a claimant under section 90 of the <sup>M37</sup>Lands Clauses Consolidation (Scotland) Act 1845 to sell the whole of the hereditament or, in the case of an agricultural unit, the whole of the affected area, which he has required the authority to purchase, or
  - (b) the right of a claimant under paragraph 4 of Schedule 2 to the <sup>M38</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to sell (unless the Lands Tribunal otherwise determines) the whole of the hereditament or, as the case may be, affected area which he has required that authority to purchase.
- (2) In consequence of subsection (1)(b), in determining whether or not to uphold an objection relating to a hereditament on the grounds mentioned in section 102(4)(c), the Lands Tribunal shall consider (in addition to the other matters which they are required to consider) whether—
  - (a) in the case of a house, building or factory, the part proposed to be acquired can be taken without material detriment to the house, building or factory, or
  - (b) in the case of a park or garden belonging to a house, the part proposed to be acquired can be taken without seriously affecting the amenity or convenience of the house.

*Status: Point in time view as at 18/03/2011.*

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#### Marginal Citations

M37 1845 c. 19.

M38 1947 c. 42.

### 118 No withdrawal of constructive notice to treat.

Without prejudice to the provisions of section 107(1) and (2), a notice to treat which is deemed to have been served by virtue of this Chapter may not be withdrawn under section 39 of the <sup>M39</sup>Land Compensation (Scotland) Act 1963.

#### Marginal Citations

M39 1963 c. 51.

### 119 Meaning of “owner-occupier” and “resident owner-occupier”.

(1) Subject to the following provisions of this section, in this Chapter “owner-occupier”, in relation to a hereditament, means—

- (a) a person who occupies the whole or a substantial part of the hereditament in right of an owner’s interest in it, and has so occupied the hereditament or that part of it during the whole of the period of 6 months ending with the date of service, or
- (b) if the whole or a substantial part of the hereditament was unoccupied for a period of not more than 12 months ending with that date, a person who so occupied the hereditament or, as the case may be, that part of it during the whole of a period of 6 months ending immediately before the period when it was not occupied.

(2) Subject to the following provisions of this section, in this Chapter “owner-occupier”, in relation to an agricultural unit, means a person who—

- (a) occupies the whole of that unit and has occupied it during the whole of the period of 6 months ending with the date of service, or
- (b) occupied the whole of that unit during the whole of a period of 6 months ending not more than 12 months before the date of service,

and, at all times material for the purposes of paragraph (a) or, as the case may be, paragraph (b), has been entitled to an owner’s interest in the whole or part of that unit.

(3) In this Chapter “resident owner-occupier”, in relation to a hereditament, means—

- (a) an individual who occupies the whole or a substantial part of the hereditament as a private dwelling in right of an owner’s interest in it, and has so occupied the hereditament or, as the case may be, that part during the whole of the period of 6 months ending with the date of service, or
- (b) if the whole or a substantial part of the hereditament was unoccupied for a period of not more than 12 months ending with that date, an individual who so occupied the hereditament or, as the case may be, that part during the whole of a period of 6 months ending immediately before the period when it was not occupied.

(4) In this section—

*Status: Point in time view as at 18/03/2011.*

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“owner’s interest”, in relation to a hereditament or agricultural unit, or part of it, includes the interest of—

- (a) the lessee under a lease of it not less than 3 years of which remain unexpired on the date of service, and
- (b) a crofter or cottar; and

“date of service”, in relation to a hereditament or agricultural unit, means the date of service of a notice in respect of it under section 101.

## **120 “Appropriate authority” for purposes of Chapter II.**

- (1) Subject to the following provisions of this section, in this Chapter “the appropriate authority”, in relation to any land, means the government department, local authority or other body or person by whom, in accordance with the circumstances by virtue of which the land falls within any paragraph of Schedule 14, the land is liable to be acquired or is indicated as being proposed to be acquired or, as the case may be, any right over the land is proposed to be acquired.
- (2) If any question arises—
  - (a) whether the appropriate authority in relation to any land for the purposes of this Chapter is the Secretary of State or a local roads authority,
  - (b) which of two or more local roads authorities is the appropriate authority in relation to any land for those purposes, or
  - (c) which of two or more local authorities is the appropriate authority in relation to any land for those purposes,
 that question shall be referred to the Secretary of State, whose decision shall be final.
- (3) If any question arises as to which authority is the appropriate authority for the purposes of this Chapter—
  - (a) section 102(2) shall have effect as if the reference to the date of service of the blight notice were a reference to that date or, if it is later, the date on which that question is determined,
  - (b) section 113(4)(b) shall apply with the substitution for the period of 6 months of a reference to that period extended by so long as it takes to obtain a determination of the question, and
  - (c) section 119(1)(b), (2)(b) and (3)(b) shall apply with the substitution for the reference to 12 months before the date of service of a reference to that period extended by so long as it takes to obtain a determination of the question.
- (4) In relation to land falling within paragraph 5, 6 or 7 of Schedule 14, until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation is established for the urban development area, this Chapter shall have effect as if “the appropriate authority” were the Secretary of State.
- <sup>[F108]</sup>(5) In relation to land falling within paragraph 18 of Schedule 14, “the appropriate authority” is—
  - (a) if the national policy statement identifies a statutory undertaker as an appropriate person to carry out the specified description of development in the location, the statutory undertaker;
  - (b) in any other case, the Secretary of State.
- (6) If any question arises by virtue of subsection (5)—

*Status: Point in time view as at 18/03/2011.*

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- (a) whether the appropriate authority in relation to any land for the purposes of this Chapter is the Secretary of State or a statutory undertaker; or
  - (b) which of two or more statutory undertakers is the appropriate authority in relation to any land for those purposes,
- that question shall be referred to the Secretary of State, whose decision shall be final.
- (7) In subsections (5) and (6) “statutory undertaker” means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 10.]

#### Textual Amendments

**F108** S. 120(5)-(7) inserted (6.4.2009 for specified purposes, 1.3.2010 in so far as not already in force) by [Planning Act 2008 \(c. 29\)](#), ss. [176\(7\)](#), [241\(8\)](#) (with s. 226); S.I. 2009/400, art. 4(a), S.I. 2010/101, art. 5 (with art. 6)

### 121 “Appropriate enactment” for purposes of Chapter II.

- (1) Subject to the following provisions of this section, in this Chapter “the appropriate enactment”, in relation to land falling within any paragraph of Schedule 14, means the enactment which provides for the compulsory acquisition of land as being land falling within that paragraph.
- (2) In relation to land falling within paragraph 2 of that Schedule, an enactment shall for the purposes of subsection (1) be taken to be an enactment which provides for the compulsory acquisition of land as being land falling within that paragraph if—
  - (a) the enactment provides for the compulsory acquisition of land for the purposes of the functions which are indicated in the development plan as being the functions for the purposes of which the land is allocated or is proposed to be developed, or
  - (b) where no particular functions are so indicated in the development plan, the enactment provides for the compulsory acquisition of land for the purposes of any of the functions of the government department, local authority or other body for the purposes of whose functions the land is allocated or is defined as the site of proposed development.
- (3) In relation to land falling within paragraph 2 of that Schedule by virtue of paragraph 2(2), “the appropriate enactment” shall be determined in accordance with subsection (2) as if references in that subsection to the development plan were references to any such plan, proposal or modifications as are mentioned in paragraph 2(2)(a), (b) or (c).
- (4) In relation to land falling within paragraph 3 or 4 of that Schedule, “the appropriate enactment” shall be determined in accordance with subsection (2) as if references in that subsection to the development plan were references to the resolution or direction in question.
- (5) In relation to land falling within paragraph 5, 6 or 7 of that Schedule, until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation is established for the urban development area, this Chapter shall have effect as if “the appropriate enactment” were section 116(1).
- (6) In relation to land falling within paragraph 8 or 9 of that Schedule, “the appropriate enactment” means Part IV of the <sup>M40</sup>Housing (Scotland) Act 1987.

*Status: Point in time view as at 18/03/2011.*

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- (7) In relation to land falling within paragraph 15 of that Schedule by virtue of paragraph 15(2), “the appropriate enactment” means the enactment which would provide for the compulsory acquisition of the land or of the rights over the land if the relevant compulsory purchase order were confirmed or made.
- [<sup>F109</sup>(7A) In relation to land falling within paragraph 17 of that Schedule by virtue of paragraph 17(2)(a) or (b), “the appropriate enactment” means the order granting development consent.
- (7B) In relation to land falling within paragraph 17 of that Schedule by virtue of paragraph 17(2)(c), “the appropriate enactment” means an order in the terms of the order applied for.
- (7C) In relation to land falling within paragraph 18 of that Schedule, “the appropriate enactment” means section 116A.]
- (8) Where, in accordance with the circumstances by virtue of which any land falls within any paragraph of that Schedule, it is indicated that the land is proposed to be acquired for roads purposes, any enactment under which a roads authority are or (subject to the fulfilment of the relevant conditions) could be authorised to acquire that land compulsorily for roads purposes shall, for the purposes of subsection (1), be taken to be an enactment providing for the compulsory acquisition of that land as being land falling within that paragraph.
- (9) In subsection (8) the reference to the fulfilment of the relevant conditions is a reference to such one or more of the following as are applicable to the circumstances in question—
- (a) the coming into operation of any requisite order or scheme under the provisions of the <sup>M41</sup>Roads (Scotland) Act 1984;
  - (b) the making or approval of any requisite plans.
- (10) If, apart from this subsection, two or more enactments would be the appropriate enactment in relation to any land for the purposes of this Chapter, the appropriate enactment for those purposes shall be taken to be that one of those enactments under which, in the circumstances in question, it is most likely that (apart from this Chapter) the land would have been acquired by the appropriate authority.
- [<sup>F110</sup>(11) If any question arises as to which enactment is the appropriate enactment in relation to any land for the purposes of this Chapter, that question shall be referred to the Scottish Ministers whose decision shall be final.]

#### Textual Amendments

**F109** S. 121(7A)-(7C) inserted (6.4.2009 for specified purposes, 1.3.2010 in so far as not already in force) by [Planning Act 2008 \(c. 29\)](#), [ss. 176\(8\), 241\(8\)](#) (with [s. 226](#)); [S.I. 2009/400, art. 4\(a\)](#), [S.I. 2010/101, art. 5](#) (with [art. 6](#))

**F110** S. 121(11) substituted (1.7.1999) by [S.I. 1999/1820, arts. 1\(2\), 4](#), [Sch. 2 Pt. I para. 127\(2\)](#); [S.I. 1998/3178, art. 3](#)

#### Marginal Citations

**M40** [1987 c. 26](#).

**M41** [1984 c. 54](#).

*Status: Point in time view as at 18/03/2011.*

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## 122 General interpretation of Chapter II.

(1) Subject to the following provisions of this section, in this Chapter—

“the affected area”, in relation to an agricultural unit, means so much of that unit as, on the date of service, consists of land falling within any paragraph of Schedule 14;

“agricultural unit” means land which is occupied as a unit for agricultural purposes, including any dwellinghouse or other building occupied by the same person for the purpose of farming the land;

“annual value”, in relation to a hereditament, means the value which, on the date of service, is shown in the valuation roll as the rateable value of the hereditament, except that, where the rateable value differs from the net annual value, it means the value which on that date is shown in the valuation roll as the net annual value of it;

“blight notice” has the meaning given in section 100(6);

“the claimant” has the meaning given in section 101(4);

“cottar” has the meaning given in section 12(5) of the <sup>M42</sup>Crofters (Scotland) Act 1993;

“crofter” has the meaning given in section 3(3) of that Act;

[<sup>F111</sup>“cross-country pipe-line” has the meaning given by section 66 of the Pipe-lines Act 1962 (c. 58);

“gas transporter” has the same meaning as in Part 1 of the Gas Act 1986 (see section 7(1) of that Act);]

“hereditament” means the aggregate of the lands and heritages (not being agricultural lands and heritages within the meaning of section 7 of the <sup>M43</sup>Valuation and Rating (Scotland) Act 1956) which form the subject of a single entry in the valuation roll for the time being in force for a valuation area;

[<sup>F112</sup>“national policy statement” has the meaning given by section 5(2) of the Planning Act 2008;]

“special enactment” means a local enactment, or a provision contained in an Act other than a local or private Act, which is a local enactment or provision authorising the compulsory acquisition of land specifically identified in it; and in this definition “local enactment” means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure.

(2) Where any land is on the boundary between two or more valuation areas, and accordingly—

(a) different parts of that land form the subject of single entries in the valuation rolls for the time being in force for those areas respectively, but

(b) if the whole of that land had been in one of those areas, it would have formed the subject of a single entry in the valuation roll for that area,

the whole of that land shall be treated, for the purposes of the definition of “hereditament” in subsection (1) of this section, as if it formed the subject of a single entry in the valuation roll for a valuation area.

(3) Land which forms the subject of an entry in the valuation roll by reason only that it is land over which any sporting rights are exercisable, or that it is land over which a right of exhibiting advertisements is let out or reserved, shall not be taken to be a hereditament within that definition.



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- (4) Where, in accordance with subsection (2), land of which different parts form the subject of single entries in the valuation rolls for the time being in force for two or more valuation areas is treated as if it formed the subject of a single entry in the valuation roll for a valuation area, the definition of “annual value” in subsection (1) shall apply as if any reference in that definition to a value shown in the valuation roll were a reference to the aggregate of the values shown (as rateable values or as net annual values, as the case may be) in those valuation rolls in relation to the different parts of that land.
- (5) In this section “date of service” has the same meaning as in section 119.

#### Textual Amendments

- F111** Words in s. 122 inserted (6.4.2009 for specified purposes, 1.3.2010 in so far as not already in force) by [Planning Act 2008 \(c. 29\)](#), [ss. 176\(9\)\(a\), 241\(8\)](#) (with s. 226); S.I. 2009/400, art. 4(a), S.I. 2010/101, art. 5 (with art. 6)
- F112** Words in s. 122 inserted (6.4.2009 for specified purposes, 1.3.2010 in so far as not already in force) by [Planning Act 2008 \(c. 29\)](#), [ss. 176\(9\)\(b\), 241\(8\)](#) (with s. 226); S.I. 2009/400, art. 4(a), S.I. 2010/101, art. 5 (with art. 6)

#### Marginal Citations

- M42** 1993 c. 44.  
**M43** 1956 c. 60.

## PART VI

### ENFORCEMENT

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

- C33** Pt. VI applied (with modifications) (1.4.2010) by [The Management of Extractive Waste \(Scotland\) Regulations 2010 \(S.S.I. 2010/60\)](#), [regs. 1\(1\), 30](#) (with arts. 4, 5)

### *Application*

## 123 Expressions used in connection with enforcement.

- (1) For the purposes of this Act—
- (a) carrying out development without the required planning permission, or
  - (b) failing to comply with any condition or limitation subject to which planning permission has been granted, <sup>F113</sup>or
  - (c) initiating development without giving notice in accordance with section 27A(1) of this Act, or
  - (d) carrying out development without displaying a notice in accordance with section 27C(1) of this Act,]
- constitutes a breach of planning control.
- (2) For the purposes of this Act—
- (a) the issue of an enforcement notice, or



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(b) the service of a breach of condition notice,  
under this Part constitutes taking enforcement action [<sup>F114</sup>as does the issuing of a notice  
under section 33A].

(3) In this Part “planning permission” includes planning permission under Part III of the  
1947 Act and Part III of the 1972 Act.

#### Textual Amendments

**F113** S. 123(1)(c)(d) and word inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 6(2), 59(2)**; S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

**F114** Words in s. 123(2) added (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 9(2), 59(2)**; S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

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

**C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**

## 124 Time limits.

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
- (4) Subsections (1) to (3) do not prevent—
  - (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect, or
  - (b) taking further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the planning authority have taken or purported to take enforcement action in respect of that breach.

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

**C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**

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### *Planning contravention notices*

#### **125 Power to require information about activities on land.**

- (1) Where it appears to the planning authority that there may have been a breach of planning control in respect of any land, they may serve notice to that effect (referred to in this Act as a “planning contravention notice”) on any person who—
  - (a) is the owner or occupier of the land or has any other interests in it, or
  - (b) is carrying out operations on the land or is using it for any purpose.
- (2) A planning contravention notice may require the person on whom it is served to give such information as to—
  - (a) any operations being carried out on the land, any use of the land and any other activities being carried out on the land, and
  - (b) any matter relating to the conditions or limitations subject to which any planning permission in respect of the land has been granted,
 as may be specified in the notice.
- (3) Without prejudice to the generality of subsection (2), the notice may require the person on whom it is served, so far as he is able—
  - (a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;
  - (b) to state when any use, operations or activities began;
  - (c) to give the name and [<sup>F115</sup>postal] address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;
  - (d) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operation;
  - (e) to state the nature of his interest (if any) in the land and the name and [<sup>F116</sup>postal] address of any other person known to him to have an interest in the land.
- (4) A planning contravention notice may give notice of a time and place at which—
  - (a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to refrain from carrying out any operations or activities or to undertake remedial works, and
  - (b) any representations which he may wish to make about the notice,
 will be considered by the authority, and the authority shall give him an opportunity to make in person any such offer or representations at that time and place.
- (5) A planning contravention notice must inform the person on whom it is served—
  - (a) of the likely consequences of his failing to respond to the notice and, in particular, that enforcement action may be taken, and
  - (b) of the effect of section 143(6).
- (6) Any requirement of a planning contravention notice shall be complied with by giving information in writing to the planning authority.
- (7) The service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control.

*Status: Point in time view as at 18/03/2011.*

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- (8) In this section references to operations or activities on land include operations or activities in, under or over the land.

#### Textual Amendments

**F115** Word in s. 125(3)(c) inserted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), **5(a)**

**F116** Word in s. 125(3)(e) inserted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), **5(a)**

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

**C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**

## 126 Penalties for non-compliance with planning contravention notice.

- (1) If at any time after the end of the period of 21 days beginning with the day on which a planning contravention notice has been served on any person, he has not complied with any requirement of the notice, he shall be guilty of an offence.
- (2) An offence under subsection (1) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.
- (3) It shall be a defence for a person charged with an offence under subsection (1) to prove that he had a reasonable excuse for failing to comply with the requirement.
- (4) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) If any person—
  - (a) makes any statement purporting to comply with a requirement of a planning contravention notice which he knows to be false or misleading in a material particular, or
  - (b) recklessly makes such a statement which is false or misleading in a material particular,he shall be guilty of an offence.
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

**C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**

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### *Enforcement notices*

#### **127 Issue of enforcement notice.**

- (1) The planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them—
  - (a) that there has been a breach of planning control, and
  - (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- (2) A copy of an enforcement notice shall be served—
  - (a) on the owner and on the occupier of the land to which it relates, and
  - (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
- (3) The service of the notice shall take place—
  - (a) not more than 28 days after its date of issue, and
  - (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)

#### **128 Contents and effect of notice.**

- (1) An enforcement notice shall state—
  - (a) the matters which appear to the planning authority to constitute the breach of planning control, and
  - (b) the paragraph of section 123(1) within which, in the opinion of the authority, the breach falls.
- (2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
- (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
- (4) Those purposes are—
  - (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
  - (b) remedying any injury to amenity which has been caused by the breach.
- (5) An enforcement notice may, for example, require—
  - (a) the alteration or removal of any buildings or works,
  - (b) the carrying out of any building or other operations,

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*Status: Point in time view as at 18/03/2011.*

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- (c) any activity on the land not to be carried on except to the extent specified in the notice, or
  - (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.
- (6) An enforcement notice issued in respect of a breach of planning control consisting of demolition of a building may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7), is as similar as possible to the demolished building.
- (7) A replacement building—
  - (a) must comply with any requirement imposed by or under any enactment applicable to the construction of buildings,
  - (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control, and
  - (c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b) of this subsection).
- (8) An enforcement notice shall specify the date on which it is to take effect and, subject to section 131(3), shall take effect on that date.
- (9) An enforcement notice shall specify the period for compliance with the notice at the end of which any steps are required to have been taken or any activities are required to have ceased, and may specify different periods for different steps or activities.
- (10) Where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.
- (11) An enforcement notice shall specify such additional matters as may be prescribed.
- (12) Regulations may require every copy of an enforcement notice served under section 127 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 130.
- (13) Where—
  - (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so, and
  - (b) all the requirements of the notice have been complied with,then, so far as the notice did not so require, planning permission shall be treated as having been granted under section 33 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
- (14) Where—
  - (a) an enforcement notice requires the construction of a replacement building, and
  - (b) all the requirements of the notice with respect to that construction have been complied with,planning permission shall be treated as having been granted under section 33 in respect of development consisting of that construction.

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

**C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

**129 Variation and withdrawal of enforcement notice.**

- (1) The planning authority may—
  - (a) withdraw an enforcement notice issued by them, or
  - (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 128(9).
- (2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were reissued, be served with a copy of it.
- (4) The withdrawal of an enforcement notice does not affect the power of the planning authority to issue a further enforcement notice.

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

**C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

**130 Appeal against enforcement notice.**

- (1) A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds—
  - <sup>F117</sup>(a) .....
  - (b) that [<sup>F118</sup>the matters which, by virtue of section 128(1)(a) have been stated in the notice,] have not occurred;
  - (c) that those matters (if they occurred) do not constitute a breach of planning control;
  - (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
  - (e) that copies of the enforcement notice were not served as required by section 127;
  - (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

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- (g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.
- (2) An appeal under this section shall be made<sup>F119</sup> ...—
- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect, or
  - (b) by sending such notice to him in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date<sup>F120</sup>; or
  - (c) by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date.]
- (3) A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing—
- (a) specifying the grounds on which he is appealing against the enforcement notice, and
  - (b) giving such further information as may be prescribed; or

#### Textual Amendments

**F117** S. 130(1)(a) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with [S.S.I. 2009/222](#), [arts. 9\(2\)\(c\)](#), 15); [S.S.I. 2009/219](#), art. 2, [sch.](#)

**F118** Words in s. 130(1)(b) substituted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(6\)](#), [59\(2\)](#) (with [S.S.I. 2009/222](#), [arts. 9\(2\)\(c\)](#), 15); [S.S.I. 2009/219](#), art. 2, [sch.](#)

**F119** Word in s. 130(2) omitted (28.7.2004) by virtue of [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), [arts. 1\(1\)](#), [3\(a\)](#)

**F120** S. 130(2)(c) and word inserted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), [arts. 1\(1\)](#), [3\(b\)](#)

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

**C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), [arts. 1](#), [7\(1\)\(b\)](#)

**C35** S. 130: power to apply conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)](#), 31, 40(2) (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

### 131 Appeals: supplementary provisions.

- (1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 130 and, in particular, but without prejudice to the generality of the foregoing provisions of this subsection, in so prescribing may—
- (a) specify the matters on which information is to be given in a statement under section 130(3);
  - (b) require the planning authority to submit, within such time as may be specified, a statement indicating the submissions which they propose to put forward on the appeal;
  - (c) specify the matters to be included in such a statement;
  - (d) require the authority or the appellant to give such notice of an appeal as may be specified to such persons as may be specified;

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- (e) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be specified, a copy of the enforcement notice and a list of the persons served with copies of it.

<sup>F121</sup>(2) .....

- (3) Where an appeal is brought under section 130 the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (4) Schedule 4 applies to appeals under section 130, including appeals under that section as applied by regulations under any other provisions of this Act.

#### Textual Amendments

**F121** S. 131(2) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with [S.S.I. 2009/222](#), arts. 9(2)(d), [15](#)); [S.S.I. 2009/219](#), art. 2, [sch.](#)

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

**C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)

**C36** S. 131: power to apply conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)](#), 31, [40\(2\)](#) (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

### 132 General provisions relating to determination of appeals.

- (1) On the determination of an appeal under section 130, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice.
- (2) On such an appeal the Secretary of State may—
- (a) correct any defect, error or misdescription in the enforcement notice, or
  - (b) vary the terms of the enforcement notice,
- if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority.
- (3) The Secretary of State may—
- (a) dismiss an appeal if the appellant fails to comply with section 130(3) within the prescribed time, and
  - (b) allow an appeal and quash the enforcement notice if the planning authority fail to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of section 131(1).
- (4) Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required by section 127(2) to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.



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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C37** S. 132: power to apply conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)](#), 31, [40\(2\)](#) (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

**133 Grant or modification of planning permission on appeal against enforcement notice.**

- (1) On the determination of an appeal under section 130, the Secretary of State may—
  - <sup>F122</sup>(a) .....
  - <sup>F122</sup>(b) .....
  - <sup>F122</sup>(c) .....
  - (d) determine whether on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which the permission was granted was lawful and, if so, issue a certificate under section 150.
- (2) The provisions of sections 150 to 153 mentioned in subsection (3) shall apply for the purposes of subsection (1)(d) as they apply for the purposes of section 150, but as if—
  - (a) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made, and
  - (b) references to the planning authority were references to the Secretary of State.
- (3) Those provisions are sections 150(5) to (7), 152(4) (so far as it relates to the form of the certificate), (6) and (7) and 153.

- <sup>F123</sup>(4) .....
- <sup>F123</sup>(5) .....
- <sup>F123</sup>(6) .....
- <sup>F123</sup>(7) .....
- <sup>F123</sup>(8) .....
- <sup>F123</sup>(9) .....
- <sup>F123</sup>(10) .....
- <sup>F123</sup>(11) .....

**Textual Amendments**

- F122** S. 133(1)(a)-(c) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with [S.S.I. 2009/222](#), arts. 9(2)(e), [15](#)); [S.S.I. 2009/219](#), art. 2, [sch.](#)
- F123** S. 133(4)-(11) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with [S.S.I. 2009/222](#), arts. 9(2)(e), [15](#)); [S.S.I. 2009/219](#), art. 2, [sch.](#)

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**
- C38** S. 133: power to apply conferred (27.5.1997) by 1997 c. 10, **ss. 23(1), 31, 40(2)** (with ss. 9(3), 10(5), 38(6))
- C39** S. 133(1) restricted (1.8.1999) by [S.S.I. 1999/1](#), **reg. 29**

**134 Validity of enforcement notices.**

The validity of an enforcement notice shall not be questioned in any proceedings whatsoever on any of the grounds specified in section 130(1)(b) to (e) except by appeal under that section.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**
- C40** S. 134: power to apply conferred (27.5.1997) by 1997 c. 10, **ss. 23(1), 31, 40(2)** (with ss. 9(3), 10(5), 38(6))

**135 Execution and cost of works required by enforcement notice.**

- (1) If any steps which are required by an enforcement notice to be taken have not been taken within the compliance period, the planning authority may—
  - (a) enter the land and take those steps, and
  - (b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- (2) If that person did not appeal to the Secretary of State although entitled to do so, he shall not be entitled to dispute the validity of the action taken by the planning authority under subsection (1) in accordance with the enforcement notice.
- (3) In computing the amount of the expenses which may be recovered by them under subsection (1), a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.
- (4) Where a copy of an enforcement notice has been served in respect of any breach of planning control—
  - (a) any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice, and
  - (b) any sums paid by the owner or lessee of any land under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken,
 shall be recoverable from the person by whom the breach of planning control was committed.
- (5) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out

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- by an enforcement notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.
- (6) A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal.
- (7) After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.
- (8) Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—
- (a) he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
  - (b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
- his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.
- (9) A planning authority who by reason of subsection (8) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.
- (10) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) In this section and in sections 136,<sup>[F124]</sup>136A,] 140 and 141 any reference to the compliance period, in relation to an enforcement notice, is a reference to the period specified in the notice for compliance with it or such extended period as the planning authority may allow for compliance with it.

#### Textual Amendments

**F124** Word in s. 135(11) inserted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(7)**, 59(2); [S.S.I. 2009/219](#), **art. 2**, sch.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), **arts. 1**, **7(1)(b)**
- C41** S. 135: power to modify conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)(e)**, 31 (with **ss. 9(3)**, 10(5), 38(6))
- C42** S. 135(5)-(9) applied (with modifications) (1.3.2010) by [The Infrastructure Planning \(Miscellaneous Prescribed Provisions\) Regulations 2010 \(S.I. 2010/105\)](#), **regs. 1(1)**, **6**

### 136 Offence where enforcement notice not complied with.

- (1) Where, at any time after the end of the compliance period in respect of an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

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- (2) Where the owner of the land is in breach of the notice he shall be guilty of an offence.
- (3) In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
- (4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
- (5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.
- (6) An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.
- (7) Where—
  - (a) a person charged with an offence under this section has not been served with a copy of the enforcement notice, and
  - (b) the notice is not contained in the appropriate register kept under section 147,
 it shall be a defence for him to show that he was not aware of the existence of the notice.
- (8) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding £20,000, and
  - (b) on conviction on indictment, to a fine.
- (9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C43** S. 136: power to modify conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)\(c\)](#), 31 (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

**[<sup>F125</sup>136] Fixed penalty notice where enforcement notice not complied with**

- (1) Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
- (2) The fixed penalty notice is to specify—
  - (a) the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or
  - (b) the activity so specified which has not ceased.

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- (3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
- (4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice.
- (5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
- (6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
- (7) The conditions are that the fixed penalty notice—
  - (a) is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and
  - (b) is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice.
- (8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- (9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- (10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
- (11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.]

#### Textual Amendments

**F125** S. 136A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 25(1), 59(2); S.S.I. 2008/411, art. 2(2)(3)(b); S.S.I. 2009/219, art. 2, sch.

### 137 Effect of planning permission etc. on enforcement or breach of condition notice.

- (1) Where, after the service of—
  - (a) a copy of an enforcement notice, or
  - (b) a breach of condition notice,planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

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- (2) Where, after a breach of condition notice has been served, any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.
- (3) The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C44** S. 137: power to modify conferred (27.5.1997) by [1997 c. 10, ss. 23\(1\)\(c\), 31](#) (with [ss. 9\(3\), 10\(5\), 38\(6\)](#))

**138 Enforcement notice to have effect against subsequent development.**

- (1) Compliance with an enforcement notice, whether in respect of—
  - (a) the removal or alteration of any building or works,
  - (b) the discontinuance of any use of land, or
  - (c) any other requirements contained in the notice,
 shall not discharge the notice.
- (2) Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.
- (3) Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered.
- (4) A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)

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**C45** S. 138: power to modify conferred (27.5.1997) by 1997 c. 10, **ss. 23(1)(c)**, 31 (with **ss. 9(3)**, 10(5), 38(6))

### **139 Power of Secretary of State to serve enforcement notice.**

- (1) If it appears to the Secretary of State that it is expedient that an enforcement notice should be served in respect of any land, he may himself serve such a notice under section 127.
- (2) An enforcement notice served by the Secretary of State shall have the same effect as if it had been served by the planning authority.
- (3) The Secretary of State shall not serve such a notice without consulting the planning authority.
- (4) The provisions of this Act relating to enforcement notices apply, so far as relevant, to an enforcement notice served by the Secretary of State as they apply to an enforcement notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.

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

**C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**

#### *Stop notices*

### **140 Stop notices.**

- (1) Where the planning authority consider it expedient that any relevant activity should cease before the expiry of the compliance period in respect of an enforcement notice, they may, when they serve the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a “stop notice”) prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.
- (2) In this section, “relevant activity” means any activity specified in the enforcement notice as an activity which the planning authority require to cease and any activity carried out as part of that activity or associated with that activity.
- (3) A stop notice may not be served where the enforcement notice has taken effect.
- (4) A stop notice shall not prohibit the use of any building as a dwellinghouse.
- (5) A stop notice shall not prohibit the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than 4 years ending with the service of the notice; and for the purposes of this subsection no account is to be taken of any period during which the activity was authorised by planning permission.



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- (6) Subsection (5) does not prevent a stop notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials.
- (7) A stop notice shall specify the date when it is to come into effect, and that date—
  - (a) must not be earlier than 3 days after the date when the notice is served, unless the planning authority consider that there are special reasons for specifying an earlier date and a statement of those reasons is served with the stop notice, and
  - (b) must not be later than 28 days from the date when the notice is first served on any person.
- (8) A stop notice may be served by the planning authority on any person who appears to them to have an interest in the land or to be engaged in the relevant activity specified in the enforcement notice.
- (9) The planning authority may at any time withdraw a stop notice (without prejudice to their power to serve another) by notice which shall be—
  - (a) served on all persons who were served with the stop notice, and
  - (b) publicised by displaying it for 7 days in place of all or any relative site notices.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C46** S. 140: power to modify conferred (27.5.1997) by [1997 c. 10, ss. 23\(1\)\(c\), 31](#) (with [ss. 9\(3\), 10\(5\), 38\(6\)](#))

**141 Stop notices: supplementary provisions.**

- (1) A stop notice shall cease to have effect when—
  - (a) the enforcement notice to which it relates is withdrawn or quashed,
  - (b) the compliance period specified under section 128(9) expires, or
  - (c) notice of the withdrawal of the stop notice is served under section 140(9),
 whichever occurs first.
- (2) Where the enforcement notice to which a stop notice relates is varied so that it no longer relates to any relevant activity, the stop notice shall cease to have effect in relation to that activity.
- (3) Where a stop notice has been served in respect of any land, the planning authority may publicise it by displaying on the land a notice (in this section and section 144 referred to as a “site notice”)—
  - (a) stating that a stop notice has been served on a particular person or persons,
  - (b) indicating its requirements, and
  - (c) stating that any person contravening it may be prosecuted for an offence under section 144.
- (4) A stop notice shall not be invalid by reason that a copy of the enforcement notice to which it relates was not served as required by section 127 if it is shown that the



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planning authority took all such steps as were reasonably practicable to effect proper service.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**
- C47** S. 141: power to modify conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)(c)**, 31 (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

**142 Power of the Secretary of State to serve stop notice.**

- (1) If it appears to the Secretary of State that it is expedient that a stop notice should be served in respect of any land, he may himself serve such a notice under section 140.
- (2) A stop notice served by the Secretary of State shall have the same effect as if it had been served by the planning authority.
- (3) The Secretary of State shall not serve such a notice without consulting the planning authority.
- (4) The provisions of this Act relating to stop notices apply, so far as relevant, to a stop notice served by the Secretary of State as they apply to a stop notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**

**143 Compensation for loss due to stop notice.**

- (1) Subject to the provisions of this section, where a stop notice under section 140 ceases to have effect a person who, when the stop notice is first served, has an interest, whether as owner or occupier or otherwise, in the land to which the notice relates shall be entitled to be compensated by the planning authority in respect of any loss or damage directly attributable to the prohibition contained in the notice or, in a case within subsection (1)(b), the prohibition of such of the activities prohibited by the stop notice as cease to be relevant activities.
- (2) For the purposes of this section a stop notice ceases to have effect when—
  - (a) the enforcement notice is quashed <sup>F126</sup> ...,
  - (b) the enforcement notice is varied <sup>F127</sup> ... so that any activity the carrying out of which is prohibited by the stop notice ceases to be a relevant activity within the meaning of section 140(2),
  - (c) the enforcement notice is withdrawn by the planning authority otherwise than in consequence of the grant by them of planning permission for the development to which the notice relates, or

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- (d) the stop notice is withdrawn.
- (3) A claim for compensation under this section shall be made to the planning authority within the prescribed time and in the prescribed manner.
- (4) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition shall include any sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition.
- (5) No compensation is payable under this section—
- (a) in respect of the prohibition in a stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control, or
  - (b) in the case of a claimant who was required to provide information under section 125, 126 or 272 in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the planning authority when responding to the notice.
- (6) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under this Part shall be referred to and determined by the Lands Tribunal.
- (7) In relation to the determination of any such question, the provisions of sections 9 and 11 of the <sup>M44</sup>Land Compensation (Scotland) Act 1963 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

#### Textual Amendments

- F126** Words in s. 143(2)(a) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with [S.S.I. 2009/222](#), arts. 12, [15](#)); [S.S.I. 2009/219](#), art. 2, [sch.](#)
- F127** Words in s. 143(2)(b) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with [S.S.I. 2009/222](#), arts. 12, [15](#)); [S.S.I. 2009/219](#), art. 2, [sch.](#)

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C48** S. 143(1)-(6): power to modify conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)\(c\)](#), 31 (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

#### Marginal Citations

- M44** [1963 c. 51](#).

### 144 Penalties for contravention of stop notice.

- (1) If any person contravenes a stop notice after a site notice has been displayed or the stop notice has been served on him he shall be guilty of an offence.
- (2) An offence under this section may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this section by reference to any period of time following the preceding conviction for such an offence.
- (3) It shall be a defence in any proceedings under subsection (1) that—

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- (a) the stop notice was not served on the accused, and
  - (b) he had no reasonable cause to believe that the activity was prohibited by the stop notice.
- (4) References in this section to contravening a stop notice include causing or permitting its contravention.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000, and
  - (b) on conviction on indictment, to a fine.
- (6) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C49** S. 144: power to modify conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)\(c\)](#), 31 (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

*F128* **Temporary stop notices**

**Textual Amendments**

- F128** Ss. 144A-144D and cross-heading inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 26\(1\)](#), 59(2); S.S.I. 2008/411, art. 2(2)(3)(b); S.S.I. 2009/219, art. 2, sch.

**144A Temporary stop notices**

- (1) If a planning authority consider that—
- (a) there has been a breach of planning control in relation to any land,
  - (b) the breach consists in engagement in an activity, and
  - (c) it is expedient that the activity (or any part of the activity) is stopped immediately,
- they may issue a temporary stop notice.
- (2) The notice must be in writing and must—
- (a) specify the activity in question,
  - (b) prohibit engagement in the activity (or in so much of the activity as is specified in the notice), and
  - (c) set out the authority's reasons for issuing the notice.
- (3) A temporary stop notice may be served on any of the following—
- (a) a person who appears to the authority to be engaged in the activity,

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- (b) a person who appears to the authority to have an interest in the land (whether as owner or occupier or otherwise).
- (4) The authority must display on the land—
  - (a) a copy of the notice, and
  - (b) a statement as to the effect of section 144C.
- (5) A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of subsection (4).
- (6) A temporary stop notice ceases to have effect at the end of the period of 28 days starting on the day the copy notice is so displayed.
- (7) Except that if a shorter period starting on that day is specified in the notice, the notice instead ceases to have effect at the end of that shorter period.
- (8) And if the notice is withdrawn by the authority before that period of 28 days, or as the case may be that shorter period, expires the notice ceases to have effect on being so withdrawn.

#### **144B Temporary stop notices: restrictions**

- (1) A temporary stop notice does not prohibit—
  - (a) the use of a building as a dwellinghouse, or
  - (b) engagement in an activity (either or both)—
    - (i) of such description,
    - (ii) in such circumstances,
 as may be prescribed.
- (2) A temporary stop notice does not prohibit engagement in any activity which has been engaged in (whether continuously or not) for a period of more than 4 years ending with the day on which a copy of the notice is first displayed in pursuance of section 144A(4).
- (3) But subsection (2) does not prevent a temporary stop notice prohibiting—
  - (a) activity consisting in, or incidental to, building, engineering, mining or other operations, or
  - (b) the deposit of refuse or waste materials.
- (4) For the purposes of subsection (2), any period during which the activity in question is authorised by planning permission is to be ignored.
- (5) A second or subsequent temporary stop notice must not be issued in respect of the same activity unless the planning authority have in the meantime taken some other enforcement action in relation to the breach of planning control which is constituted by the activity.
- (6) In subsection (5), “enforcement action” includes obtaining the grant of an interdict under section 146(2).

#### **144C Temporary stop notices: offences**

- (1) A person is guilty of an offence if he contravenes a temporary stop notice—
  - (a) which has been served on him, or
  - (b) a copy of which has been displayed in pursuance of section 144A(4).

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- (2) Contravention of a temporary stop notice includes causing or permitting the contravention of it.
- (3) An offence under this section may be charged by reference to a day or to a period longer than a day.
- (4) A person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different days or different periods.
- (5) It is a defence in any proceedings under this section that—
  - (a) the temporary stop notice was not served on the accused, and
  - (b) he did not know, and could not reasonably have been expected to know, of its existence.
- (6) A person convicted of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding £20,000,
  - (b) on conviction on indictment, to a fine.
- (7) In determining the amount of the fine, the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.

#### **144D Temporary stop notices: compensation**

- (1) A person who, as at the date on which a temporary stop notice is first displayed in pursuance of section 144A(4), has an interest (whether as owner or occupier or otherwise) in the land to which the notice relates is entitled to be compensated by the planning authority in respect of any loss or damage directly attributable to the prohibition effected by that notice.
- (2) But subsection (1) applies only if the circumstances are as set out in at least one of the following paragraphs—
  - (a) the activity which is specified in the notice is authorised by planning permission granted on or before the date mentioned in that subsection,
  - (b) a certificate in respect of the activity is issued under section 150 or granted under that section by virtue of section 154,
  - (c) the authority withdraws the notice other than following such grant of planning permission as is mentioned in paragraph (a).
- (3) Subsections (3) to (7) of section 143 apply to compensation payable under this section as they apply to compensation payable under that section; and for the purpose of that application references in those subsections to a stop notice are to be taken to be references to a temporary stop notice.]

#### *Breach of condition notices*

#### **145 Enforcement of conditions.**

- (1) This section applies where planning permission for carrying out any development has been granted subject to conditions.
- (2) The planning authority may, if any of the conditions is not complied with, serve a notice (in this Act referred to as a “breach of condition notice”) on—

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- (a) any person who is carrying out or has carried out the development, or
  - (b) any person having control of the land,
- requiring him to secure compliance with such of the conditions as are specified in the notice.
- (3) References in this section to the person responsible are to the person on whom the breach of condition notice has been served.
- (4) The conditions which may be specified in a notice served by virtue of subsection (2) (b) are any of the conditions regulating the use of the land.
- (5) A breach of condition notice shall specify the steps which the authority consider ought to be taken, or the activities which the authority consider ought to cease, to secure compliance with the conditions specified in the notice.
- (6) The authority may by notice served on the person responsible withdraw the breach of condition notice, but its withdrawal shall not affect the power to serve on him a further breach of condition notice in respect of the conditions specified in the earlier notice or any other conditions.
- (7) The period allowed for compliance with the notice is—
- (a) such period of not less than 28 days beginning with the date of service of the notice as may be specified in the notice, or
  - (b) that period as extended by a further notice served by the planning authority on the person responsible.
- (8) If, at any time after the end of the period allowed for compliance with the notice—
- (a) any of the conditions specified in the notice is not complied with, and
  - (b) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,
- the person responsible is in breach of the notice.
- (9) If the person responsible is in breach of the notice he shall be guilty of an offence.
- (10) An offence under subsection (9) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction for such an offence.
- (11) It shall be a defence for a person charged with an offence under subsection (9) to prove—
- (a) that he took all reasonable measures to secure compliance with the conditions specified in the notice, or
  - (b) where the notice was served on him by virtue of subsection (2)(b), that he no longer had control of the land.
- (12) A person who is guilty of an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (13) In this section—
- (a) “conditions” includes limitations; and
  - (b) references to carrying out any development include causing or permitting another to do so.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)
- C50** S. 145: power to modify conferred (27.5.1997) by [1997 c. 10](#), [ss. 23\(1\)\(c\)](#), 31 (with [ss. 9\(3\)](#), [10\(5\)](#), [38\(6\)](#))

[<sup>F129</sup>145A] **Fixed penalty notice where breach of condition notice not complied with**

- (1) Where a planning authority have reason to believe that, by virtue of subsection (8) of section 145, a person is in breach of a breach of condition notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
- (2) The fixed penalty notice is to specify—
  - (a) the step specified, under subsection (5) of section 145, in the breach of condition notice which has not been taken, or
  - (b) the activity so specified which has not ceased.
- (3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
- (4) For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in that notice, any liability to conviction for an offence under section 145(9) as respects the breach of the breach of condition notice.
- (5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
- (6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
- (7) The conditions are that the fixed penalty notice—
  - (a) is served within the period of 6 months which immediately follows the period allowed by section 145(7) for compliance with the breach of condition notice, and
  - (b) is not served after the person has been charged with an offence under section 145(9) as respects the breach of the breach of condition notice.
- (8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 145(9) as respects that breach.
- (9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 145(9) as respects that breach.
- (10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.

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- (11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.]

#### Textual Amendments

**F129** S. 145A inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\), ss. 25\(2\), 59\(2\)](#); S.S.I. 2008/411, art. 2(2)(3)(b); S.S.I. 2009/219, art. 2, sch.

### *Interdicts*

#### **146 Interdicts restraining breaches of planning control.**

- (1) Whether or not they have exercised or propose to exercise any of their other powers under this Act, a planning authority may seek to restrain or prevent any actual or apprehended breach of any of the controls provided for by or under this Act by means of an application for interdict.
- (2) On an application under subsection (1) the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the breach.
- (3) In this section “the court” means the Court of Session or the sheriff.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\), arts. 1, 7\(1\)\(b\)](#)
- C51** S. 146 extended (27.5.1997) by [1997 c. 9, ss. 79\(1\), 83\(2\)](#) (with s. 45(4))

### *Registers*

#### <sup>F130</sup>**147** [<sup>F130</sup>**Enforcement etc.: register of notices** ]

- (1) Every planning authority shall, with respect to enforcement notices, breach of condition notices [<sup>F131</sup>, notices under section 33A, stop notices and temporary stop notices] which have been served in relation to land in their district, keep a register—
  - (a) in such manner, and
  - (b) containing such information,
 as may be prescribed; and there may also be prescribed circumstances in which an entry in the register shall be deleted.
- (2) Every register kept under this section shall be available for inspection by the public at all reasonable hours.



*Status: Point in time view as at 18/03/2011.*

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#### Textual Amendments

- F130** S. 147 heading substituted (12.12.2008 for specified purposes, 3.8.3009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 9(4)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.
- F131** Words in s. 147(1) substituted (12.12.2008 for specified purposes, 3.8.3009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 9(3)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.

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

- C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(1)(b)**
- C52** S. 147: power to modify conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)(c)**, 31 (with **ss. 9(3)**, 10(5), 38(6))

#### *Enforcement of orders for discontinuance of use, etc.*

### **148 Penalties for contravention of orders under section 71 and Schedule 8.**

- (1) Any person who without planning permission—
- (a) uses land, or causes or permits land to be used—
    - (i) for any purpose for which an order under section 71 or paragraph 1 of Schedule 8 has required that its use shall be discontinued, or
    - (ii) in contravention of any condition imposed by such an order by virtue of subsection (1) of that section or, as the case may be, sub-paragraph (1) of that paragraph,
  - (b) resumes, or causes or permits to be resumed, development consisting of the winning and working of minerals or involving the depositing of mineral waste the resumption of which an order under paragraph 3 of that Schedule has prohibited, or
  - (c) contravenes, or causes or permits to be contravened, any such requirement as is specified in sub-paragraph (3) or (4) of that paragraph,
- shall be guilty of an offence.
- (2) Any person who contravenes any requirement of a suspension order or a supplementary suspension order under paragraph 5 or 6 of Schedule 8 or who causes or permits any requirement of such an order to be contravened shall be guilty of an offence.
- (3) Any person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.
- (4) It shall be a defence for a person charged with an offence under this section to prove that he took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.
- (5) If in any case the defence provided by subsection (4) involves an allegation that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not,

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without the leave of the court, be entitled to rely on the defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

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

**C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)

**149 Enforcement of orders under section 71 and Schedule 8.**

(1) This section applies where—

- (a) any step required by an order under section 71 or paragraph 1 of Schedule 8 to be taken for the alteration or removal of any buildings or works or any plant or machinery,
- (b) any step required by an order under paragraph 3 of that Schedule to be taken—
  - (i) for the alteration or removal of plant or machinery, or
  - (ii) for the removal or alleviation of any injury to amenity, or
- (c) any step for the protection of the environment required to be taken by a suspension order or a supplementary suspension order under paragraph 5 or 6 of that Schedule,

has not been taken within the period specified in the order or within such extended period as the planning authority may allow.

- (2) Where this section applies the planning authority may enter the land and take the required step and may recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.
- (3) A planning authority taking any step under subsection (1) may sell any materials removed by them from any land unless those materials are claimed by the owner within 3 days of their removal by the planning authority.
- (4) Where such materials have been sold the planning authority shall pay the owner the net proceeds of the sale after deducting any expenses recoverable by them from him.

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

**C34** Ss. 123-149 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)

*Certificate of lawful use or development*

**150 Certificate of lawfulness of existing use or development.**

(1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful,

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- (b) any operations which have been carried out in, on, over or under land are lawful, or
  - (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,
- he may make an application for the purpose to the planning authority specifying the land and describing the use, operations or other matter.
- (2) For the purposes of this Act, uses and operations are lawful at any time if—
    - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason), and
    - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
  - (3) For the purposes of this Act, any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
    - (a) the time for taking enforcement action in respect of the failure has then expired, and
    - (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.
  - (4) If, on an application under this section, the planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
  - (5) A certificate under this section shall—
    - (a) specify the land to which it relates,
    - (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 26(2)(f), identifying it by reference to that class),
    - (c) give the reasons for determining the use, operations or other thing to be lawful, and
    - (d) specify the date of the application for the certificate.
  - (6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.
  - (7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—
    - (a) section 3(3) of the <sup>M45</sup>Caravan Sites and Control of Development Act 1960,
    - (b) section 5(2) of the <sup>M46</sup>Control of Pollution Act 1974, and
    - (c) section 36(2)(a) of the <sup>M47</sup>Environmental Protection Act 1990.

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

C53 S. 150 modified (28.9.2000) by S.S.I. 2000/323, reg. 7(5)

**Marginal Citations**

M45 1960 c. 62.

*Status: Point in time view as at 18/03/2011.*

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**M46** 1974 c. 40.

**M47** 1990 c. 43.

## **151 Certificate of lawfulness of proposed use or development.**

- (1) If any person wishes to ascertain whether—
  - (a) any proposed use of buildings or other land, or
  - (b) any operations proposed to be carried out in, on, over or under land,
 would be lawful, he may make an application for the purpose to the planning authority specifying the land and describing the use or operations in question.
- (2) If, on an application under this section, the planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- (3) A certificate under this section shall—
  - (a) specify the land to which it relates,
  - (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 26(2)(f), identifying it by reference to that class),
  - (c) give the reasons for determining the use or operations to be lawful, and
  - (d) specify the date of the application for the certificate.
- (4) There shall be an irrefutable presumption as to the lawfulness of any use or operations for which a certificate is in force under this section unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

## **152 Certificates under sections 150 and 151: supplementary provisions.**

- (1) An application for a certificate under section 150 or 151 shall be made in such manner as may be prescribed by regulations or a development order and shall include such particulars, and be verified by such evidence, as may be required by such regulations or such an order or by any directions given under such regulations or such an order or by the planning authority.
- (2) Provision may be made by such regulations or a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by planning authorities.
- (3) In particular, such regulations or such an order may provide for requiring the authority—
  - (a) to give to any applicant within such time as may be prescribed by the regulations or the order such notice as may be so prescribed as to the manner in which his application has been dealt with, and
  - (b) to give to the Secretary of State and to such other persons as may be prescribed by or under the regulations or the order, such information as may be so prescribed with respect to such applications made to the authority, including information as to the manner in which any application has been dealt with.
- (4) A certificate under section 150 or 151 may be issued—

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- (a) for the whole or part of the land specified in the application, and
  - (b) where the application specifies two or more uses, operations or other things, for all of them or some one or more of them,
- and shall be in such form as may be prescribed by such regulations or a development order.
- (5) A certificate under section 150 or 151 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.
  - (6) In section 36 references to applications for planning permission shall include references to applications for certificates under section 150 or 151.
  - (7) A planning authority may revoke a certificate under section 150 or 151 if, on the application for the certificate—
    - (a) a statement was made or document used which was false in a material particular, or
    - (b) any material information was withheld.
  - (8) Provision may be made by such regulations or a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

### **153 Offences.**

- (1) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under section 150 or 151 of this Act—
  - (a) knowingly or recklessly makes a statement which is false or misleading in a material particular,
  - (b) with intent to deceive, uses any document which is false or misleading in a material particular, or
  - (c) with intent to deceive, withholds any material information,he shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

### **154 Appeals against refusal or failure to give decision on application.**

- (1) Where an application is made to a planning authority for a certificate under section 150 or 151 and—
  - (a) the application is refused or is refused in part, or
  - (b) the planning authority do not give notice to the applicant of their decision on the application within such period as may be prescribed by regulations or a development order or within such extended period as may at any time be agreed in writing by the applicant and the authority,the applicant may appeal to the Secretary of State.

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- (2) An appeal under subsection (1) shall be by notice given within such period (not being less than 28 days) as may be prescribed by regulations or a development order.
- (3) On any such appeal, if and so far as the Secretary of State is satisfied—
  - (a) in the case of an appeal under subsection (1)(a), that the authority’s refusal is not well-founded, or
  - (b) in the case of an appeal under subsection (1)(b), that, if the planning authority had refused the application, their refusal would not have been well-founded, he shall grant the appellant a certificate under section 150 or 151 accordingly or, in the case of a refusal in part, modify the certificate granted by the authority on the application.
- (4) If and so far as the Secretary of State is satisfied that the authority’s refusal is or, as the case may be, would have been well-founded, he shall dismiss the appeal.
- (5) Schedule 4 applies to appeals under this section.

### 155 Further provisions as to appeals to the Secretary of State.

<sup>F132</sup>(1) .....

- (2) Where the Secretary of State or a person appointed by him under Schedule 4 to determine an appeal grants a certificate under section 150 or 151, the Secretary of State or that person shall give notice to the planning authority of that fact.

#### Textual Amendments

**F132** S. 155(1) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with S.S.I. 2009/222, [art. 9\(2\)\(f\)](#)); S.S.I. 2009/219, art. 2, [sch.](#)

### *Rights of entry for enforcement purposes*

### 156 Right to enter without warrant.

- (1) Any person duly authorised in writing by a planning authority may at any reasonable hour enter any land—
  - (a) to ascertain whether there is or has been any breach of planning control on the land or any other land;
  - (b) to determine whether any of the powers conferred on a planning authority by sections 127 to 138, 140, 141, 144,<sup>F133</sup>144A,] 145 and 147 to 155 should be exercised in relation to the land or any other land;
  - (c) to determine how any such power should be exercised in relation to the land or any other land;
  - (d) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land,
 if there are reasonable grounds for entering for the purpose in question.
- (2) Any person duly authorised in writing by the Secretary of State may at any reasonable hour enter any land to determine whether an enforcement notice should be issued in

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relation to the land or any other land, if there are reasonable grounds for entering for that purpose.

- (3) The Secretary of State shall not so authorise any person without consulting the planning authority.
- (4) Admission to any building used as a dwellinghouse shall not be demanded as of right by virtue of subsection (1) or (2) unless 24 hours' notice of the intended entry has been given to the occupier of the building.

#### **Textual Amendments**

**F133** Word in s. 156(1)(b) inserted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 54(8), 59(2); S.S.I. 2009/219, art. 2, sch.

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

**C54** Ss. 156-158 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

### **157 Right to enter under warrant.**

- (1) If the sheriff is satisfied—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 156(1) or (2), and
  - (b) that—
    - (i) admission to the land has been refused, or a refusal is reasonably apprehended, or
    - (ii) the case is one of urgency,he may issue a warrant authorising any person duly authorised in writing to enter the land.
- (2) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (3) A warrant authorises entry on one occasion only and that entry must be—
  - (a) within one month from the date of the issue of the warrant, and
  - (b) at a reasonable hour, unless the case is one of urgency.

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

**C54** Ss. 156-158 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

### **158 Rights of entry: supplementary provisions.**

- (1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 156 or 157 (referred to in this section as “a right of entry”)—



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- (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering,
  - (b) may take with him such other persons as may be necessary, and
  - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
- (2) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
  - (3) If any damage is caused to land or moveable property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State.
  - (4) The provisions of section 86 shall apply in relation to compensation under subsection (3) as they apply in relation to compensation under Part IV.
  - (5) If any person who enters any land, in exercise of a right of entry discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.
  - (6) Subsection (5) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.
  - (7) A person who is guilty of an offence under subsection (5) shall be liable—
    - (a) on summary conviction to a fine not exceeding the statutory maximum, or
    - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.

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

**C54** Ss. 156-158 functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, [7\(1\)\(b\)](#)

*[<sup>F134</sup>Enforcement charters*

**Textual Amendments**

**F134** S. 158A and cross-heading inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 27**, [59\(2\)](#); [S.S.I. 2007/130](#), art. [2\(2\)](#), sch.

**158A Enforcement charters**

- (1) A planning authority are to prepare an enforcement charter; that is to say, a document in which are set out—
  - (a) a statement of the authority's policies as regards their taking enforcement action for the purposes of this Act,



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- (b) an account of how members of the public are to bring any ostensible breach of planning control to the attention of the authority, and
- (c) an account—
  - (i) of how any complaint to the authority as regards the taking by them of enforcement action is to be made, and
  - (ii) of their procedures for dealing with any such complaint.
- (2) The Scottish Ministers may issue guidance to a planning authority for the purposes of this section and an authority must have regard to any guidance so issued.
- (3) A planning authority must keep their enforcement charter under review and must update and re-publish it—
  - (a) whenever required to do so by the Scottish Ministers, and
  - (b) (subject to paragraph (a)) whenever they think it appropriate to do so but in any event within 2 years after last publishing (or re-publishing) it.
- (4) When they publish, or re-publish, their enforcement charter, the authority are to—
  - (a) send two copies of it to the Scottish Ministers, and
  - (b) place a copy of it in each public library in their district,and such publication, or re-publication, is to include by electronic means (as for example by means of the internet).]

## PART VII

### SPECIAL CONTROLS

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

- C55** Pt. VII functions made exercisable concurrently (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, 7(1)(b)

## CHAPTER I

### TREES

#### *General duty of planning authorities as respects trees*

#### **159 Planning permission to include appropriate provision for preservation and planting of trees.**

It shall be the duty of the planning authority—

- (a) to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees, and
- (b) to make such orders under section 160 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise<sup>F135</sup>, and

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- (c) of the planning authority from time to time to review any order made in exercise of their powers under that section and to consider whether it is requisite to vary or revoke the order in question.]

#### Textual Amendments

**F135** S. 159(c) and word added (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 28(1)(d)**, 59(2); [S.S.I. 2010/400](#), **art. 3**, sch.

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

**C56** S. 159 excluded (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), **arts. 1(1)**, **3(2)(c)** (with **art. 14(3)**)

### *Tree preservation orders*

#### **160 Power to make tree preservation orders.**

[<sup>F136</sup>(1) A planning authority may, if it appears to them that the requirements of subsection (1A) are met, make an order specifying any trees, groups of trees or woodlands in their district and providing for their preservation.

(1A) Those requirements are (either or both)—

- (a) that it is expedient in the interests of amenity to make that provision,
- (b) that the trees, groups of trees or woodlands are of cultural or historical significance.]

(2) An order under subsection (1) is in this Act referred to as a “tree preservation order”.

(3) A tree preservation order may, in particular, make provision—

- (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees except with the consent of the planning authority, and for enabling that authority to give their consent subject to conditions;
- (b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the order;
- (c) for applying, in relation to any consent under the order, and to applications for such consent, any of the provisions of this Act mentioned in subsection (4), subject to such adaptations and modifications as may be specified in the order.

(4) The provisions referred to in subsection (3)(c) are—

- (a) the provisions of Part III relating to planning permission and to applications for planning permission, except sections 32, 34, 35, 36(2) and (3), 38, 58 to 62, 69 and 70 and Schedules 6 and 7, and section 65 of the <sup>M48</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997,
- (b) sections 88 to 92, 94 and 95 (except so far as they relate to purchase notices served in consequence of such orders as are mentioned in section 88(1)(b) or (c)), and
- (c) section 263.

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- (5) A tree preservation order may be made so as to apply, in relation to trees to be planted pursuant to any such conditions as are mentioned in section 159(a), as from the time when those trees are planted.
- (6) Without prejudice to any other exemptions for which provision may be made by a tree preservation order, nothing in such an order shall prohibit the uprooting, felling or lopping of trees if—
- (a) it is urgently necessary in the interests of safety,
  - (b) it is necessary for the prevention or abatement of a nuisance, or
  - [<sup>F137</sup>(ba) it is authorised by an order granting development consent,]
  - (c) it is in compliance with any obligation imposed by or under an Act of Parliament [<sup>F138</sup> or an Act of the Scottish Parliament],
- so long as <sup>F139</sup>... notice in writing of the proposed operations is given to the planning authority as soon as practicable after the operations become necessary.
- (7) This section shall have effect subject to—
- (a) section 39(2) of the <sup>M49</sup>Housing and Planning Act 1986 (saving for effect of section 2(4) of the <sup>M50</sup>Opencast Coal Act 1958 on land affected by a tree preservation order despite its repeal), and
  - (b) section 15 of the <sup>M51</sup>Forestry Act 1967 (licences under that Act to fell trees comprised in a tree preservation order).
- [<sup>F140</sup>(8) In relation to an application for consent under a tree preservation order the Scottish Ministers may by regulations make provision as to—
- (a) the form and manner in which the application must be made,
  - (b) particulars of such matters as are to be included in the application,
  - (c) any documents or other materials which are to accompany the application.]

#### Textual Amendments

- F136** S. 160(1)(1A) substituted for s. 160(1) (1.2.2011) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 28(2)(a), 59(2)**; S.S.I. 2010/400, art. 3, sch.
- F137** S. 160(6)(ba) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 56** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)
- F138** Words in s. 160(6)(c) added (3.8.2009) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 54(9), 59(2)**; S.S.I. 2009/219, art. 2, sch.
- F139** Words in s. 160(6) repealed (1.2.2011) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 28(2)(b), 59(2)**; S.S.I. 2010/400, art. 3, sch.
- F140** S. 160(8) inserted (26.11.2010) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 28(2)(c), 59(2)**; S.S.I. 2010/400, art. 2(1)(2)(a)

#### Marginal Citations

- M48** 1997 c. 9.
- M49** 1986 c. 63.
- M50** 1958 c. 69.
- M51** 1967 c. 10.

## 161 Form of and procedure applicable to orders.

- [<sup>F141</sup>(1) Subject to section 249, a tree preservation order—

*Status: Point in time view as at 18/03/2011.*

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- (a) takes effect on such date as may be specified in the order, but
  - (b) expires 6 months after it is made unless it has, within that period, been confirmed by the planning authority.
- (1A) An order may be confirmed under subsection (1)(b) without modification or subject to such modifications as the planning authority consider expedient.]
- (2) As soon as a tree preservation order is confirmed, the planning authority shall record it in the appropriate Register of Sasines or, as the case may be, register it in the Land Register of Scotland.
- (3) Provision may be made by regulations with respect to—
- (a) the form of tree preservation orders, and
  - (b) the procedure to be followed in connection with the confirmation of such orders.
- (4) Without prejudice to the generality of subsection (3), the regulations may make provision—
- (a) that, before a tree preservation order is confirmed by the planning authority, notice of the making of the order shall be given to the owners, lessees and occupiers of land affected by the order and to such other persons, if any, as may be specified in the regulations,
  - (b) that objections and representations with respect to the order, if duly made in accordance with the regulations, shall be considered before the order is confirmed by the planning authority, and
  - (c) that copies of the order, when confirmed by the authority, shall be served on such persons as may be specified in the regulations.

#### Textual Amendments

**F141** S. 161(1)(1A) substituted for s. 161(1) (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 28(3), 59(2)** (with [S.S.I. 2010/431](#), arts. 1(1), 2); [S.S.I. 2010/400](#), art. 3, sch.

#### [<sup>F142</sup>161A] **Imminent danger to trees: entry to affix copy of tree preservation order**

- (1) If it appears to a planning authority that a tree, group of trees or woodlands—
- (a) on land in their district, and
  - (b) in respect of which they have made a tree preservation order,
- may be in imminent danger of being cut down, topped, lopped, uprooted, wilfully damaged or wilfully destroyed and accordingly that it is expedient that a copy of the order should be affixed conspicuously to the tree, group of trees or woodlands in question, a person duly authorised in writing by them may enter the land and so affix such a copy.
- (2) Subsection (1) is without prejudice to any provision made by virtue of section 161(3) (b) and (4) as respects notice of the making of the order.]

#### Textual Amendments

**F142** S. 161A inserted (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 28(4), 59(2)**; [S.S.I. 2010/400](#), art. 3, sch.

*Status: Point in time view as at 18/03/2011.*

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**[<sup>F143</sup>162 Tree preservation: Forestry Commissioners**

- (1) A tree preservation order does not have effect in respect of anything done—
  - (a) by or on behalf of the Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967 or otherwise under their management or supervision;
  - (b) by or on behalf of any other person in accordance with a relevant plan which is for the time being in force.
- (2) A relevant plan is a plan of operations or other working plan approved by the Forestry Commissioners under—
  - (a) a forestry dedication agreement within the meaning of section 5 of the Forestry Act 1967, or
  - (b) conditions of a grant or loan made under section 1 of the Forestry Act 1979.
- (3) A reference to a provision of the Forestry Act 1967 or the Forestry Act 1979 includes a reference to a corresponding provision replaced by that provision or any earlier corresponding provision.]

**Textual Amendments**

**F143** S. 162 substituted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 95, 121(4)** (with s. 111); [S.S.I. 2006/268](#), art. 3(b)

**[<sup>F144</sup>163 Provisional tree preservation orders.**

.....

**Textual Amendments**

**F144** S. 163 repealed (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), **sch.** (with [S.S.I. 2010/431](#), arts. 1(1), 2); [S.S.I. 2010/400](#), art. 3, **sch.**

**164 Power for Secretary of State to make tree preservation orders.**

- (1) If it appears to the Secretary of State that it is expedient that a tree preservation order, or an order amending or revoking such an order, should be made, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the planning authority and [<sup>F145</sup>timeously] confirmed by them under this Chapter.
- (3) The Secretary of State shall not make such an order without consulting the planning authority.
- (4) The provisions of this Chapter and of any regulations made under it with respect to the procedure to be followed in connection with the making and confirmation of any order mentioned in subsection (1) and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of subsection (1), its making by him and the service of copies of it.

*Status: Point in time view as at 18/03/2011.*

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#### Textual Amendments

**F145** Word in s. 164(2) inserted (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\), ss. 28\(5\), 59\(2\); S.S.I. 2010/400, art. 3, sch.](#)

*Compensation for loss or damage caused by orders etc.*

### 165 Compensation in respect of tree preservation orders.

- (1) A tree preservation order may make provision for the payment by the planning authority, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of loss or damage caused or incurred in consequence of—
  - (a) the refusal of any consent required under the order, or
  - (b) the grant of any such consent subject to conditions.
- (2) Except in so far as may be otherwise provided by section 166(5), any tree preservation order or any regulations made under this Act, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal.
- (3) In relation to the determination of any such question, the provisions of sections 9 and 11 of the <sup>M52</sup>Land Compensation (Scotland) Act 1963 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

#### Marginal Citations

**M52** [1963 c. 51.](#)

### 166 Compensation in respect of requirement as to replanting of trees.

- (1) This section applies where—
  - (a) a requirement is imposed by the planning authority or the Secretary of State under a tree preservation order for securing the replanting of all or any part of a woodland area which is felled in the course of forestry operations permitted by or under the order, and
  - (b) the Forestry Commissioners decide not to make any grant or loan under section 1 of the <sup>M53</sup>Forestry Act 1979 in respect of the replanting by reason that the requirement frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry.
- (2) Where this section applies, the planning authority exercising functions under the tree preservation order shall be liable, on the making of a claim in accordance with this section, to pay compensation in respect of such loss or damage, if any, as is caused or incurred in consequence of compliance with the requirement.
- (3) The Forestry Commissioners shall, at the request of the person under a duty to comply with such a requirement as is mentioned in subsection (1)(a), give a certificate stating—
  - (a) whether they have decided not to make such a grant or loan as is mentioned in subsection (1)(b), and

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- (b) if so, the grounds for their decision.
- (4) A claim for compensation under this section must be served on the planning authority—
- (a) within 12 months from the date on which the requirement was made, or
  - (b) where an application has been made to the Secretary of State for the determination of any question relating to the reasonableness of a requirement, within 12 months from the date of the determination of the Secretary of State, but subject in either case to such extension of that period as the planning authority may allow.
- (5) Any question of disputed compensation under this section shall be determined in accordance with section 70 of the <sup>M54</sup>Countryside (Scotland) Act 1967.

**Marginal Citations**

**M53** 1979 c. 21.

**M54** 1967 c. 86.

*Consequences of tree removal etc.*

**167 Replacement of trees.**

- (1) If any tree in respect of which a tree preservation order is for the time being in force—
- (a) is removed, uprooted or destroyed in contravention of the order, or
  - (b) except in the case of a tree to which the order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its felling or uprooting is authorised only by virtue of section 160(6)(a),
- it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.
- (2) The duty imposed by subsection (1) does not apply to an owner if on application by him the planning authority dispense with it.
- (3) In respect of trees in a woodland it shall be sufficient for the purposes of this section to replace the trees removed, uprooted or destroyed by planting the same number of trees—
- (a) on or near the land on which the trees removed, uprooted or destroyed stood, or
  - (b) on such other land as may be agreed between the planning authority and the owner of the land,
- and in such places as may be designated by the planning authority.
- (4) In relation to any tree planted pursuant to this section, the relevant tree preservation order shall apply as it applied to the original tree.
- (5) The duty imposed by subsection (1) on the owner of any land shall attach to the person who is from time to time the owner of the land.



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## 168 Enforcement of duties as to replacement of trees.

- (1) If it appears to the planning authority that—
- (a) the provisions of section 167, or
  - (b) any conditions of a consent given under a tree preservation order which require the replacement of trees,
- are not complied with in the case of any tree or trees, the authority may serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified.
- (2) A notice under subsection (1) may be served by a planning authority only within 2 years from the date on which the failure to comply with those provisions or conditions came to the knowledge of the authority.
- (3) A notice under subsection (1) shall specify a period at the end of which it is to take effect, being a period of not less than 28 days beginning with the date of service of the notice.
- [<sup>F146</sup>(3A) In relation to any tree planted by virtue of a requirement such as is mentioned in subsection (1)(b), the relevant tree preservation order shall apply as it applied to the original trees.]
- (4) The duty imposed by section 167(1) may only be enforced as provided by this section and not otherwise.

### Textual Amendments

**F146** S. 168(3A) inserted (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **28(6)**, 59(2); S.S.I. 2010/400, art. 3, sch.

## 169 Appeal against section 168 notice.

- (1) A person on whom a notice under section 168(1) is served may appeal to the Secretary of State against the notice on any of the following grounds—
- (a) that the provisions of section 167 or, as the case may be, the conditions mentioned in section 168(1)(b) are not applicable or have been complied with;
  - (b) that in all the circumstances of the case the duty imposed by section 167 should be dispensed with in relation to any tree;
  - (c) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;
  - (d) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;
  - (e) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.
- (2) An appeal under subsection (1) may be made either by giving written notice to the Secretary of State before the end of the period specified in accordance with section 168(3), or by sending such notice to him in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before the end of that period.



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- (3) A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed under subsection (4), a statement in writing—
  - (a) specifying the grounds on which he is appealing against the notice under section 168(1), and
  - (b) giving such further information as may be so prescribed.
- (4) The Secretary of State may prescribe the procedure to be followed on appeals under this section, and (without prejudice to the generality of the foregoing provisions of this subsection) in so prescribing—
  - (a) may specify the time within which an appellant is to submit a statement under subsection (3) and the matters on which information is to be given in such a statement;
  - (b) may require the planning authority to submit, within such time as may be specified, a statement indicating the submissions which they propose to put forward on the appeal;
  - (c) may specify the matters to be included in such a statement;
  - (d) may require the authority or the appellant to give such notice of an appeal under this section as may be specified to such persons as may be specified;
  - (e) may require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be specified, a copy of the notice and a list of the persons on whom the notice has been served.
- (5) The Secretary of State may—
  - (a) dismiss an appeal if the appellant fails to comply with subsection (3) within the time prescribed under subsection (4)(a), and
  - (b) allow an appeal and quash the notice under section 168(1) if the planning authority fail to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of subsection (4).
- <sup>F147</sup>(6) .....
- (7) Where such an appeal is brought, the notice under section 168(1) shall be of no effect pending the final determination or the withdrawal of the appeal.
- (8) On such an appeal the Secretary of State may—
  - (a) correct any defect, error or misdescription in the notice under section 168(1), or
  - (b) vary its terms,if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority.
- (9) On the determination of such an appeal the Secretary of State shall give directions for giving effect to the determination including, where appropriate, directions for quashing the notice under section 168(1).
- (10) Schedule 4 applies to appeals under this section.

**Textual Amendments**

**F147** S. 169(6) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), [sch.](#) (with S.S.I. 2009/222, [art. 9\(2\)\(g\)](#)); S.S.I. 2009/219, art. 2, [sch.](#)

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## **170 Execution and cost of works required by section 168 notice.**

- (1) If, within the period specified in a notice under section 168(1) for compliance with it, or within such extended period as the planning authority may allow, any trees which are required to be planted by a notice under that section have not been planted, the planning authority may—
  - (a) enter the land and plant those trees, and
  - (b) recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- (2) If the person mentioned in subsection (1)(b) was entitled to appeal to the Secretary of State but did not do so, he shall not be entitled in proceedings under that subsection to dispute the validity of the action taken in accordance with the notice by the planning authority.
- (3) In computing the amount of the expenses which may be recovered by them under subsection (1), a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.
- (4) Where a notice under section 168(1) has been served—
  - (a) any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice, and
  - (b) any sums paid by the owner or lessee of any land under subsection (1) in respect of expenses incurred by the planning authority in planting trees required by such a notice to be planted,
 shall be recoverable from the person responsible for the cutting down, destruction or removal of the original tree or trees.
- (5) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by a notice under section 168(1), the sheriff may by warrant authorise the owner to go on to the land and carry out the work.
- (6) A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal by the planning authority.
- (7) Where such materials have been sold the planning authority shall pay the owner the proceeds of the sale after deducting any expenses recoverable by them from him.
- (8) Where a planning authority seek under subsection (1) to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—
  - (a) he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
  - (b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
 his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.
- (9) A planning authority who by reason of subsection (8) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.

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- (10) Any person who wilfully obstructs a person acting in the exercise of the power conferred by subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **171 Penalties for non-compliance with tree preservation order.**

- (1) If any person, in contravention of a tree preservation order—
- (a) cuts down, uproots or wilfully destroys a tree, or
  - (b) wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it,
- he shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) shall be liable—
- (a) on summary conviction to a fine not exceeding £20,000, and
  - (b) on conviction on indictment, to a fine.
- (3) In determining the amount of any fine to be imposed on a person convicted of an offence under subsection (1), the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.
- (4) If any person contravenes the provisions of a tree preservation order otherwise than as mentioned in subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### *Trees in conservation areas*

### **172 Preservation of trees in conservation areas.**

- (1) Subject to the provisions of this section and section 173, any person who, in relation to a tree to which this section applies, does any act which might by virtue of section 160(3)(a) be prohibited by a tree preservation order shall be guilty of an offence.
- [<sup>F148</sup>(1A) Subsection (1) does not apply so far as the act in question is authorised by an order granting development consent.]
- (2) Subject to section 173, this section applies to any tree in a conservation area in respect of which no tree preservation order is for the time being in force.
- (3) It shall be a defence for a person charged with an offence under subsection (1) to prove—
- (a) that he served notice of his intention to do the act in question (with sufficient particulars to identify the tree) on the planning authority in whose area the tree is or was situated, and
  - (b) that he did the act in question—
    - (i) with the consent of the planning authority in whose area the tree is or was situated, or
    - (ii) after the expiry of the period of 6 weeks from the date of the notice but before the expiry of the period of 2 years from that date.

*Status: Point in time view as at 18/03/2011.*

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- (4) Section 171 shall apply to an offence under this section as it applies to a contravention of a tree preservation order.
- [<sup>F149</sup>(5) An emanation of the Crown must not, in relation to a tree to which this section applies, do an act mentioned in subsection (1) above unless—
- (a) the first condition is satisfied, and
  - (b) either the second or third condition is satisfied.
- [ Subsection (5) does not apply so far as the act in question is authorised by an order
- <sup>F150</sup>(5A) granting development consent.]
- (6) The first condition is that the emanation serves notice of an intention to do the act (with sufficient particulars to identify the tree) on the planning authority in whose area the tree is situated.
- (7) The second condition is that the act is done with the consent of the authority.
- (8) The third condition is that the act is done—
- (a) after the end of the period of six weeks starting with the date of the notice, and
  - (b) before the end of the period of two years starting with that date.]

#### Textual Amendments

- F148** S. 172(1A) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), [Sch. 2 para. 57\(2\)](#) (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)
- F149** S. 172(5)-(8) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 96, 121\(4\)](#) (with s. 111); [S.S.I. 2006/268](#), art. 3(b)
- F150** S. 172(5A) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), [Sch. 2 para. 57\(3\)](#) (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)

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

- C57** S. 172 excluded (1.2.2011) by [The Town and Country Planning \(Tree Preservation Order and Trees in Conservation Areas\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/434\)](#), regs. 1, [8](#)
- C58** S. 172 excluded (18.3.2011) by [Forth Crossing Act 2011 \(asp 2\)](#), [ss. 10\(3\)\(b\), 80\(2\)](#) (with ss. 69, 78); [S.S.I. 2011/38](#), art. 2, sch.
- C59** S. 172(1) excluded (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\)](#), [s. 59\(3\)](#) (with s. 75)
- C60** S. 172(1) excluded (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\)](#), [s. 59\(3\)](#) (with ss. 76, 84)
- C61** S. 172(1) excluded (24.7.2006) by [Waverley Railway \(Scotland\) Act 2006 \(asp 13\)](#), [s. 31\(4\)](#) (with ss. 50(2), 51)
- C62** S. 172(1) excluded (15.1.2007) by [Glasgow Airport Rail Link Act 2007 \(asp 1\)](#), [s. 32\(5\)](#) (with s. 50)
- C63** S. 172(1) excluded (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), [s. 37\(5\)\(b\)](#) (with ss. 52, 60)
- C64** S. 172(1) excluded (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), [s. 38\(5\)\(b\)](#) (with ss. 48, 59)

### 173 Power to disapply section 172.

- (1) The Secretary of State may by regulations direct that section 172 shall not apply in such cases as may be specified in the regulations.

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- (2) Without prejudice to the generality of subsection (1), the regulations may be framed so as to exempt from the application of that section cases defined by reference to all or any of the following matters—
  - (a) acts of such descriptions or done in such circumstances or subject to such conditions as may be specified in the regulations;
  - (b) trees in such conservation areas as may be so specified;
  - (c) trees of a size or species so specified; or
  - (d) trees belonging to persons or bodies of a description so specified.
- (3) The regulations may, in relation to any matter by reference to which an exemption is conferred by them, make different provision for different circumstances.
- (4) Regulations under subsection (1) may in particular, but without prejudice to the generality of that subsection, exempt from the application of section 172 cases exempted from section 160 by subsection (6) of that section.

#### **174 Enforcement of controls as respects trees in conservation areas.**

- (1) If any tree to which section 172 applies—
  - (a) is removed, uprooted or destroyed in contravention of that section, or
  - (b) is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of the provisions of such regulations under subsection (1) of section 173 as are mentioned in subsection (4) of that section,it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.
- (2) The duty imposed by subsection (1) does not apply to an owner if on application by him the planning authority dispense with it.
- (3) The duty imposed by subsection (1) on the owner of any land attaches to the person who is from time to time the owner of the land and may be enforced as provided by section 168 and not otherwise.

#### **175 Register of section 172 notices.**

It shall be the duty of a planning authority to compile and keep available for public inspection free of charge at all reasonable hours and at a convenient place a register containing such particulars as the Secretary of State may determine of notices under section 172 affecting trees in their district.

#### *Rights of entry*

#### **176 Rights to enter without warrant.**

- (1) Any person duly authorised in writing by a planning authority may enter any land for the purpose of—
  - (a) surveying it in connection with making or confirming a tree preservation order with respect to the land,
  - (b) ascertaining whether an offence under section 171 or 172 has been committed on the land, or

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*Status: Point in time view as at 18/03/2011.*

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- (c) determining whether a notice under section 168(1) should be served on the owner of the land,  
if there are reasonable grounds for entering for the purpose in question.
- (2) Any person duly authorised in writing by the Secretary of State may enter any land for the purpose of surveying it in connection with making, amending or revoking a tree preservation order with respect to the land if there are reasonable grounds for entering for that purpose.
- (3) Any person who is duly authorised in writing by a planning authority may enter any land in connection with the exercise of any functions conferred on the authority by or under sections 159 to 163 and 167 to 170.
- (4) Any person who is an officer of the Valuation Office may enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation in respect of any land which is payable by the planning authority under section 165.
- (5) Any person who is duly authorised in writing by the Secretary of State may enter any land in connection with the exercise of any functions conferred on the Secretary of State by or under sections 160 to 162, 168(1) to (3), 169 and 170.
- (6) The Secretary of State shall not authorise any person as mentioned in subsection (2) without consulting the planning authority.
- (7) Admission shall not be demanded as of right—
  - (a) by virtue of subsection (1) or (2) to any building used as a dwellinghouse, or
  - (b) by virtue of subsection (3), (4) or (5) to any land which is occupied, unless 24 hours' notice of the intended entry has been given to the occupier.
- (8) Any right to enter by virtue of this section shall be exercised at a reasonable hour.

## **177 Right to enter under warrant.**

- (1) If the sheriff is satisfied—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 176(1) or (2), and
  - (b) that—
    - (i) admission to the land has been refused, or a refusal is reasonably apprehended, or
    - (ii) the case is one of urgency,
 he may issue a warrant authorising any person duly authorised in writing by a planning authority or, as the case may be, the Secretary of State to enter the land.
- (2) For the purposes of subsection (1)(b)(i) of this section admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (3) A warrant authorises entry on one occasion only and that entry must be—
  - (a) within one month from the date of the issue of the warrant, and
  - (b) at a reasonable hour, unless the case is one of urgency.

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## **178 Rights of entry: supplementary provisions.**

- (1) Any power conferred under or by virtue of section 176 or 177 to enter land (referred to in this section as “a right of entry”) shall be construed as including power to take samples from any tree and samples of the soil.
- (2) A person authorised to enter land in the exercise of a right of entry—
  - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering,
  - (b) may take with him such other persons as may be necessary, and
  - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
- (3) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If any damage is caused to land or moveable property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State.

## **CHAPTER II**

### **LAND ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD**

#### *Land adversely affecting other land*

## **179 Notice requiring proper maintenance of land.**

- (1) If it appears to a planning authority that the amenity of any part of their district, or an adjoining district, is adversely affected by the condition of any land in their district they may serve on the owner, lessee and occupier of the land a notice under this section requiring such steps for abating the adverse effect as may be specified in the notice to be taken within such period as may be so specified.
- (2) Service under subsection (1) shall be effected by the service of a copy of the notice.
- (3) Subject to section 180, a notice under this section shall take effect on such date as may be specified in the notice, being a date not less than 28 days after the latest service thereof under subsection (1).
- (4) The planning authority may withdraw a notice under this section (without prejudice to their power to serve another) at any time before it takes effect; and if they so withdraw it, they shall forthwith give notice of the withdrawal to every person on whom the notice was served.
- (5) No notice may be served under subsection (1) with reference to any building which is—
  - (a) a building which is the subject of a scheme or order under the enactments for the time being in force with respect to ancient monuments, or
  - (b) a building for the time being included in a list of monuments published by the Secretary of State under any such enactment.

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- (6) The provisions of section 135 shall, subject to any necessary modifications, apply in respect of a notice under this section as they apply in respect of an enforcement notice under section 127.

### **180 Appeal against notice under section 179.**

- (1) A person on whom a notice under section 179 is served, or any other person having an interest in the land to which the notice relates, may at any time before the date specified in the notice as the date on which it is to take effect appeal to the Secretary of State against the notice, on any of the following grounds—
- (a) that neither the amenity of any part of the planning authority’s district nor that of any adjoining district has been adversely affected;
  - (b) that the steps required by the notice to be taken exceed what is necessary to remedy any such adverse effect;
  - (c) that the specified period for compliance with the notice falls short of what should reasonably be allowed;
  - (d) that the condition of the land is attributable to, and such as results in the ordinary course of events from, a continuing lawful use of the land or from continuing lawful operations carried out thereon; or
  - (e) that the notice was served other than in accordance with section 179.
- (2) An appeal under this section shall be made by notice in writing to the Secretary of State.
- (3) The provisions of sections 130(3), 131(1)<sup>F151</sup>... and 132(3) shall apply to appeals under this section as they apply to appeals under those sections.
- (4) On an appeal under this section the Secretary of State—
- (a) may correct any informality, defect or technical error in the notice if he is satisfied that it is not material, and
  - (b) may disregard the failure of the planning authority to serve the notice upon a person upon whom it should have been served, if it appears to him that neither that person nor the appellant has been substantially prejudiced by that failure.
- (5) Where an appeal is brought under this section, the notice under section 179 shall be of no effect pending the final determination, or the withdrawal, of the appeal.
- (6) In determining an appeal under this section the Secretary of State shall give such directions as seem to him appropriate; and these may include directions for quashing the notice or for varying its terms in favour of the appellant.
- (7) Schedule 4 applies to appeals under this section.

#### **Textual Amendments**

**F151** Words in s. 180(3) repealed (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Consequential Amendments\) Order 2009 \(S.S.I. 2009/256\)](#), arts. 1(3), **2(4)**

### **181 Register of notices under section 179.**

- (1) Every planning authority shall keep a register of notices under section 179 which have been served in relation to land in their district—



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- (a) in such manner, and
  - (b) containing such information,
- as may be prescribed; and there may also be prescribed circumstances in which an entry in the register shall be deleted.
- (2) Every register kept under subsection (1) shall be available for inspection by the public at all reasonable hours.

### CHAPTER III

#### ADVERTISEMENTS

##### *Advertisement regulations*

#### **182 Regulations controlling display of advertisements.**

- (1) Regulations shall make provision for restricting or regulating the display of advertisements so far as appears to the Secretary of State to be expedient in the interests of amenity or public safety.
- (2) Without prejudice to the generality of subsection (1), any such regulations may provide—
- (a) for regulating the dimensions, appearance and position of advertisements which may be displayed, the sites on which advertisements may be displayed and the manner in which they are to be affixed to the land;
  - (b) for requiring the consent of the planning authority to be obtained for the display of advertisements, or of advertisements of any class specified in the regulations;
  - (c) for applying, in relation to any such consent and to applications for such consent, any of the provisions mentioned in subsection (3), subject to such adaptations and modifications as may be specified in the regulations;
  - (d) for the constitution, for the purposes of the regulations, of such advisory committees as may be prescribed by the regulations, and for determining the manner in which the expenses of any such committee are to be defrayed.

[<sup>F152</sup>(2A) The regulations may also make provision as to—

- (a) the form and manner in which an application for consent must be made,
  - (b) particulars of such matters as are to be included in the application,
  - (c) any documents or other materials which are to accompany the application.]
- (3) The provisions referred to in subsection (2)(c) are—
- (a) the provisions of Part III relating to planning permission and to applications for planning permission, except sections 32, 34, 35, 36(2) and (3), 38, 58 to 62, 69 and 70 and Schedules 6 and 7, and section 65 of the <sup>M55</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997,
  - (b) sections 88 to 92, 94 and 95 (except so far as they relate to purchase notices served in consequence of such orders as are mentioned in section 88(1)(b) or (c)), and
  - (c) section 263.

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#### Textual Amendments

**F152** S. 182(2A) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 7(2), 59(2); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

#### Marginal Citations

**M55** 1997 c. 9.

### 183 Power to make different advertisement regulations for different areas.

- (1) Regulations made under section 182 may make different provision with respect to different areas, and in particular may make special provision—
  - (a) with respect to conservation areas, and
  - (b) with respect to areas defined for the purposes of the regulations as areas of special control.
- (2) An area may be defined as an area of special control if it is—
  - (a) a rural area, or
  - (b) an area which appears to the Secretary of State to require special protection on grounds of amenity.
- (3) Without prejudice to the generality of subsection (1), the regulations may prohibit the display in an area of special control of all advertisements except advertisements of such classes (if any) as may be prescribed.
- (4) Areas of special control for the purposes of the regulations may be defined by means of orders made or approved by the Secretary of State in accordance with the provisions of the regulations.
- (5) Where the Secretary of State is authorised by the regulations to make or approve any such order as is mentioned in subsection (4), the regulations shall provide—
  - (a) for the publication of notice of the proposed order in such manner as may be prescribed,
  - (b) for the consideration of objections duly made to it, and
  - (c) for the holding of such inquiries or other hearings as may be prescribed, before the order is made or approved.
- (6) Nothing in this section or in any such regulations shall be construed as authorising the restricting or regulation of the display of any advertisement by reason only of the subject matter or wording of it.

### 184 Planning permission not needed for advertisements complying with regulations.

Where the display of advertisements in accordance with regulations made under section 182 involves development of land—

- (a) planning permission for that development shall be deemed to be granted by virtue of this section, and
- (b) no application shall be necessary for that development under Part III.

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

- C65** S. 184 applied (4.4.2003 for specified purposes, 28.11.2004 in so far as not already in force) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), [ss. 21\(7\)](#), [122\(1\)](#), [129\(2\)\(5\)\(d\)](#) (with [ss. 119](#), [121](#)) (see [S.S.I. 2003/456](#), art. 2)

*Repayment of expense of removing prohibited advertisements*

**185 Repayment of expense of removing prohibited advertisements.**

- (1) Where, for the purpose of complying with any regulations made under section 182, works are carried out by any person—
  - (a) for removing an advertisement which was being displayed on 16th August 1948, or
  - (b) for discontinuing the use for the display of advertisements of a site used for that purpose on that date,that person shall, on a claim made to the planning authority within such time and in such manner as may be prescribed, be entitled to recover from that authority compensation in respect of any expenses reasonably incurred by him in carrying out those works.
- (2) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal.
- (3) In relation to the determination of any such question, the provisions of sections 9 and 11 of the <sup>M56</sup>Land Compensation (Scotland) Act 1963 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

**Marginal Citations**

- M56** 1963 c. 51.

*Enforcement of control over advertisements*

**186 Enforcement of control as to advertisements.**

- (1) Regulations under section 182 may make provision for enabling the planning authority to require—
  - (a) the removal of any advertisement which is displayed in contravention of the regulations, or
  - (b) the discontinuance of the use for the display of advertisements of any site which is being so used in contravention of the regulations.
- (2) For that purpose the regulations may apply any of the provisions of Part VI with respect to enforcement notices or the provisions of section 143(1) to (5), subject to such adaptations and modifications as may be specified in the regulations.
- (3) Without prejudice to any provisions included in such regulations by virtue of subsection (1) or (2), if any person displays an advertisement in contravention of the

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regulations he shall be guilty of an offence and liable on summary conviction to a fine of such amount as may be prescribed, not exceeding level 3 on the standard scale and, in the case of a continuing offence, one-tenth of level 3 on the standard scale for each day during which the offence continues after conviction.

- (4) Without prejudice to the generality of subsection (3), a person shall be deemed to display an advertisement for the purposes of that subsection if—
- (a) he is the owner or occupier of the land on which the advertisement is displayed, or
  - (b) the advertisement gives publicity to his goods, trade, business or other concerns.
- (5) A person shall not be guilty of an offence under subsection (3) by reason only—
- (a) of his being the owner or occupier of the land on which an advertisement is displayed, or
  - (b) of his goods, trade, business or other concerns being given publicity by the advertisement,
- if he proves that it was displayed without his knowledge or consent.

## **187 Power to remove or obliterate placards and posters.**

- (1) Subject to the provisions of this section, a planning authority may remove or obliterate any placard or poster—
- (a) which is displayed in their area, and
  - (b) which in their opinion is so displayed in contravention of regulations made under section 182.
- (2) Subsection (1) does not authorise the removal or obliteration of a placard or poster displayed within a building to which there is no public right of access.
- (3) Subject to subsection (4), where a placard or poster identifies the person who displayed it or caused it to be displayed, the planning authority shall not exercise any power conferred by subsection (1) unless they have first given him notice in writing—
- (a) that in their opinion it is displayed in contravention of regulations made under section 182, and
  - (b) that they intend to remove or obliterate it on the expiry of a period specified in the notice.
- (4) Subsection (3) does not apply if—
- (a) the placard or poster does not give his address, and
  - (b) the authority do not know it and are unable to ascertain it after reasonable inquiry.
- (5) The period specified in a notice under subsection (3) must be not less than 2 days from the date of service of the notice.
- (6) Any person duly authorised in writing by the planning authority may at any reasonable time enter any land for the purpose of exercising a power conferred by this section if—
- (a) the land is unoccupied, and
  - (b) it would be impossible to exercise the power without entering the land.

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## PART VIII

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

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

- C66** Pt. VIII excluded (1.4.2007) by [Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **3(2)(d)** (with art. 14(3))
- C67** Pt. VIII modified (20.6.2008) by [Glasgow Commonwealth Games Act 2008 \(asp 4\)](#), ss. 42, 49; S.S.I. 2008/245, art. 2

#### *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 <sup>M57</sup>Lands Clauses Consolidation (Scotland) Act 1845) and sections 6 and 70 of the <sup>M58</sup>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 <sup>M59</sup>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.

<sup>F153</sup>(3) . . . . .

#### Textual Amendments

- F153** S. 188(3) repealed (1.4.2003) by [Local Government in Scotland Act 2003 \(asp 1\)](#), ss. 60(1)(i), 62(2); S.S.I. 2003/134, art. 2(1), Sch.

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

- C68** S. 188(2) applied (with modifications)(26.3.2001) by [2000 c. 26, s. 95, Sch. 6 para. 7](#); S.I. 2000/2957, art. 2(3), [Sch. 3](#) (with arts. 3-8)

#### Marginal Citations

- M57** 1845 c. 19.  
**M58** 1845 c. 33.  
**M59** 1923 c. 20.

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

- (1) A local authority shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area which—

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- (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.
- [<sup>F154</sup>(2A) The Scottish Ministers must not authorise the acquisition of any interest in Crown land unless—
- (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and
  - (b) the appropriate authority consents to the acquisition.]
- (3) Where a local authority exercise their powers under subsection (1) in relation to any land, they shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily—
- (a) any land adjoining that land which is required for the purposes of executing works for facilitating its development or use, or
  - (b) where the land forms part of a common or open space, any land which is required for the purpose of being given in exchange for the land which is being acquired.
- (4) It is immaterial by whom the local authority propose any activity or purpose mentioned in subsection (1) or (3)(a) is to be undertaken or achieved and in particular the local authority need not propose to undertake that activity or achieve that purpose themselves.
- (5) The Secretary of State may authorise a local authority to acquire compulsorily under subsection (1) land which is not in their area.
- (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 <sup>M60</sup>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.

<sup>F155</sup>(8) .....

[<sup>F156</sup>(9) Crown land must be construed in accordance with Part 12.]

#### Textual Amendments

**F154** S. 189(2A) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 3\(2\)](#) (with s. 111); [S.S.I. 2006/268](#), art. 3(f)

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**F155** S. 189(8) repealed (1.4.2003) by Local Government in Scotland Act 2003 (asp 1), ss. 60(1)(j), 62(2); S.S.I. 2003/134, art. 2(1), Sch.

**F156** S. 189(9) inserted (12.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), s. 121(4), Sch. 5 para. 3(3) (with s. 111); S.S.I. 2006/268, art. 3(f)

#### Marginal Citations

**M60** 1947 c. 42.

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

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

[<sup>F157</sup>(1A) But subsection (1) does not permit the acquisition of any interest in Crown land unless—

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

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

- (a) in the interests of the proper planning of the area concerned,
- (b) for the purpose of ensuring that the primary land can be used, or developed and used, (together with that other land) in what appears to him to be the best or most economic way, or
- (c) where the primary land or any land acquired, or which he proposes to acquire, by virtue of paragraph (a) or (b) of this subsection or of section 122(1)(a) or (b) of the <sup>M61</sup>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 <sup>M62</sup>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—

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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.

(7) For the purpose of subsection (6)(b), “treaty” includes any international agreement, and any protocol or annex to a treaty or international agreement.

[<sup>F158</sup>(8) Crown land must be construed in accordance with Part 12.]

#### Textual Amendments

**F157** S. 190(1A) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 4\(2\)](#) (with s. 111); S.S.I. 2006/268, art. 3(f)

**F158** S. 190(8) added (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 4\(3\)](#) (with s. 111); S.S.I. 2006/268, art. 3(f)

#### Marginal Citations

**M61** 1980 c. 65.

**M62** 1947 c. 42.

### *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).
- (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



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- (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.
- <sup>F159</sup>(9) .....
- (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.

**Textual Amendments**

**F159** S. 191(9) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), Sch. 12 para. 60(3), **Sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

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

**C69** S. 191 modified (27.5.1997) by [1997 c. 9](#), **ss. 59(2), 83(2)** (with s. 45(4))

**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.

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### **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).

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

**C70** S. 193 modified (27.5.1997) by 1997 c. 9, ss. 59(2), 83(2) (with s. 45(4))

#### *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 [F160electronic communications code] on the operator of [F161an electronic communications code network], or
  - (c) to any [F162electronic communications apparatus] kept installed for the purposes of any such [F163network] .
- (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>M63</sup>Land Compensation (Scotland) Act 1963.

#### Textual Amendments

- F160** 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)
- F161** 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)
- F162** 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)
- F163** 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

- M63** 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)

- C71** 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)
- C72** 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)
- C73** 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)
- C74** S. 195 applied (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\)](#), s. **42(1)** (with s. 75)
- C75** S. 195 applied (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\)](#), s. **42(1)** (with ss. 76, 84)
- C76** 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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- C77** S. 195 applied (15.1.2007) by [Glasgow Airport Rail Link Act 2007 \(asp 1\), s. 40\(1\)](#) (with s. 50)
- C78** S. 195 applied (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\), s. 35\(1\)](#) (with ss. 52, 60)
- C79** S. 195 applied (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\), s. 35\(1\)](#) (with ss. 48, 59)
- C80** S. 195 applied (with modifications) (1.6.2010) by [The Network Rail \(Waverley Steps\) Order 2010 \(S.S.I. 2010/188\), arts. 1, 24](#)

## 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>F164</sup>electronic communications code] on the operator of <sup>F165</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>M64</sup>Lands Clauses Consolidation (Scotland) Act 1845 or under section 6 of the <sup>M65</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

**F164** 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)

**F165** 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

**M64** 1845 c. 19.

**M65** 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>M66</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>M67</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>M68</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)**

**C81** 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**

**M66** 1997 c. 9.

**M67** 1978 c. 29.

**M68** 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>M69</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)**

**C82** 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**

**M69** 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>M70</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>M71</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**

**M70** 1984 c. 58.

**M71** 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>M72</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>M73</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.

#### **Marginal Citations**

**M72** 1947 c. 42.

**M73** 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>M74</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.

#### Marginal Citations

M74 1997 c. 9.

## PART IX

### ROADS, FOOTPATHS AND RIGHTS OF WAY

#### *Stopping up and diversion of roads by Secretary of State*

#### **202 Roads affected by development: orders by Secretary of State.**

- (1) The Secretary of State may by order authorise the stopping up or diversion of any road if he is satisfied that it is necessary to do so in order to enable development to be carried out—
  - (a) in accordance with planning permission granted under Part III [<sup>F166</sup>or section 242A], or
  - (b) by a government department.
- (2) Such an order may make such provision as appears to the Secretary of State to be necessary or expedient for the construction or improvement of any other road.
- (3) Such an order may direct that the other road so constructed or improved—
  - (a) shall be entered by the local roads authority in the list of public roads kept by them under section 1 of the <sup>M75</sup>Roads (Scotland) Act 1984, or
  - (b) shall be deemed for the purposes of that Act to have been constructed by the Secretary of State under section 19 of that Act and shall, on such date as may be specified in the order, become a trunk road within the meaning of that Act.
- (4) Any order made under this section may contain such incidental and consequential provisions as appear to the Secretary of State to be necessary or expedient, including in particular—
  - (a) provision for authorising the Secretary of State, or requiring any other authority or person specified in the order to pay, or to make contributions in respect of, the cost of doing any work provided for by the order or any increased expenditure to be incurred which is attributable to the doing of any such work;

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- (b) provision for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the road to which the order relates.
- (5) An order may be made under this section authorising the stopping up or diversion of any road which is temporarily stopped up or diverted under any other enactment.
- (6) This section is without prejudice to—
  - (a) any power conferred on the Secretary of State by any other enactment to authorise the stopping up or diversion of a road,
  - (b) section 3 of the <sup>M76</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, or
  - (c) section 206(1)(a).

#### **Textual Amendments**

**F166** Words in s. 202(1)(a) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), 4(7)

#### **Marginal Citations**

**M75** 1984 c. 54.  
**M76** 1947 c. 42.

### *Powers of local authorities to extinguish certain rights*

#### **203 Order extinguishing right to use vehicles on road.**

- (1) This section applies where—
  - (a) a competent authority by resolution adopt a proposal for improving the amenity of part of their area, and
  - (b) the proposal involves a road in that area (being a road over which the public have a right of way with vehicles, but not a trunk road or a road classified as a principal road for the purposes of advances under section 3 of the Roads (Scotland) Act 1984) being changed to a footpath or bridleway.
- (2) Subject to paragraph 5 of Schedule 16 and to subsection (9), the competent authority may by order provide for the extinguishment of any right which persons may have to use vehicles on that road.
- (3) An order made under subsection (2) may include such provision as the competent authority (after consultation with the planning authority and the roads authority, if different from the competent authority) think fit for permitting the use on the road of vehicles (whether mechanically propelled or not) in such cases as may be specified in the order, notwithstanding the extinguishment of any such right as is mentioned in that subsection.
- (4) Such provision as is mentioned in subsection (3) may be framed by reference to—
  - (a) particular descriptions of vehicles,
  - (b) particular persons by whom, or on whose authority, vehicles may be used, or

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- (c) the circumstances in which, or the times at which, vehicles may be used for particular purposes.
- (5) No provision contained in, or having effect under, any enactment, being a provision prohibiting or restricting the use of footpaths or bridleways, shall affect any use of a vehicle on a road in relation to which an order made under subsection (2) has effect, where the use is permitted in accordance with provisions of the order included by virtue of subsections (3) and (4).
- (6) Without prejudice to section 275(7), the competent authority may, subject to paragraph 5 of Schedule 16 and to subsection (9), by order revoke an order made by them in relation to a road under subsection (2); and if they do so, any right to use vehicles on the road in relation to which the order was made which was extinguished by virtue of the order under subsection (2) shall be reinstated.
- (7) An order under this section—
  - (a) may make such provision as appears to the competent authority to be necessary or expedient for the construction or improvement of any other road (not being a trunk road such as is mentioned in paragraph (a), or a special road such as is mentioned in paragraph (b), of section 207(1)) and may direct that the other road so constructed or improved shall be entered by the local roads authority in the list of public roads kept by the local roads authority under section 1 of the <sup>M77</sup>Roads (Scotland) Act 1984, and
  - (b) may contain such incidental and consequential provisions as appear to the competent authority to be necessary or expedient, including in particular—
    - (i) provision for authorising the competent authority, or requiring any other authority or person specified in the order, to make such payments, repayments or contributions as are mentioned in section 202(4)(a), and
    - (ii) such provision as is mentioned in section 202(4)(b).
- (8) This section is without prejudice to—
  - (a) any power conferred on the competent authority by any other enactment to authorise the stopping up or diversion of a road, or
  - (b) section 206(1)(b).
- (9) The competent authorities for the purposes of this section and section 204 are local authorities, and a competent authority shall not make an order under subsection (2) or (6), if they are not the roads authority, without obtaining the consent of that authority.

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

**C83** S. 203: power to modify conferred (27.5.1997) by 1980 c. 65, **Sch. 30 Pt. II para. 6** (as replaced (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 31(12)**)

**Marginal Citations**

**M77** 1984 c. 54.

*Status: Point in time view as at 18/03/2011.*

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## **204 Compensation for orders under section 203.**

- (1) Any person who, at the time of an order under section 203(2) coming into force, has an interest in land having lawful access to a road to which the order relates shall be entitled to be compensated by the competent authority in respect of—
  - (a) any depreciation in the value of his interest which is directly attributable to the order, and
  - (b) any other loss or damage which is so attributable.
- (2) A claim for compensation under subsection (1) shall be made to the competent authority within the prescribed time and in the prescribed manner.
- (3) For the purpose of assessing any such compensation the rules set out in section 12 of the <sup>M78</sup>Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (4) Where an interest in land is subject to a heritable security—
  - (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the security,
  - (b) a claim for any such compensation may be made by any creditor in a heritable security over the interest, but without prejudice to the making of a claim by the person entitled to the interest,
  - (c) no compensation to which this section applies shall be payable in respect of the interest of the creditor in the heritable security (as distinct from the interest which is subject to the security), and
  - (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the heritable security shall be paid to the creditor in the security, or if there is more than one such creditor, to the creditor whose security ranks first, and shall in either case be applied by him as if it were proceeds of sale by him under the powers competent to creditors in heritable securities.
- (5) Except in so far as may be provided by any regulations made under this Act, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal.
- (6) In relation to the determination of any such question, the provisions of sections 9 and 11 of the Land Compensation (Scotland) Act 1963 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

### **Marginal Citations**

M78 1963 c. 51.

## **205 Provision of amenity for road reserved to pedestrians.**

- (1) Where an order has been made under section 203(2) in relation to a road, a competent authority may carry out and maintain any such works on or in the road, or place on or in it any such objects or structures, as appear to them—
  - (a) to be expedient for the purposes of—

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- (i) giving effect to the order, or
  - (ii) enhancing the amenity of the road and its immediate surroundings, or
- (b) to be otherwise desirable for a purpose beneficial to the public.
- (2) The powers exercisable by a competent authority under this section include—
- (a) laying out any part of the road with lawns, trees, shrubs and flowerbeds, and
  - (b) providing facilities for recreation or refreshment.
- (3) A competent authority may so exercise their powers under this section as to restrict the access of the public to any part of the road, but shall not so exercise them as—
- (a) to prevent persons from entering the road at any place where they could enter it before the order under section 203 was made,
  - (b) to prevent the passage of the public along the road,
  - (c) to prevent normal access by pedestrians to premises adjoining the road,
  - (d) to prevent any use of vehicles which is permitted by an order made under section 203 and applying to the road,
  - (e) to prevent statutory undertakers from having access to any works of theirs under, in, on, over, along or across the road, or
  - (f) to prevent the operator of [<sup>F167</sup>an electronic communications code network] from having access to any works of his under, in, on, over, along or across the road.
- (4) An order under section 203(6) may make provision requiring the removal of any obstruction of the road resulting from the exercise by a competent authority of their powers under this section.
- (5) The competent authorities for the purposes of this section are local authorities, and a competent authority shall not exercise any powers conferred by this section, if they are not the roads authority, without obtaining the consent of that authority.

#### Textual Amendments

**F167** Words in s. 205(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)(c)(2)(a)

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

**C84** S. 205: power to modify conferred (27.5.1997) by 1980 c. 65, [Sch. 30 Pt. II para. 7](#) (as replaced (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 31\(12\)](#))

## 206 Extinguishment of public rights of way over land held for planning purposes.

- (1) Where any land has been acquired or appropriated for planning purposes and is for the time being held by a local authority for the purposes for which it was acquired or appropriated—
- (a) the Secretary of State may by order extinguish any public right of way over the land if he is satisfied that an alternative right of way has been or will be provided or that the provision of an alternative right of way is not required;
  - (b) subject to paragraph 5 of Schedule 16, the local authority may by order extinguish any such right over the land if they are so satisfied.

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- (2) In this section any reference to the acquisition or appropriation of land for planning purposes shall be construed in accordance with section 201 as if this section were in Part VIII.

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

**C85** S. 206: power to modify conferred (27.5.1997) by 1980 c. 65, **Sch. 30 Pt. II para. 8** (as replaced (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 31(12)**)

*Powers of planning authorities to stop up roads, etc.*

**207 Roads affected by development: orders by planning authorities.**

- (1) Subject to paragraph 5 of Schedule 16 and to subsection (5), a planning authority may by order authorise the stopping up or diversion of any road which is not—
- (a) a trunk road within the meaning of the <sup>M79</sup>Roads (Scotland) Act 1984, or
  - (b) a special road provided by the Secretary of State in pursuance of a scheme under that Act,
- if they are satisfied that it is necessary to do so in order to enable the development to be carried out in accordance with planning permission granted under Part III [<sup>F168</sup>or section 242A], or by a government department.
- (2) An order under this section—
- (a) may make such provision as appears to the planning authority to be necessary or expedient for the construction or improvement of any other road (not being a trunk road such as is mentioned in paragraph (a), or a special road such as is mentioned in paragraph (b), of subsection (1)) and may direct that the other road so constructed or improved shall be entered by the local roads authority in the list of public roads kept by the local roads authority under section 1 of the <sup>M80</sup>Roads (Scotland) Act 1984, and
  - (b) may contain such incidental and consequential provisions as appear to the planning authority to be necessary or expedient, including in particular—
    - (i) provision for authorising the planning authority, or requiring any other authority or person specified in the order, to make such payments, repayments or contributions as are mentioned in section 202(4)(a), and
    - (ii) such provision as is mentioned in section 202(4)(b).
- (3) An order may be made under this section authorising the stopping up or diversion of any road (not being a trunk road such as is mentioned in paragraph (a), or a special road such as is mentioned in paragraph (b), of subsection (1)) which is temporarily stopped up or diverted under any other enactment.
- (4) This section is without prejudice to any power conferred on the planning authority by any other enactment to authorise the stopping up or diversion of a road.
- (5) The planning authority shall not make an order under this section without consulting the roads authority (in a case where they are themselves not that authority).



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#### Textual Amendments

**F168** Words in s. 207(1) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), 4(8)

#### Marginal Citations

**M79** 1984 c. 54.

**M80** 1984 c. 54.

## 208 Footpaths and bridleways affected by development: orders by planning authorities.

- (1) Subject to paragraph 5 of Schedule 16, a planning authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied that it is necessary to do so in order to enable the development to be carried out—
  - (a) in accordance with planning permission granted under Part III [<sup>F169</sup>or section 242A], or
  - (b) by a government department.
- (2) An order under this section may, if the planning authority are satisfied that it should do so, provide—
  - (a) for the creation of an alternative footpath or bridleway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing path or way for such use;
  - (b) for authorising or requiring works to be carried out in relation to any footpath or bridleway for whose stopping up or diversion, creation or improvement, provision is made by the order;
  - (c) for the preservation of any rights of statutory undertakers in respect of apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath or bridleway;
  - (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.
- (3) An order may be made under this section authorising the stopping up or diversion of a footpath or bridleway which is temporarily stopped up or diverted under any other enactment.
- [<sup>F170</sup>(4) This section applies in relation to any land which is a core path (within the meaning of Part 1 of the Land Reform (Scotland) Act 2003 (asp 2)) as it applies in relation to footpaths and bridleways.]

#### Textual Amendments

**F169** Words in s. 208(1)(a) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), 4(9)

**F170** S. 208(4) inserted (9.2.2005) by [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#), s. 100(3), [Sch. 2 para. 17](#) (with s. 100(2)); [S.S.I. 2005/17](#), art. 2(b)

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### *Procedure*

#### **209 Procedure for making and confirming orders by Secretary of State and planning authorities.**

Schedule 16 shall have effect in relation to the procedure for the making and confirming of orders under this Part by the Secretary of State and planning authorities.

#### **210 Recovery of costs of making orders.**

- (1) Where a person requests a local authority to make an order to which this subsection applies, the local authority may require him, as a condition of their compliance with the request, to make such provision as they consider reasonable as regards any costs to be incurred by them in so complying.
- (2) The orders to which subsection (1) applies are orders under any of the following enactments—
  - (a) section 203 (orders extinguishing the right to use vehicles on a road);
  - (b) section 207 (orders authorising the stopping up or diversion of certain roads);
  - (c) section 208 (orders authorising the stopping up or diversion of footpaths or bridleways);
  - (d) section 34 of the <sup>M81</sup>Countryside (Scotland) Act 1967 (orders as regards the closure of public paths); and
  - (e) section 35 of that Act (orders as regards the diversion of public paths).

#### **Marginal Citations**

**M81** 1967 c. 86.

### *Supplementary provisions*

#### **211 Concurrent proceedings in connection with roads.**

- (1) In relation to orders under sections 202, 203 and 207, regulations made under this Act may make provision for securing that any proceedings required to be taken for the purposes of the acquisition of land under section 104(1)(b)(i) of the <sup>M82</sup>Roads (Scotland) Act 1984 may be taken concurrently with any proceedings required to be taken for the purposes of the order.
- (2) In relation to orders under section 206(1)(a) or (b), regulations may make provision for securing—
  - (a) that any proceedings required to be taken for the purposes of such an order may be taken concurrently with any proceedings required to be taken for the purposes of the acquisition of the land over which the right of way is to be extinguished, or
  - (b) that any proceedings required to be taken for the purposes of the acquisition of any other land under section 104(1)(b)(ii) of the Roads (Scotland) 1984 Act may be taken concurrently with either or both of the proceedings referred to in the preceding paragraph.



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

**C86** S. 211(1) excluded (11.8.2004) by [Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 \(asp 10\)](#), s. 27(4)(b) (with s. 33)

**Marginal Citations**

**M82** 1984 c. 54.

**212** [<sup>F171</sup>Electronic communications apparatus] .

- (1) Where in pursuance of an order under section 202, 203 or 207 a road is stopped up, diverted or changed and immediately before the date on which the order became operative there was under, in, on, over, along or across the road any [<sup>F171</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F172</sup>an electronic communications code network], the operator of that [<sup>F173</sup>network] shall have the same powers in respect of the [<sup>F171</sup>electronic communications apparatus] as if the order had not come into force.
- (2) Notwithstanding subsection (1), any person entitled to land over which the road subsisted shall be entitled to require the alteration of the apparatus.
- (3) Where—
  - (a) any such order provides for the improvement of a road for which the Secretary of State is not the roads authority, and
  - (b) immediately before the date on which the order came into force, there was under, in, on, over, along or across the road any [<sup>F171</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F172</sup>an electronic communications code network],the local roads authority shall be entitled to require the alteration of the apparatus.
- (4) Subsection (3) does not have effect so far as it relates to the alteration of any [<sup>F171</sup>electronic communications apparatus] for the purpose of authority's works within the meaning of Part IV of the <sup>M83</sup>New Roads and Street Works Act 1991.
- (5) Where an order under section 206(1)(b) extinguishing a public right of way or an order under section 208 authorising the stopping up or diversion of any footpath or bridleway is made by a planning authority and, at the time of the publication of the notice required by paragraph 6 of Schedule 16, any [<sup>F171</sup>electronic communications apparatus] was kept installed for the purposes of [<sup>F172</sup>an electronic communications code network] under, in, on, over, along or across the land over which the right of way subsisted—
  - (a) the power of the operator of the [<sup>F173</sup>network] to remove the apparatus shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of 3 months from the date on which the right of way is extinguished or, as the case may be, the footpath or bridleway is stopped up or diverted and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the [<sup>F173</sup>network] has given notice to the authority which made the order of his intention to remove the apparatus or that part of it, as the case may be;

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- (b) the operator of the [F173network] may by notice given to the authority which made the order not later than the end of the said period of 3 months abandon the [F171electronic communications apparatus] or any part of it;
  - (c) subject to paragraph (b), the operator of the [F173network] shall be deemed at the end of that period to have abandoned any part of the apparatus which the operator has then neither removed nor given notice of his intention to remove;
  - (d) the operator of the [F173network] shall be entitled to recover from the authority which made the order the expense of providing, in substitution for the apparatus and any other [F171electronic communications apparatus] connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any [F171electronic communications apparatus] in such other place as the operator may require; and
  - (e) where under the preceding provisions of this subsection the operator of the [F173network] has abandoned the whole or any part of any [F171electronic communications apparatus] that apparatus or that part of it shall vest in the authority which made the order and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of [F172an electronic communications code network].
- (6) As soon as reasonably practicable after the making of any such order as is mentioned in subsection (5) in circumstances in which that subsection applies in relation to the operator of [F172an electronic communications code network], the authority which made the order shall give notice to the operator of the making of the order.
- (7) Paragraph 1(2) of the [F174electronic communications code] (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.
- (8) Paragraph 21 of the [F174electronic communications code] (restriction on removal of [F171electronic communications apparatus]) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any [F171electronic communications apparatus] as it applies in relation to an entitlement to require the removal of any such apparatus.

#### Textual Amendments

- F171** Words in s. 212 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(d)(2)(d)
- F172** Words in s. 212 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(d)(2)(a)
- F173** Word in s. 212 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(d)(2)(f)
- F174** Words in s. 212 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(d)(2)(e)

#### Marginal Citations

- M83** 1991 c. 22.

*Status: Point in time view as at 18/03/2011.*

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*Temporary road orders: mineral workings*

**213 Temporary stopping up of roads, footpaths and bridleways for mineral workings.**

- (1) Where the Secretary of State is satisfied—
  - (a) that an order under section 202 for the stopping up or diversion of a public road is required for the purpose of enabling minerals to be worked by surface working, and
  - (b) that the road can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public,the order may provide for the stopping up or diversion of the road during such period as may be prescribed by or under the order and for its restoration at the expiration of that period.
- (2) Where a planning authority are so satisfied in respect of an order under section 207, the order may so provide.
- (3) Where a planning authority are satisfied—
  - (a) that an order under section 208 for the stopping up or diversion of a footpath or bridleway is required for the purpose of enabling minerals to be worked by surface working, and
  - (b) that the footpath or bridleway can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public,the order may provide for the stopping up or diversion of the footpath or bridleway during such period as may be prescribed by or under the order and for its restoration at the expiration of that period.
- (4) Without prejudice to the provisions of section 202, 207 or 208, where provision is made in any order by virtue of subsection (1), (2) or (3) that order may also contain such provisions as appear to the Secretary of State or, as the case may be, the planning authority to be expedient—
  - (a) for imposing upon persons who, apart from the order, would be subject to any liability with respect to the repair of the original road, footpath or bridleway during the period prescribed by or under the order a corresponding liability in respect of any road, footpath or bridleway provided in pursuance of the order;
  - (b) for the stopping up at the expiry of that period of any road, footpath or bridleway so provided and for the reconstruction and maintenance of the original road, footpath or bridleway;and any provision included in the order in accordance with section 202(4), section 207(2) or section 208(2) requiring payment to be made in respect of any cost or expenditure under the order may provide for the payment of a capital sum in respect of the estimated amount of that cost or expenditure.
- (5) In relation to any road which is stopped up or diverted by virtue of an order under section 202 or 207, sections 224 and 225 shall have effect as if—
  - (a) for references to land which has been acquired as there mentioned and to the purchasing authority there were substituted respectively references to land over which the road subsisted and to the person entitled to possession of that land, and

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- (b) references in subsection (6) of each of those sections to a planning authority or statutory undertaker included references to any person (other than the Secretary of State) who is entitled to possession of that land, and sections 228 to 231 shall have effect accordingly.

## PART X

### STATUTORY UNDERTAKERS

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

- C87 Pt. X applied (with modifications) (1.4.2010) by [The Management of Extractive Waste \(Scotland\) Regulations 2010 \(S.S.I. 2010/60\)](#), regs. 1(1), 31(3) (with arts. 4, 5)

#### *Preliminary*

#### 214 Meaning of “statutory undertakers”.

- (1) Subject to the following provisions of this section, in this Act “statutory undertakers” means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power or water and a relevant airport operator (within the meaning of Part V of the <sup>M84</sup>Airports Act 1986).
- (2) Subject to the following provisions of this section, in this Act “statutory undertaking” shall be construed in accordance with subsection (1) and, in relation to a relevant airport operator (within the meaning of Part V of the Airports Act 1986), means an airport to which that Part of that Act applies.
- (3) Subject to <sup>F175</sup>subsections (5) to (5B)], for the purposes of the provisions mentioned in subsection (4) any public gas transporter, <sup>F176</sup>any universal postal service provider in connection with the provision of a universal postal service]<sup>F177</sup>, the Civil Aviation Authority and a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (air traffic services)] shall be deemed to be statutory undertakers and their undertakings statutory undertakings.
- (4) The provisions referred to in subsection (3) are sections 26, 57, 69, 70, 77(3), 90 to 92, 94, 99, 121(11)(b), 194(2)(a), 196 to 198, 200, 202(4)(b), 205(3)(e), 208(2), 215(1) and (2), 216, 218, 219, 221 to 236, 239(10)(a), 255, 270(9), 277(2) and (3), and Schedules 6, 7, 14 and 16.
- (5) Subsection (4) shall apply—
  - (a) as respects <sup>F178</sup>a universal postal service provider in connection with the provision of a universal postal service], as if the reference to sections 26, 194(2)(a), 196, 200, 202(4)(b), 205(3)(e), 208(2), 215(1) and (2) and 277(2) and (3) were omitted;
  - <sup>F179</sup>(b) as respects the Civil Aviation Authority, as if the references to sections 200, 215(1) and (2) and 277(2) and (3) were omitted and the reference to Schedule 16 included the words “except paragraph 3”]; and

*Status: Point in time view as at 18/03/2011.*

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- (c) as respects any public gas transporter, as if the reference to Schedule 7 were omitted and the reference to Schedule 16 included the words “except paragraphs 1 and 3”.

[<sup>F180</sup>(5A) For the purposes of this Act—

- (a) a person who holds a licence under Chapter I of Part I of the Transport Act 2000 shall not be considered to be a statutory undertaker unless the person is carrying out activities authorised by the licence;
- (b) the person’s undertaking shall not be considered to be a statutory undertaking except to the extent that it is the person’s undertaking as licence holder.]

[<sup>F181</sup>(5B) The undertaking of a universal postal service provider so far as relating to the provision of a universal postal service shall be taken to be his statutory undertaking for the purposes of this Act; and references in this Act to his undertaking shall be construed accordingly.]

- (6) Any holder of a licence under section 6 of the <sup>M85</sup>Electricity Act 1989 shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking—
- (a) for the purposes of the provisions mentioned in subsection (7)(a), if he holds a licence under subsection (1) of that section;
- (b) for the purposes of the provisions mentioned in subsection (7)(b), if he is entitled to exercise any power conferred by Schedule 3 to that Act; and
- (c) for the purposes of the provisions mentioned in subsection (7)(c), if he is entitled to exercise any power conferred by paragraph 2 of Schedule 4 to that Act.
- (7) The provisions referred to in subsection (6) are—
- (a) sections 26, 77(3), 90 to 92, 94, 99, 194(2)(a), 196, 200, 205(3)(e), 215(1) and (2), 216, 218, 219, 221 to 236, 239(10)(a), 255, 270(9), 277(2) and (3), Schedule 14 and paragraphs 2(2)(a) and (3)(a) of Schedule 16;
- (b) sections 121(11)(b), 197 and 198; and
- (c) sections 202(4)(b) and 208(2) and paragraphs 1, 6(2)(b)(iii) and (3), 8(5) and (7) and 9(1), (3) and (4) of Schedule 16.

#### Textual Amendments

- F175** Words in s. 214(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 112(2)(a)** (subject to art. 1(3))
- F176** Words in s. 214(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 112(2)(b)** (subject to art. 1(3))
- F177** Words in s. 214(3) substituted (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 10(2)** (with s. 106); S.I. 2001/869, **art. 2**
- F178** Words in s. 214(5) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 112(3)** (subject to art. 1(3))
- F179** S. 214(5)(b): by 2000 c. 38, s. 37, **Sch. 5 para. 10(3)** (with s. 106); S.I. 2001/869, **art. 2**, it is provided (1.4.2001) that for the words “and the Civil Aviation Authority” there shall be substituted the words “, the Civil Aviation Authority and a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (air traffic services)”
- F180** S. 214(5A) inserted (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 10(4)** (with s. 106); S.I. 2001/869, **art. 2**
- F181** S. 214(5B) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 112(4)** (subject to art. 1(3))

*Status: Point in time view as at 18/03/2011.*

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#### Marginal Citations

**M84** 1986 c. 31.

**M85** 1989 c. 29.

### 215 Meaning of “operational land”.

- (1) Subject to the following provisions of this section and to section 216, in this Act “operational land” means, in relation to statutory undertakers—
- (a) land which is used for the purpose of carrying on their undertaking, and
  - (b) land in which an interest is held for that purpose.
- (2) Paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.
- <sup>F182</sup>(2A) Subsection (1) does not apply in relation to a person who holds a licence under Chapter I of Part I of the Transport Act 2000.
- <sup>F182</sup>(2B) Subject to section 216, in this Act “operational land” means, in relation to a person who holds a licence under Chapter I of Part I of the Transport Act 2000, land—
- (a) which is used by the licence holder, or by a company associated with it, for the purpose of carrying out activities authorised by the licence, or
  - (b) in which the licence holder, or a company associated with it, holds an interest for that purpose.
- <sup>F182</sup>(2C) If for the purposes of this Act a question arises whether land is operational land in relation to a person who holds a licence under Chapter I of Part I of the Transport Act 2000 the question must be decided by the Secretary of State.]
- <sup>F183</sup>(2D) Subsection (1) does not apply in relation to a universal postal service provider.
- (2E) Subject to subsections (3) and (4) and section 216, in this Act “operational land” means, in relation to a universal postal service provider, land—
- (a) which is used by the provider, or by a company associated with him, for any purpose in connection with the provision of a universal postal service, or
  - (b) in which the provider, or a company associated with him, holds an interest for any such purpose]
- (3) In sections 77(3), 218 to 236 and paragraph 6 of Schedule 6 “operational land”, in relation to <sup>F184</sup>[a universal postal service provider.] and the Civil Aviation Authority, means land of the Post Office’s or, as the case may be, of the Authority’s of any such class as may be prescribed by regulations.
- (4) Such regulations—
- (a) may define a class of land by reference to any circumstances whatsoever, and
  - (b) in the case of the Civil Aviation Authority, may make provision for different circumstances, including prescribing different classes of land for the purposes of different provisions.
- (5) In the case of <sup>F185</sup>[a universal postal service provider] or the Civil Aviation Authority, if any question arises as to whether land belonging to either of them falls within a class defined by such regulations, it shall be determined by the Secretary of State.

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### Textual Amendments

**F182** S. 215(2A)(2B)(2C) inserted (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 11** (with s. 105); S.I. 2001/869, **art. 2**

**F183** S. 215(2D)(2E) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 113(2)**

**F184** Words in s. 215(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 113(3)**

**F185** Words in s. 215(5) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 113(4)**

## 216 Cases in which land is to be treated as not being operational land.

- (1) This section applies where an interest in land is held by statutory undertakers for the purpose of carrying on their undertaking and—
  - (a) the interest was acquired by them on or after 8th December 1969, or
  - (b) it was held by them immediately before that date but the circumstances were then such that the land did not fall to be treated as operational land for the purposes of the 1947 Act.
- (2) Where this section applies in respect of any land then, notwithstanding the provisions of section 215, the land shall not be treated as operational land for the purposes of this Act unless it falls within subsection (3) or (4).
- (3) Land falls within this subsection if—
  - (a) there is, or at some time has been, in force with respect to it a specific planning permission for its development, and
  - (b) that development, if carried out, would involve or have involved its use for the purpose of the carrying on of the statutory undertakers' undertaking.
- (4) Land falls within this subsection if—
  - (a) the statutory undertakers' interest in the land was acquired by them as the result of a transfer under the provisions of the <sup>M86</sup>Transport Act 1968, the <sup>M87</sup>Gas Act 1986 or the <sup>M88</sup>Airports Act 1986 from other statutory undertakers, and
  - (b) immediately before transfer the land was operational land of those other undertakers.
- (5) A specific planning permission for the purpose of subsection (3)(a) is a planning permission—
  - (a) granted on an application in that behalf made under Part III [<sup>F186</sup>or section 242A],
  - (b) granted by provisions of a development order granting planning permission generally for development which has received specific parliamentary approval,
  - (c) granted by a special development order in respect of development specifically described in the order,
  - (d) deemed to be granted by virtue of a direction of a government department under section 57(1), or
  - (e) deemed to be granted by virtue of paragraph 27 of Schedule 9 to the <sup>M89</sup>Post Office Act 1969.
- (6) In subsection (5)—



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- (a) the reference in paragraph (a) to Part III includes a reference to Part III of the 1972 Act and the enactments in force before the commencement of that Act and replaced by Part III of it,
- (b) the reference in paragraph (b) to development which has received specific parliamentary approval is a reference to development authorised—
- (i) by a local or private Act of Parliament [<sup>F187</sup> or by a private Act of the Scottish Parliament],
  - (ii) by an order approved by both Houses of Parliament [<sup>F188</sup> or by the Scottish Parliament], <sup>F189</sup> . . .
  - (iii) by an order which has been brought into operation in accordance with the provisions of the <sup>M90</sup>Statutory Orders (Special Procedure) Act 1945, [<sup>F190</sup>; or
  - (iv) by an order which has been brought into operation in accordance with the provisions of the Scotland Act 1998 (Transitory and Transitional Provisions) (Orders subject to Special Parliamentary Procedure) Order 1999 <sup>F191</sup> or of an enactment comprised in, or contained in an instrument made under, an Act of the Scottish Parliament providing, or making provision for, the special procedure referred to in section 94(2) of the Scotland Act 1998 ]
- being an Act or order which designates specifically both the nature of the development authorised by it and the land upon which it may be carried out, and
- (c) the reference in paragraph (d) to section 57(1) includes a reference to section 37 of the 1972 Act and section 32 of the 1947 Act.
- (7) This section shall not apply to land in the case of which an interest of the Postmaster General's vested in the Post Office by virtue of section 16 of the <sup>M91</sup>Post Office Act 1969.
- (8) Where an interest in land is held by
- <sup>F192</sup>(a) the Civil Aviation Authority;
  - (b) a person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000; or
  - (c) a company associated with such a person,]
- this section shall not apply for the purpose of determining whether the land is operational land in relation to the Authority [<sup>F193</sup>person or company] for the purposes of this Act.

#### Textual Amendments

**F186** Words in s. 216(5)(a) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004](#) (Commencement No.2 and Consequential Provisions) (Scotland) Order 2006 (S.S.I. 2006/243), arts. 1(1), **4(10)**

**F187** Words in s. 216(6)(b)(i) added (3.8.2009) by [Planning etc. \(Scotland\) Act 2006](#) (asp 17), **ss. 54(10)(a)**, 59(2); S.S.I. 2009/219, art. 2, sch.

**F188** Words in s. 216(6)(b)(ii) added (3.8.2009) by [Planning etc. \(Scotland\) Act 2006](#) (asp 17), **ss. 54(10)(b)**, 59(2); S.S.I. 2009/219, art. 2, sch.

**F189** Word in s. 216(6)(b)(ii) repealed (27.7.2000) by [S.I. 2000/2040](#), art. 2, **Sch. Pt. I para. 20(a)**, Pt. III

**F190** S. 216(6)(b)(iv) and preceding word inserted (27.7.2000) by [S.I. 2000/2040](#), art. 2, **Sch. Pt. I para. 20(b)**

**F191** [S.I. 1999/1593](#).



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**F192** Words in s. 216(8) substituted (21.4.2006) by Transport Act 2000 (Consequential Amendments) (Scotland) Order 2006 (S.I. 2006/1157), art. 1(1), **Sch. para. 1(a)**

**F193** Words in s. 216(8) inserted (21.4.2006) by Transport Act 2000 (Consequential Amendments) (Scotland) Order 2006 (S.I. 2006/1157), art. 1(1), **Sch. para. 1(b)**

#### Marginal Citations

**M86** 1968 c. 73.

**M87** 1986 c. 44.

**M88** 1986 c. 31.

**M89** 1969 c. 48.

**M90** 1945 c. 18.

**M91** 1969 c. 49.

<sup>F194</sup>**217** .....

#### Textual Amendments

**F194** S. 217 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(3) Pt IV**; S.I. 1998/3178, **art. 3**

### *Application of Part III to statutory undertakers*

## **218 Applications for planning permission by statutory undertakers.**

(1) Where—

- (a) an application for planning permission to develop land to which this subsection applies is made by statutory undertakers and is referred to the [<sup>F195</sup>Scottish Ministers] under Part III,
- (b) an appeal is made to the [<sup>F195</sup>Scottish Ministers] under that Part from the decision on such an application, or
- (c) such an application is deemed to be made under subsection (7) of section 133 on an appeal under section 130 by statutory undertakers,

the application or appeal shall be dealt with by the [<sup>F196</sup>Scottish Ministers].

(2) Subsection (1) applies to—

- (a) operational land, and
- (b) land in which the statutory undertakers hold or propose to acquire an interest with a view to its being used for the purpose of carrying on their undertaking, where the planning permission, if granted on the application or appeal, would be for development involving the use of the land for that purpose.

<sup>F197</sup>(3) .....

(4) Subsection (2)(b) shall have effect in relation to the Civil Aviation Authority as if for the reference to development involving the use of land for the purpose of carrying on the Civil Aviation Authority's undertaking there were substituted a reference to development involving the use of land for such of the purposes of carrying on that undertaking as may be prescribed.

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### Textual Amendments

- F195** Words in s. 218(1) substituted (1.7.1999) by [S.I. 1999/1820, arts. 1\(2\), 4, Sch. 2 Pt. I para. 127\(4\)\(a\)](#); [S.I. 1998/3178, art. 3](#)
- F196** Words in s. 218(1) substituted (1.7.1999) by [S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 127\(4\)\(a\)](#); [S.I. 1998/3178](#)
- F197** S. 218(3) repealed (1.7.1999) by [S.I. 1999/1820, arts. 1\(2\), 4, Sch. 2 Pt. I para. 127\(4\)\(b\) Pt. IV](#); [S.I. 1998/3178, art. 3](#)

## 219 Conditional grants of planning permission.

Notwithstanding anything in Part III, planning permission to develop operational land of statutory undertakers shall not, except with their consent, be granted subject to conditions requiring—

- (a) that any buildings or works authorised by the permission shall be removed, or
  - (b) that any use of the land so authorised shall be discontinued,
- at the end of a specified period.

## 220 Development requiring authorisation of government department.

- (1) [<sup>F198</sup>Scottish Ministers] shall not be required under section 218(1) to deal with an application for planning permission for the development of operational land if the authorisation of a government department is required in respect of that development.
- (2) Subsection (1) does not apply where the relevant authorisation has been granted without any direction as to the grant of planning permission.
- (3) For the purposes of this section development shall be taken to be authorised by a government department if—
  - (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment,
  - (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development,
  - (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose,
  - (d) authority is given by the department—
    - (i) for the borrowing of money for the purpose of the development, or
    - (ii) for the application for that purpose of any money not otherwise so applicable, or
  - (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants,

and references in this section to the authorisation of a government department shall be construed accordingly.

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**Textual Amendments**

**F198** Words in s. 220(1) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(5)**; S.I. 1998/3178, **art. 3**

<sup>F199</sup>**221** .....

**Textual Amendments**

**F199** S. 221 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(6)**, Pt. IV; S.I. 1998/3178, **art. 3**

<sup>F200</sup>**222** .....

**Textual Amendments**

**F200** S. 222 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(6)**, Pt. IV; S.I. 1998/3178, **art. 3**

<sup>F201</sup>**223** .....

**Textual Amendments**

**F201** S. 223 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2** Pt. I para. 127(6), Pt. IV; S.I. 1998/3178, **art. 3**

*Extinguishment of rights of statutory undertakers, etc.*

**224 Extinguishment of rights of statutory undertakers: preliminary notices.**

- (1) This section applies where any land has been acquired by a Minister, a planning authority or statutory undertakers under Part VIII of this Act or Chapter V of Part I of the <sup>M92</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or compulsorily under any other enactment or has been appropriated by a planning authority for planning purposes, and—
  - (a) there subsists over that land a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, being a right of way or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, or
  - (b) there is on, under or over the land apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking.
- (2) For the purposes of this section the relevant period, in relation to a notice served in respect of any right or apparatus, is the period of 28 days from the date of service of

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- the notice or such longer period as may be specified in it in relation to that right or apparatus.
- (3) If the acquiring or appropriating authority is satisfied that the extinguishment of the right or, as the case may be, the removal of the apparatus is necessary for the purpose of carrying out any development with a view to which the land was acquired or appropriated, they may serve on the statutory undertakers a notice—
    - (a) stating that at the end of the relevant period the right will be extinguished, or
    - (b) requiring that before the end of that period the apparatus shall be removed.
  - (4) The statutory undertakers on whom a notice is served under subsection (3) may, before the end of the period of 28 days from the date of service of the notice, serve a counter-notice on the acquiring or appropriating authority—
    - (a) stating that they object to all or any of the provisions of the notice, and
    - (b) specifying the grounds of their objection.
  - (5) If no counter-notice is served under subsection (4)—
    - (a) any right to which the notice relates shall be extinguished at the end of the relevant period, and
    - (b) if at the end of that period any requirement of the notice as to the removal of any apparatus has not been complied with, the acquiring or appropriating authority may remove the apparatus and dispose of it in any way the authority may think fit.
  - (6) If a counter-notice is served under subsection (4) on a planning authority or on statutory undertakers, the authority or undertakers may either—
    - (a) withdraw the notice (without prejudice to the service of a further notice), or
    - (b) apply to the <sup>F202</sup>Scottish Ministers for an order under this section embodying the provisions of the notice, with or without modification.
  - (7) If a counter-notice is served under subsection (4) on <sup>F203</sup>the Scottish Ministers—
    - (a) <sup>F203</sup>the Scottish Ministers may withdraw the notice (without prejudice to the service of a further notice), or
    - (b) <sup>F203</sup>the Scottish Ministers may make an order under this section embodying the provisions of the notice, with or without modification.
  - (8) In this section any reference to the appropriation of land for planning purposes shall be construed in accordance with section 201(1) as if this section were in Part VIII.

#### Textual Amendments

**F202** Words in s. 224(6) substituted by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(7)(a)**; S.I. 1998/3178, **art. 3**

**F203** Words in s. 224(7) substituted by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(7)(b)**; S.I. 1998/3178, **art. 3**

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

**C88** Ss. 224-227 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)(c)** (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**)

**C89** Ss. 224-227 applied (with modifications) (11.8.2004) by **Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10)**, **Sch. 9 para. 1** (with s. 33)

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- C90** Ss. 224-227 applied (with modifications) (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\)](#), [Sch. 9 para. 1](#) (with s. 75)
- C91** Ss. 224-227 applied (with modifications) (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\)](#), [sch. 9 para. 1](#) (with ss. 76, 84)
- C92** Ss. 224-227 applied (with modifications) (24.7.2006) by [Waverley Railway \(Scotland\) Act 2006 \(asp 13\)](#), [sch. 8](#) (with ss. 50(2), 51)
- C93** Ss. 224-227 applied (15.1.2007) by [Glasgow Airport Rail Link Act 2007 \(asp 1\)](#), [sch. 7 para. 1](#) (with s. 50)
- C94** Ss. 224-227 applied (with modifications) (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), [sch. 7](#) (with ss. 52, 60)
- C95** Ss. 224-227 applied (with modifications) (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), [sch. 7](#) (with ss. 48, 59)
- C96** Ss. 224-227 applied (with modifications) (1.6.2010) by [The Network Rail \(Waverley Steps\) Order 2010 \(S.S.I. 2010/188\)](#), [art. 1](#), [sch. 7 para. 1](#)
- C97** Ss. 224-227 applied (with modifications) (18.3.2011) by [Forth Crossing Act 2011 \(asp 2\)](#), [ss. 57, 80\(2\)](#) (with ss. 69, 78); [S.S.I. 2011/38](#), [art. 2](#), [sch.](#)

#### Marginal Citations

**M92** 1997 c. 9.

## 225 Extinguishment of rights of telecommunications code system operators: preliminary notices.

- (1) This section applies where any land has been acquired by a Minister, a planning authority or statutory undertakers under Part VIII or under Chapter V of Part I of the <sup>M93</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or compulsorily under any other enactment or has been appropriated by a planning authority for planning purposes, and—
- there subsists over that land a right conferred by or in accordance with the <sup>F204</sup>[electronic communications code] on the operator of <sup>F205</sup>[an electronic communications code network], being a right of way or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, or
  - there is on, under or over the land <sup>F206</sup>[electronic communications apparatus] kept installed for the purposes of any such <sup>F207</sup>[network].
- (2) For the purposes of this section the relevant period, in relation to a notice served in respect of any right or apparatus, is the period of 28 days from the date of service of the notice or such longer period as may be specified in it in relation to that right or apparatus.
- (3) If the acquiring or appropriating authority is satisfied that the extinguishment of the right or, as the case may be, the removal of the apparatus is necessary for the purpose of carrying out any development with a view to which the land was acquired or appropriated, they may serve on the operator of <sup>F208</sup>[the electronic communications code network] a notice—
- stating that at the end of the relevant period the right will be extinguished, or
  - requiring that before the end of that period the apparatus shall be removed.
- (4) The operator of <sup>F208</sup>[the electronic communications code network] on whom a notice is served under subsection (2) may, before the end of the period of 28 days from the date of service of the notice, serve a counter-notice on the acquiring or appropriating authority—

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- (a) stating that he objects to all or any of the provisions of the notice, and
  - (b) specifying the grounds of his objection.
- (5) If no counter-notice is served under subsection (4)—
- (a) any right to which the notice relates shall be extinguished at the end of the relevant period, and
  - (b) if at the end of that period any requirement of the notice as to the removal of any apparatus has not been complied with, the acquiring or appropriating authority may remove the apparatus and dispose of it in any way the authority may think fit.
- (6) If a counter-notice is served under subsection (4) on a planning authority or on statutory undertakers, the authority or undertakers may either—
- (a) withdraw the notice (without prejudice to the service of a further notice), or
  - (b) apply to the <sup>[F209]</sup>Scottish Ministers for an order under this section embodying the provisions of the notice, with or without modification.
- (7) If a counter-notice is served under subsection (4) on <sup>[F210]</sup>the Scottish Ministers—
- (a) <sup>[F211]</sup>they may withdraw the notice (without prejudice to the service of a further notice), or
  - (b) <sup>[F211]</sup>they may make an order under this section embodying the provisions of the notice, with or without modification.
- (8) In this section any reference to the appropriation of land for planning purposes shall be construed in accordance with section 201(1) as if this section were in Part VIII.

#### Textual Amendments

- F204** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(e)
- F205** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(a)
- F206** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(d)
- F207** Word in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(f)
- F208** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(b)
- F209** Words in s. 225(6)(b) substituted (1.7.1999) by 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(8)(a); [S.I. 1998/3178](#), [art. 3](#)
- F210** Words in s. 225(7) substituted (1.7.1999) by 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(8)(b)(i); [S.I. 1998/3178](#), [art. 3](#)
- F211** Words in s. 225(7) substituted (1.7.1999) by 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(8)(b)(ii); [S.I. 1998/3178](#), [art. 3](#)

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

- C88** Ss. 224-227 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)(c) (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](#))
- C89** Ss. 224-227 applied (with modifications) (11.8.2004) by [Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 \(asp 10\)](#), [Sch. 9 para. 1](#) (with s. 33)



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- C90** Ss. 224-227 applied (with modifications) (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\)](#), [Sch. 9 para. 1](#) (with s. 75)
- C91** Ss. 224-227 applied (with modifications) (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\)](#), [sch. 9 para. 1](#) (with ss. 76, 84)
- C92** Ss. 224-227 applied (with modifications) (24.7.2006) by [Waverley Railway \(Scotland\) Act 2006 \(asp 13\)](#), [sch. 8](#) (with ss. 50(2), 51)
- C93** Ss. 224-227 applied (15.1.2007) by [Glasgow Airport Rail Link Act 2007 \(asp 1\)](#), [sch. 7 para. 1](#) (with s. 50)
- C94** Ss. 224-227 applied (with modifications) (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), [sch. 7](#) (with ss. 52, 60)
- C95** Ss. 224-227 applied (with modifications) (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), [sch. 7](#) (with ss. 48, 59)
- C96** Ss. 224-227 applied (with modifications) (1.6.2010) by [The Network Rail \(Waverley Steps\) Order 2010 \(S.S.I. 2010/188\)](#), [art. 1](#), [sch. 7 para. 1](#)
- C97** Ss. 224-227 applied (with modifications) (18.3.2011) by [Forth Crossing Act 2011 \(asp 2\)](#), [ss. 57, 80\(2\)](#) (with ss. 69, 78); [S.S.I. 2011/38](#), [art. 2](#), [sch.](#)

#### Marginal Citations

**M93** 1997 c. 9.

## **226 Notice for same purposes as sections 224 and 225 but given by undertakers to developing authority.**

- (1) Subject to the provisions of this section, where land has been acquired or appropriated as mentioned in section 224(1) or 225(1) and—
- there is on, under or over the land any apparatus vested in or belonging to statutory undertakers, and
  - the undertakers claim that development to be carried out on the land is such as to require, on technical or other grounds connected with the carrying on of their undertaking, the removal or re-siting of the apparatus affected by the development,
- the undertakers may serve on the acquiring or appropriating authority a notice claiming the right to enter on the land and carry out such works for the removal or re-siting of the apparatus or any part of it as may be specified in the notice.
- (2) No notice under this section shall be served later than 21 days after the beginning of the development of land which has been acquired or appropriated as mentioned in section 224(1) or, as the case may be, 225(1).
- (3) Where a notice is served under this section, the authority on whom it is served may, before the end of the period of 28 days from the date of service, serve on the statutory undertakers a counter-notice—
- stating that they object to all or any of the provisions of the notice, and
  - specifying the grounds of their objection.
- (4) If no counter-notice is served under subsection (3), the statutory undertakers shall, after the end of that period, have the rights claimed in their notice.
- (5) If a counter-notice is served under subsection (3), the statutory undertakers who served the notice under this section may either withdraw it or may apply to the [F212 Scottish Ministers] for an order under this section conferring on the undertakers

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the rights claimed in the notice or such modified rights as the Secretary of State and the appropriate Minister think it expedient to confer on them.

- (6) Where, by virtue of this section or of an order of [<sup>F213</sup>the Scottish Ministers] under it, statutory undertakers have the right to execute works for the removal or re-siting of apparatus, they may arrange with the acquiring or appropriating authority for the works to be carried out by that authority, under the superintendence of the undertakers, instead of by the undertakers themselves.
- (7) In subsection (1)(a), the reference to apparatus vested in or belonging to statutory undertakers shall include a reference to [<sup>F206</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F205</sup>an electronic communications code network].
- (8) For the purposes of subsection (7), in this section—
- (a) references (except in subsection (1)(a)) to statutory undertakers shall have effect as references to the operator of any such [<sup>F207</sup>network], and
- <sup>F214</sup>(b) .....

#### Textual Amendments

- F205** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(a)
- F206** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(d)
- F207** Word in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(f)
- F212** Words in s. 226(5) substituted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, **Sch. 2 Pt. I para. 127(9)(a)**; [S.I. 1998/3178](#), **art. 3**
- F213** Words in s. 226(6) substituted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, **Sch. 2 Pt. I para. 127(9)(b)**; [S.I. 1998/3178](#), **art. 3**
- F214** S. 226(8)(b) repealed (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, **Sch. 2 Pt. I para. 127(9)(c)**, Pt. IV; [S.I. 1998/3178](#), **art. 3**

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

- C88** Ss. 224-227 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)(c) (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)
- C89** Ss. 224-227 applied (with modifications) (11.8.2004) by [Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 \(asp 10\)](#), **Sch. 9 para. 1** (with s. 33)
- C90** Ss. 224-227 applied (with modifications) (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\)](#), **Sch. 9 para. 1** (with s. 75)
- C91** Ss. 224-227 applied (with modifications) (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\)](#), **sch. 9 para. 1** (with ss. 76, 84)
- C92** Ss. 224-227 applied (with modifications) (24.7.2006) by [Waverley Railway \(Scotland\) Act 2006 \(asp 13\)](#), **sch. 8** (with ss. 50(2), 51)
- C93** Ss. 224-227 applied (15.1.2007) by [Glasgow Airport Rail Link Act 2007 \(asp 1\)](#), **sch. 7 para. 1** (with s. 50)
- C94** Ss. 224-227 applied (with modifications) (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), **sch. 7** (with ss. 52, 60)
- C95** Ss. 224-227 applied (with modifications) (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), **sch. 7** (with ss. 48, 59)



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- C96** Ss. 224-227 applied (with modifications) (1.6.2010) by [The Network Rail \(Waverley Steps\) Order 2010 \(S.S.I. 2010/188\)](#), art. 1, [sch. 7 para. 1](#)
- C97** Ss. 224-227 applied (with modifications) (18.3.2011) by [Forth Crossing Act 2011 \(asp 2\)](#), [ss. 57, 80\(2\)](#) (with [ss. 69, 78](#)); [S.S.I. 2011/38](#), art. 2, [sch.](#)

## 227 Orders under sections 224 and 225.

- (1) Where [<sup>F215</sup>the Scottish Ministers] propose to make an order under section 224(7) or 225(7), they shall prepare a draft of the order.
- (2) Before making an order under subsection (6) or (7) of section 224, or under subsection (6) or (7) of section 225, the [<sup>F216</sup>Scottish Ministers] shall give the statutory undertakers or, as the case may be, the operator of [<sup>F208</sup>the electronic communications code network] on whom notice was served under subsection (3) of section 224 or, as the case may be, under subsection (3) of section 225 an opportunity of objecting to the application for, or proposal to make, the order.
- (3) If any such objection is made, before making the order the Ministers shall cause an inquiry to be held and shall give those statutory undertakers or, as the case may be, that operator (and, in a case falling within subsection (6) of either of those sections, the planning authority or statutory undertakers on whom the counter-notice was served) an opportunity of appearing before, and being heard by, a person appointed for the purpose by the [<sup>F217</sup>Scottish Ministers] .
- (4) After complying with subsections (2) and (3) the Ministers may, if they think fit, make the order in accordance with the application or, as the case may be, in accordance with the draft order, either with or without modification.
- (5) Where an order is made under section 224 or 225—
  - (a) any right to which the order relates shall be extinguished at the end of the period specified in that behalf in the order, and
  - (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the order as to the removal of the apparatus has not been complied with, the acquiring or appropriating authority may remove the apparatus and dispose of it in any way the authority may think fit.

<sup>F218</sup>(6) . . . . .

### Textual Amendments

- F208** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), [Sch. 1 para. 13\(1\)\(e\)\(2\)\(b\)](#)
- F215** Words in s. 227(1) substituted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. I para. 127\(10\)\(a\)](#); [S.I. 1998/3178](#), [art. 3](#)
- F216** Words in s. 227(2) substituted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. I para. 127\(10\)\(b\)](#); [S.I. 1998/3178](#), [art. 3](#)
- F217** Words in s. 227(3) substituted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. I para. 127\(10\)\(c\)](#); [S.I. 1998/3178](#), [art. 3](#)
- F218** S. 227(6) repealed (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. I para. 127\(10\)\(d\)](#), Pt. IV; [S.I. 1998/3178](#), [art. 3](#)

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

- C88** Ss. 224-227 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)(c) (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)
- C89** Ss. 224-227 applied (with modifications) (11.8.2004) by Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10), **Sch. 9 para. 1** (with s. 33)
- C90** Ss. 224-227 applied (with modifications) (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **Sch. 9 para. 1** (with s. 75)
- C91** Ss. 224-227 applied (with modifications) (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **sch. 9 para. 1** (with ss. 76, 84)
- C92** Ss. 224-227 applied (with modifications) (24.7.2006) by Waverley Railway (Scotland) Act 2006 (asp 13), **sch. 8** (with ss. 50(2), 51)
- C93** Ss. 224-227 applied (15.1.2007) by Glasgow Airport Rail Link Act 2007 (asp 1), **sch. 7 para. 1** (with s. 50)
- C94** Ss. 224-227 applied (with modifications) (19.4.2007) by Edinburgh Airport Rail Link Act 2007 (asp 16), **sch. 7** (with ss. 52, 60)
- C95** Ss. 224-227 applied (with modifications) (8.5.2007) by Airdrie-Bathgate Railway and Linked Improvements Act 2007 (asp 19), **sch. 7** (with ss. 48, 59)
- C96** Ss. 224-227 applied (with modifications) (1.6.2010) by The Network Rail (Waverley Steps) Order 2010 (S.S.I. 2010/188), art. 1, **sch. 7 para. 1**
- C97** Ss. 224-227 applied (with modifications) (18.3.2011) by Forth Crossing Act 2011 (asp 2), **ss. 57, 80(2)** (with ss. 69, 78); S.S.I. 2011/38, art. 2, sch.

#### *Extension or modification of statutory undertakers' functions*

### **228 Extension or modification of functions of statutory undertakers.**

- (1) The powers conferred by this section shall be exercisable where, on a representation made by statutory undertakers, it appears to the [<sup>F219</sup>Scottish Ministers] to be expedient that the powers and duties of those undertakers should be extended or modified, in order—
- (a) to secure the provision of services which would not otherwise be provided, or satisfactorily provided, for any purpose in connection with which a planning authority or [<sup>F220</sup>the Scottish Ministers] may be authorised under Part VIII or under Chapter V of Part I of the <sup>M94</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to acquire land or in connection with which any such person may compulsorily acquire land under any other enactment, or
  - (b) to facilitate an adjustment of the carrying on of the undertaking necessitated by any of the acts and events mentioned in subsection (2).
- (2) Those acts and events are—
- (a) the acquisition under Part VIII or that Chapter or compulsorily under any other enactment of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers in question;
  - (b) the extinguishment of a right or the imposition of any requirement by virtue of section 224 or 225;
  - (c) a decision on an application made by the statutory undertakers for planning permission to develop any such land as is mentioned in paragraph (a);

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- (d) the revocation or modification of planning permission granted on any such application;
  - (e) the making of an order under section 71 or paragraph 1 of Schedule 8 in relation to any such land.
- (3) The powers conferred by this section shall also be exercisable where, on a representation made by a planning authority [<sup>F221</sup> it appears to the Scottish Ministers] to be expedient that the powers and duties of statutory undertakers should be extended or modified in order to secure the provision of new services, or the extension of existing services, for any purpose in connection with which the planning authority <sup>F222</sup> . . . making the representation may be authorised under Part VIII or under Chapter V of Part I of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to acquire land or in connection with which the local authority <sup>F222</sup> . . . may compulsorily acquire land under any other enactment.
- (4) Where the powers conferred by this section are exercisable, the [<sup>F223</sup> Scottish Ministers] may, if they think fit, by order provide for such extension or modification of the powers and duties of the statutory undertakers as appears to them to be requisite in order—
- (a) to secure the services in question, as mentioned in subsection (1)(a) or (3), or
  - (b) to secure the adjustment in question, as mentioned in subsection (1)(b), as the case may be.
- (5) Without prejudice to the generality of subsection (4), an order under this section may make provision—
- (a) for empowering the statutory undertakers—
    - (i) to acquire (whether compulsorily or by agreement) any land specified in the order, and
    - (ii) to erect or construct any buildings or works so specified;
  - (b) for applying in relation to the acquisition of any such land or the construction of any such works enactments relating to the acquisition of land and the construction of works;
  - (c) where it has been represented that the making of the order is expedient for the purposes mentioned in subsection (1)(a) or (3), for giving effect to such financial arrangements between the planning authority <sup>F224</sup> . . . and the statutory undertakers as they may agree, or as, in default of agreement, may be determined to be equitable in such manner and by such tribunal as may be specified in the order;
  - (d) for such incidental and supplemental matters as appear to the [<sup>F225</sup> Scottish Ministers] to be expedient for the purposes of the order.
- (6) Orders under this section shall be subject to special parliamentary procedure.

#### Textual Amendments

**F219** Words in s. 228(1) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(11)(a)**; S.I. 1998/3178, **art. 3**

**F220** Words in s. 228(1)(a) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(11)(b)**; S.I. 1998/3178, **art. 3**

**F221** Words in s. 228(3) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(11)(c)(i)**; S.I. 1998/3178, **art. 3**

**F222** Words in s. 228(3) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(11)(c)(ii)**, Pt. IV; S.I. 1998/3178, **art. 3**

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- F223** Words in s. 228(4) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(11)(d)**; S.I. 1998/3178, **art. 3**
- F224** Words in s. 228(5)(c) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(11)(e)**; S.I. 1998/3178, **art. 3**
- F225** Words in s. 228(5)(d) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(11)(f)**; S.I. 1998/3178, **art. 3**

#### Marginal Citations

**M94** 1997 c. 9.

### 229 Procedure in relation to orders under section 228.

- (1) As soon as possible after making such a representation as is mentioned in section 228(1) or (3) the statutory undertakers, the planning authority<sup>F226</sup> . . . making the representation shall publish notice of the representation.
- (2) A notice under subsection (1)—
- shall be published in such form and manner as the [F227Scottish Ministers] may direct,
  - shall give such particulars as they may direct of the matters to which the representation relates, and
  - shall specify the time within which (being not less than 28 days), and the manner in which, objections to the making of an order on the representation may be made.
- (3) A similar notice shall be served—
- on any persons appearing from the valuation roll to have an interest in any land to which the representation relates, and
  - if directed by the [F227Scottish Ministers], on such persons, or persons of such classes, as may be so directed.

#### Textual Amendments

- F226** Words in s. 229(1) repealed (1.7.1999) by S.I. 1999/1820, **arts. 1(2), 4** Sch. 2 Pt. I para. 127(12)(a), Pt. IV; S.I. 1998/3178, **art. 3**
- F227** Words in s. 229(2)(3)(b) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2)(b), 4, **Sch. 2 Pt. I para. 127(12)(b)**; S.I. 1998/3178, **art. 3**

### 230 Relief of statutory undertakers from obligations rendered impracticable.

- (1) Where, on a representation made by statutory undertakers, the appropriate Minister is satisfied that the fulfilment of any obligation incurred by those undertakers in connection with the carrying on of their undertaking has been rendered impracticable by an act or event to which this subsection applies, [F228Scottish Ministers], [F228; if they think fit], by order direct that the statutory undertakers shall be relieved of the fulfilment of that obligation, either absolutely or to such extent as may be specified in the order.
- (2) Subsection (1) applies to the following acts and events—
- the compulsory acquisition under Part VIII or under Chapter V of Part I of the<sup>M95</sup> Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

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- or under any other enactment of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers, and
- (b) the acts and events specified in section 228(2)(b) to (e).
- (3) The [<sup>F229</sup>Scottish Ministers] may direct statutory undertakers who have made a representation to [<sup>F229</sup>them] under subsection (1) to publicise it in either or both of the following ways—
- (a) by publishing in such form and manner as [<sup>F229</sup>they] may direct a notice, giving such particulars as he may direct of the matters to which the representation relates and specifying the time within which (being not less than 28 days), and the manner in which, objections to the making of an order on the representation may be made;
- (b) by serving such a notice on such persons, or persons of such classes, as [<sup>F229</sup>they] may direct.
- (4) The statutory undertakers shall comply with any direction given to them under subsection (3) as soon as practicable after the making of the representation under subsection (1).
- (5) If any objection to the making of an order under this section is duly made and is not withdrawn before the order is made, the order shall be subject to special parliamentary procedure.
- (6) Immediately after an order is made under this section by the [<sup>F230</sup>Scottish Ministers], [<sup>F230</sup>they] shall—
- (a) publish a notice stating that the order has been made and naming a place where a copy of it may be seen at all reasonable hours, and
- (b) serve a similar notice—
- (i) on any person who duly made an objection to the order and has sent to the [<sup>F230</sup>Scottish Ministers] a request in writing to serve [<sup>F230</sup>them] with the notice required by this subsection, specifying an address for service, and
- (ii) on such other persons (if any) as the [<sup>F230</sup>Scottish Ministers][<sup>F230</sup> think] fit.
- (7) Subject to subsection (8), and to the provisions of Part XI, an order under this section shall become operative on the date on which the notice required by subsection (6) is first published.
- (8) Where in accordance with subsection (5) the order is subject to special parliamentary procedure, subsection (7) shall not apply.

#### Textual Amendments

**F228** Words in s. 230(1) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(13)(a); S.I. 1998/3178, art. 3

**F229** Words in s.230(3) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(13)(b); S.I. 1998/3178, art. 3

**F230** Word in s. 230(6) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(13)(c); S.I.1998/3178, art. 3

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### Marginal Citations

M95 1997 c. 9.

## 231 Objections to orders under sections 228 and 230.

- (1) For the purposes of sections 228 and 230, an objection to the making of an order shall not be treated as duly made unless—
  - (a) the objection is made within the time and in the manner specified in the notice required by section 229 or, as the case may be, section 230, and
  - (b) a statement in writing of the grounds of the objection is comprised in or submitted with the objection.
- (2) Where an objection to the making of such an order is duly made in accordance with subsection (1) and is not withdrawn, the following provisions of this section shall have effect in relation to it.
- (3) Unless the [<sup>F231</sup>Scottish Ministers] decides without regard to the objection not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, before [<sup>F231</sup>they] makes a final decision [<sup>F231</sup>they]—
  - (a) shall consider the grounds of the objection as set out in the statement, and
  - (b) may, if [<sup>F231</sup>they][<sup>F231</sup>think] fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates.
- (4) In so far as the [<sup>F232</sup>Scottish Ministers], after considering the grounds of the objection as set out in the original statement and in any such further statement, is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation, the [<sup>F232</sup>Scottish Ministers] may treat the objection as irrelevant for the purpose of making a final decision.
- (5) If—
  - (a) after considering the grounds of the objection as so set out, the [<sup>F233</sup>Scottish Ministers] is satisfied that, for the purpose of making a final decision, [<sup>F233</sup>they] is sufficiently informed as to the matters to which the objection relates, or
  - (b) in a case where a further statement has been required, it is not submitted within the specified period,
 the [<sup>F233</sup>Scottish Ministers] may make a final decision without further investigation as to those matters.
- (6) Subject to subsections (4) and (5), before making a final decision the [<sup>F234</sup>Scottish Ministers] shall give the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the [<sup>F234</sup>Scottish Ministers]
- (7) If the objector takes that opportunity, the [<sup>F235</sup>Scottish Ministers] shall give an opportunity of appearing and being heard on the same occasion to the statutory undertakers, planning authority <sup>F236</sup> . . . on whose representation the order is proposed to be made, and to any other persons to whom it appears to [<sup>F235</sup>them] to be expedient to give such an opportunity.
- (8) Notwithstanding anything in the previous provisions of this section, if it appears to the [<sup>F237</sup>Scottish Ministers] that the matters to which the objection relates are such as to



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require investigation by public local inquiry before [<sup>F237</sup> they] makes a final decision, he shall cause such an inquiry to be held.

(9) Where the [<sup>F238</sup> Scottish Ministers] determines to cause such an inquiry to be held, any of the requirements of subsections (3) to (7) to which effect has not been given at the time of that determination shall be dispensed with.

(10) In this section any reference to making a final decision in relation to an order is a reference to deciding whether to make the order or what modification (if any) ought to be made.

<sup>F239</sup>(11) . . . . .

#### Textual Amendments

- F231** Words in s. 231(3) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(14)(a)**; S.I. 1998/3178, **art. 3**
- F232** Words in s. 231(4) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(14)(b)**; S.I. 1998/3178, **art. 3**
- F233** Words in s. 231(5) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(14)(c)**; S.I. 1998/3178, **art. 3**
- F234** Words in s. 231(6) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(14)(d)**; S.I. 1998/3178, **art. 3**
- F235** Words in s. 231(7) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(14)(e)**
- F236** Words in s. 231(7) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(14)(e)**; S.I. 1998/3178, **art. 3**
- F237** Words in s. 231(8) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(14)(f)**; S.I. 1998/3178, **art. 3**
- F238** Words in s. 231(9) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(14)(g)**; S.I. 1998/3178, **art. 3**
- F239** S. 231(11) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(14)(h)**; S.I. 1998/3178, **art. 3**

### Compensation

#### 232 Right to compensation in respect of certain decisions and orders.

(1) Statutory undertakers shall, subject to the following provisions of this Part, be entitled to compensation from the planning authority—

(a) in respect of any decision made in accordance with section 218 by which planning permission to develop operational land of those undertakers is refused or is granted subject to conditions where—

(i) planning permission for that development would have been granted by a development order but for a direction given under such an order that planning permission so granted should not apply to the development, and

(ii) it is not development which has received specific parliamentary approval (within the meaning of section 216(6)(b));

(b) in respect of any order under section 65, as modified by section 221, by which planning permission which was granted on the application of those undertakers for the development of any such land is revoked or modified.

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- (2) Where by virtue of section 224—
- (a) any right vested in or belonging to statutory undertakers is extinguished, or
  - (b) any requirement is imposed on statutory undertakers,
- those undertakers shall be entitled to compensation from the acquiring or appropriating authority at whose instance the right was extinguished or the requirement imposed.
- (3) Where by virtue of section 225—
- (a) any right vested in or belonging to an operator of [<sup>F240</sup>an electronic communications code network] is extinguished, or
  - (b) any requirement is imposed on such an operator,
- the operator shall be entitled to compensation from the acquiring or appropriating authority at whose instance the right was extinguished or the requirement imposed.
- (4) Where—
- (a) works are carried out for the removal or resiting of statutory undertakers' apparatus, and
  - (b) the undertakers have the right to carry out those works by virtue of section 226 or an order of [<sup>F241</sup>the Scottish Ministers] under that section,
- the undertakers shall be entitled to compensation from the acquiring or appropriating authority.
- (5) Subsection (1) shall not apply in respect of a decision or order if—
- (a) it relates to land acquired by the statutory undertakers after 7th January 1947, and
  - (b) the [Scottish Ministers] include in the decision or order a direction that subsection (1) shall not apply to it.
- (6) The [<sup>F241</sup>Scottish Ministers] may give a direction under subsection (5) only if they are satisfied, having regard to the nature, situation and existing development of the land and of any neighbouring land, and to any other material considerations, that it is unreasonable that compensation should be recovered in respect of the decision or order in question.
- (7) For the purposes of this section the [<sup>F242</sup>provisions of] sections 58 and 59 shall be disregarded.

#### Textual Amendments

**F240** Words in s. 232 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(f)(2)(a)

**F241** Words in s. 232(4)(5)(6) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, [Sch. 2 Pt. I para. 127\(15\)](#); S.I. 1998/3178, [art. 3](#)

**F242** Words in s. 232(7) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 22\(5\)](#), 59(2) (with S.S.I. 2009/222, [art. 10\(2\)\(g\)](#)); S.S.I. 2008/411, art. 2(2)(3)(a); S.S.I. 2009/219, art. 2, sch.

### 233 Measure of compensation to statutory undertakers etc.

- (1) Where—
- (a) statutory undertakers are entitled to compensation—



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- (i) as mentioned in subsection (1), (2) or (4) of section 232,
  - (ii) under the provisions of section 83 in respect of an order made under section 71 or paragraph 1, 3, 5 or 6 of Schedule 8 as modified by section 222, or
  - (iii) in respect of a compulsory acquisition of land which has been acquired by those undertakers for the purposes of their undertaking, where the first-mentioned acquisition is effected under a compulsory purchase order confirmed or made without the [<sup>F243</sup>Scottish Ministers' certificate], or
- (b) the operator of [<sup>F240</sup>an electronic communications code network] is entitled to compensation as mentioned in section 232(3),
- the amount of the compensation shall (subject to section 234) be an amount calculated in accordance with this section.
- (2) Subject to subsections (4) to (6), that amount shall be the aggregate of—
- (a) the amount of any expenditure reasonably incurred in acquiring land, providing apparatus, erecting buildings or doing work for the purpose of any adjustment of the carrying on of the undertaking or, as the case may be, [<sup>F244</sup>the provision of the electronic communications code network] rendered necessary by the proceeding giving rise to compensation (a “business adjustment”),
  - (b) the appropriate amount for loss of profits, and
  - (c) where the compensation is under section 232(2) or (3) and is in respect of the imposition of a requirement to remove apparatus, the amount of any expenditure reasonably incurred by the statutory undertakers or, as the case may be, the operator in complying with the requirement, reduced by the value after removal of the apparatus removed.
- (3) In subsection (2) “the appropriate amount for loss of profits” means—
- (a) where a business adjustment is made, the aggregate of—
    - (i) the estimated amount of any decrease in net receipts from the carrying on of the undertaking or, as the case may be, [<sup>F244</sup>the provision of the electronic communications code network] pending the adjustment, in so far as the decrease is directly attributable to the proceeding giving rise to compensation, and
    - (ii) such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking or, as the case may be, [<sup>F244</sup>the provision of the electronic communications code network] in the period after the adjustment has been completed, in so far as the decrease is directly attributable to the adjustment;
  - (b) where no business adjustment is made, such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking or, as the case may be, [<sup>F244</sup>the provision of the electronic communications code network] which is directly attributable to the proceeding giving rise to compensation.
- (4) Where a business adjustment is made, the aggregate amount mentioned in subsection (2) shall be reduced by such amount (if any) as appears to the tribunal referred to in section 235(2) to be appropriate to offset—
- (a) the estimated value of any property (whether moveable or heritable) belonging to the statutory undertakers or the operator and used for the carrying on of their undertaking or, as the case may be, [<sup>F244</sup>the provision of the electronic communications code network] which in consequence of the adjustment

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- ceases to be so used, in so far as the value of the property has not been taken into account under paragraph (c) of that subsection, and
- (b) the estimated amount of any increase in net receipts from the carrying on of the undertaking or [<sup>F244</sup>the provision of the electronic communications code network] in the period after the adjustment has been completed, in so far as that amount has not been taken into account in determining the amount mentioned in paragraph (b) of that subsection and is directly attributable to the adjustment.
- (5) Where a business adjustment is made the aggregate amount mentioned in subsection (2) shall be further reduced by any amount which appears to that tribunal to be appropriate, having regard to any increase in the capital value of heritable property belonging to the statutory undertakers or the operator which is directly attributable to the adjustment, allowance being made for any reduction made under subsection (4)(b).
- (6) Where—
- (a) the compensation is under section 232(4), and
- (b) the acquiring or appropriating authority carry out the works,
- then, in addition to any reduction falling to be made under subsection (4) or (5), the aggregate amount mentioned in subsection (2) shall be reduced by the actual cost to the authority of carrying out the works.
- (7) References in this section to a decrease in net receipts shall be construed as references—
- (a) to the amount by which a balance of receipts over expenditure is decreased,
- (b) to the amount by which a balance of expenditure over receipts is increased, or
- (c) where a balance of receipts over expenditure is converted into a balance of expenditure over receipts, to the aggregate of the two balances,
- and references to an increase in net receipts shall be construed accordingly.
- (8) In this section—
- “proceeding giving rise to compensation” means—
- (a) except in relation to compensation under section 232(4), the particular action (that is to say, the decision, order, extinguishment of a right, imposition of a requirement or acquisition) in respect of which compensation falls to be assessed, as distinct from any development or project in connection with which that action may have been taken, and
- (b) in relation to compensation under section 232(4), the circumstances making it necessary for the apparatus in question to be removed or resited; and
- <sup>F243</sup>[“Scottish Ministers’ certificate” ] means such a certificate as is mentioned in paragraph 10 of Schedule 1 to the <sup>M96</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.

#### Textual Amendments

**F240** Words in s. 232 substituted (17.9.2003) by Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), Sch. 1 para. 13(1)(f)(2)(a)

**F243** Words in s. 233(1)(a)(iii)(8) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(16); S.I. 1998/3178, art. 3

**F244** Words in s. 233 substituted (17.9.2003) by Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), Sch. 1 para. 13(1)(f)(2)(c)

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#### Marginal Citations

M96 1947 c. 42.

### 234 Exclusion of section 233 at option of statutory undertakers.

- (1) Where statutory undertakers are entitled to compensation in respect of such a compulsory acquisition as is mentioned in section 233(1)(c), the statutory undertakers may by notice in writing under this section elect that the compensation shall be ascertained in accordance with the enactments (other than rule (5) of the rules set out in section 12 of the <sup>M97</sup>Land Compensation (Scotland) Act 1963) which would be applicable apart from section 233.
- (2) If the statutory undertakers so elect the compensation shall be ascertained accordingly.
- (3) An election under this section may be made either in respect of the whole of the land comprised in the compulsory acquisition in question or in respect of part of that land.
- (4) Any notice under this section shall be given to the acquiring authority before the end of the period of 2 months from the date of service of notice to treat in respect of the interest of the statutory undertakers.

#### Marginal Citations

M97 1963 c. 51.

### 235 Procedure for assessing compensation.

- (1) Where the amount of any such compensation as is mentioned in subsection (1) of section 233 falls to be ascertained in accordance with the provisions of that section, the compensation shall, in default of agreement, be assessed by the tribunal mentioned in subsection (2) below, if apart from this section it would not fall to be so assessed.
- (2) The tribunal referred to in subsection (1) above shall consist of 4 persons, namely—
  - (a) an advocate or solicitor of not less than 7 years' standing, appointed by the Lord President of the Court of Session to act as chairman,
  - (b) two persons appointed by the [<sup>F245</sup>Scottish Ministers' certificate] as persons having special knowledge and experience of the valuation of land and of civil engineering respectively, and
  - (c) for each claim coming before the tribunal, a person selected by the [<sup>F246</sup>Scottish Ministers], as a person having special knowledge and experience of statutory undertakings of the kind carried on by the claimant, from the members of a panel appointed by [<sup>F247</sup>those] Ministers of persons appearing to them to have such knowledge and experience of statutory undertakings.
- (3) The Treasury may pay out of money provided by Parliament to the members of the tribunal such remuneration (whether by way of salaries or by way of fees), and such allowances, as the Treasury may determine.
- (4) For the purposes of any proceedings arising before the tribunal in respect of compensation falling to be ascertained as mentioned in subsection (1), sections 9 and 11 of the <sup>M98</sup>Land Compensation (Scotland) Act 1963 shall apply as they apply to proceedings on a question referred to the Lands Tribunal under section 8 of that Act,

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but with the substitution, in section 11, for references to the acquiring authority, of references to the person from whom the compensation is claimed.

#### Textual Amendments

**F245** Words in s. 235(2)(b) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Pt. I para. 127(17)(a); S.I. 1998/3178, art. 3

**F246** Words in s. 235(2)(c) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(17)(b)(i); S.I. 1998/3178, art. 3

**F247** Words in s. 235(2)(c) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Pt. I para. 127(17)(b)(ii); S.I. 1998/3178, art. 3

#### Marginal Citations

**M98** 1963 c. 51.

### Advertisements

#### 236 Special provisions as to display of advertisements on operational land.

Sections 218 to 222 and 232(1), (5) and (6) do not apply in relation to the display of advertisements on operational land of statutory undertakers.

## PART XI

### VALIDITY

#### 237 Validity of development plans and certain orders, decisions and directions.

(1) Except as provided by this Part, the validity of—

- [<sup>F248</sup>(a) a strategic development plan or local development plan or any alteration, repeal or replacement of any such plan, whether before or after the plan, alteration, repeal or replacement has been approved or adopted,]
- (b) a simplified planning zone scheme or any alteration of any such scheme, whether before or after the adoption or approval of the scheme or alteration,
- (c) an order under any provision of Part IX, whether before or after the order has been made,
- (d) an order under section 230, whether before or after the order has been made,
- (e) any such order as is mentioned in subsection (2), whether before or after it has been confirmed, or
- (f) any such action on the part of the Secretary of State as is mentioned in subsection (3) [<sup>F249</sup>or on the part of a planning authority as is mentioned in subsection (3A)],

shall not be questioned in any legal proceedings whatsoever.

(2) The orders referred to in subsection (1)(e) are—

- (a) any order under section 65 or under the provisions of that section as applied by or under any other provision of this Act;
- (b) any order under section 71 or under the provisions of that section as applied by or under any other provisions of this Act;

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- (c) any tree preservation order;
  - (d) any order made in pursuance of section 183(4);
  - (e) any order under paragraph 1, 3, 5 or 6 of Schedule 8.
- (3) The action referred to in subsection (1)(f) is action on the part of the Secretary of State of any of the following descriptions—
- [<sup>F250</sup>(za) any decision on an application under section 31A;]
    - (a) any decision on an application referred to him under section 46;
    - (b) any decision on an appeal under section 47;
    - (c) any decision to confirm a completion notice under section 62;
  - [<sup>F251</sup>(ca) any determination on an appeal under section 75B or 75F;]
    - (d) any decision on an appeal under section 130;
    - (e) any decision to confirm or not to confirm a purchase notice including—
      - (i) any decision not to confirm such a notice in respect of part of the land to which it relates, or
      - (ii) any decision to grant any permission, or give any direction, instead of confirming such a notice, either wholly or in part;
    - (f) any decision on an appeal under section 154 against the refusal or partial refusal of an application for a certificate under section 150 or 151;
  - [<sup>F252</sup>(fa) any decision on an appeal under section 169;]
    - (g) any decision on an appeal under section 180 against a notice under section 179;
    - (h) any decision relating—
      - (i) to an application for consent under a tree preservation order,
      - (ii) to an application for consent under any regulations made under section 182 or 183, or
      - (iii) to any certificate or direction under any such order or regulations, whether it is a decision on appeal or a decision on an application referred to the Secretary of State for determination in the first instance.
  - [<sup>F253</sup>(i) any decision on an application for planning permission under section 242A.]
- [<sup>F254</sup>(3A) The action on the part of a planning authority is any decision or determination (other than a deemed decision) in a review conducted by them by virtue of section 43A(8).]
- (4) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such action as is mentioned in subsection (3) [<sup>F255</sup>or on the part of a planning authority to take any such action as is mentioned in subsection (3A)].

#### Textual Amendments

- F248** S. 237(1)(a) substituted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(11\)\(a\)](#), 59(2) (with [S.S.I. 2008/427](#), [arts. 1\(1\), 2-5](#)); [S.S.I. 2009/70](#), [art. 2](#), [sch.](#)
- F249** Words in s. 237(1)(f) added (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 19\(3\)\(a\)](#), 59(2) (with [S.S.I. 2008/427](#), [arts. 1\(1\), 2-5](#)); [S.S.I. 2008/411](#), [art. 2\(2\)\(3\)\(a\)](#), [S.S.I. 2009/219](#), [art. 2](#), [sch.](#)
- F250** S. 237(3)(za) inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(11\)\(b\)\(i\)](#), 59(2) (with [S.S.I. 2008/427](#), [arts. 1\(1\), 2-5](#)); [S.S.I. 2007/130](#), [art. 2\(2\)](#), [sch.](#)

*Status: Point in time view as at 18/03/2011.*

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- F251** S. 237(3)(ca) inserted (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(11)(b)(ii)**, 59(2); S.S.I. 2010/400, art. 3, sch. (as amended (2.12.2010) by S.S.I. 2010/430, art. 3)
- F252** S. 237(3)(fa) inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(11)(b)(iii)**, 59(2) (with S.S.I. 2008/427, arts. 1(1), 2-5); S.S.I. 2007/130, art. 2(2), sch.
- F253** S. 237(3)(i) added (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 92(2)**, 121(4) (with s. 111); S.S.I. 2006/243, art. 3
- F254** S. 237(3A) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(3)(b)**, 59(2) (with S.S.I. 2008/427, arts. 1(1), 2-5); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.
- F255** Words in s. 237(4) added (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(3)(c)**, 59(2) (with S.S.I. 2008/427, arts. 1(1), 2-5); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.

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

- C98** S. 237 applied (with modifications) (1.4.2010) by [The Management of Extractive Waste \(Scotland\) Regulations 2010 \(S.S.I. 2010/60\)](#), regs. 1(1), **10(5)** (with regs. 4, 5)
- C99** S. 237(3): power to apply conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)(b)**, 31, 40(2) (with **ss. 9(3)**, 10(5), 38(6))

## **238 Proceedings for questioning validity of development plans and certain schemes and orders.**

- (1) If any person aggrieved by a [<sup>F256</sup>strategic development plan or local development plan desires to question the validity of the plan] on the ground—
- that it is not within the powers conferred by Part II, or
  - that any [<sup>F257</sup>relevant requirement of that Part or of any regulations made under that Part has not been complied with,]
- he may make an application to the Court of Session under this section.
- (2) On any application under this section the Court of Session—
- may by interim order wholly or in part suspend the operation of the plan <sup>F258</sup>..., either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings;
  - if satisfied that the plan <sup>F259</sup>... is wholly or to any extent outside the powers conferred by Part II, or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of that Part or of any regulations made under it, may wholly or in part quash the plan <sup>F259</sup>... either generally or in so far as it affects any property of the applicant.
- (3) Subsections (1) and (2) shall apply, subject to any necessary modifications, to a simplified planning zone scheme or an alteration of such a scheme or to an order under section 202, 203, 206, 207, 208 or 230 as they apply to any plan <sup>F260</sup>... there mentioned.
- (4) An application under this section must be made within 6 weeks from the relevant date.
- (5) For the purposes of subsection (4) the relevant date is—
- in the case of an application in respect of [<sup>F261</sup>a strategic development plan, the date of its publication under section 14(1)(b);]
  - <sup>F262</sup>(aa) in the case of an application in respect of a local development plan, the date of its publication under section 20A(1)(b);]
  - in the case of an application by virtue of subsection (3) in respect of a simplified planning zone scheme or an alteration of such a scheme, the date



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- of the publication of the first notice of the approval or adoption of the scheme or alteration required by regulations under paragraph 12 of Schedule 5;
- (c) in the case of an application by virtue of subsection (3) in respect of an order under section 202 or 206(1)(a), the date on which the notice required by paragraph 1(7) of Schedule 16 is first published;
  - (d) in the case of an application by virtue of subsection (3) in respect of an order under section 203, 206(1)(b), 207 or 208, the date on which the notice required by paragraph 11 of Schedule 16 is first published in accordance with that paragraph; and
  - (e) in the case of an application by virtue of subsection (3) in respect of an order under section 230, the date on which the notice required by subsection (6) of that section is first published;

but subject, in the case of those orders made under sections 202, 203 and 230, to section 241.

- (6) In their application to simplified planning zone schemes and their alteration, subsections (1) and (2) shall have effect as if they referred to Part III instead of Part II.

#### Textual Amendments

- F256** Words in s. 238(1) substituted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(12\)\(a\)\(i\)](#), [59\(2\)](#) (with [S.S.I. 2008/427](#), [arts. 1\(1\), 2-5](#)); [S.S.I. 2009/70](#), [art. 2](#), [sch.](#)
- F257** Words in s. 238(1)(b) substituted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(12\)\(a\)\(ii\)](#), [59\(2\)](#) (with [S.S.I. 2008/427](#), [arts. 1\(1\), 2-5](#)); [S.S.I. 2009/70](#), [art. 2](#), [sch.](#)
- F258** Words in s. 238(2)(a) repealed (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(12\)\(b\)\(i\)](#), [59\(2\)](#) (with [S.S.I. 2008/427](#), [arts. 1\(1\), 2-5](#)); [S.S.I. 2009/70](#), [art. 2](#), [sch.](#)
- F259** Words in s. 238(2)(b) repealed (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(12\)\(b\)\(ii\)](#), [59\(2\)](#) (with [S.S.I. 2008/427](#), [arts. 1\(1\), 2-5](#)); [S.S.I. 2009/70](#), [art. 2](#), [sch.](#)
- F260** Words in s. 238(3) repealed (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(12\)\(c\)](#), [59\(2\)](#) (with [S.S.I. 2008/427](#), [arts. 1\(1\), 2-5](#)); [S.S.I. 2009/70](#), [art. 2](#), [sch.](#)
- F261** Words in s. 238(5)(a) substituted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(12\)\(d\)\(i\)](#), [59\(2\)](#) (with [S.S.I. 2008/427](#), [arts. 1\(1\), 2-5](#)); [S.S.I. 2009/70](#), [art. 2](#), [sch.](#)
- F262** S. 238(5)(aa) inserted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(12\)\(d\)\(ii\)](#), [59\(2\)](#) (with [S.S.I. 2008/427](#), [arts. 1\(1\), 2-5](#)); [S.S.I. 2009/70](#), [art. 2](#), [sch.](#)

### 239 Proceedings for questioning the validity of other orders, decisions and directions.

(1) If any person—

- (a) is aggrieved by any order to which this section applies and wishes to question the validity of that order on the grounds—
  - (i) that the order is not within the powers of this Act, or
  - (ii) that any of the relevant requirements have not been complied with in relation to that order, or
- (b) is aggrieved by any action on the part of the Secretary of State <sup>F263</sup>, or on the part of a planning authority,] to which this section applies and wishes to question the validity of that action on the grounds—
  - (i) that the action is not within the powers of this Act, or
  - (ii) that any of the relevant requirements have not been complied with in relation to that action,

he may make an application to the Court of Session under this section.

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- (2) Without prejudice to subsection (1), if the authority directly concerned with any order to which this section applies, or with any action on the part of the Secretary of State to which this section applies, wish to question the validity of that order or action on any of the grounds mentioned in subsection (1), the authority may make an application to the Court of Session under this section.
- (3) An application under this section must be made within 6 weeks from the date on which the order is confirmed (or, in the case of an order under section 65 which takes effect under section 67 without confirmation, the date on which it takes effect) or, as the case may be, the date on which the action is taken.
- (4) This section applies to any such order as is mentioned in subsection (2) of section 237 and to any such action on the part of the Secretary of State as is mentioned in subsection (3) of that section [<sup>F264</sup>or on the part of a planning authority as is mentioned in subsection (3A) of that section].
- (5) On any application under this section the Court of Session—
  - (a) may, subject to subsection (6), by interim order suspend the operation of the order or action in question until the final determination of the proceedings;
  - (b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to it, may quash that order or action.
- (6) Paragraph (a) of subsection (5) shall not apply to applications questioning the validity of tree preservation orders.
- (7) In relation to a tree preservation order, or to an order made in pursuance of section 183(4), the powers conferred on the Court of Session by subsection (5) shall be exercisable by way of quashing or (where applicable) suspending the operation of the order either in whole or in part, as the court may determine.
- (8) References in this section to the confirmation of an order include the confirmation of an order subject to modifications as well as the confirmation of an order in the form in which it was made.
- (9) In this section “the relevant requirements”, in relation to any order or action to which this section applies, means any requirements of this Act or of the <sup>M99</sup>Tribunals and Inquiries Act 1992, or of any order, regulations or rules made under this Act or under that Act which are applicable to that order or action.
- (10) Any reference in this section to the authority directly concerned with any order or action to which this section applies—
  - (a) in relation to any such decision as is mentioned in section 237(3)(e), where the Secretary of State confirms the notice in question, wholly or in part, with the substitution of another local authority or statutory undertakers for the planning authority, includes a reference to that local authority or those statutory undertakers;
  - (b) in any other case, is a reference to the planning authority.



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#### Textual Amendments

**F263** Words in s. 239(1)(b) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(4)(a)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.

**F264** Words in s. 239(4) added (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(4)(b)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 2009/219, art. 2, sch.

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

**C100** S. 239 applied (with modifications) (1.4.2010) by [The Management of Extractive Waste \(Scotland\) Regulations 2010 \(S.S.I. 2010/60\)](#), regs. 1(1), **10(5)** (with regs. 4, 5)

**C101** S. 239: power to apply conferred (27.5.1997) by [1997 c. 10](#), **ss. 23(1)(b)**, 31, 40(2) (with ss. 9(3), 10(5), 38(6))  
S. 239(1)(b),(2): extended (1.8.1999) by [S.S.I. 1999/1](#), **reg. 43**

#### Marginal Citations

**M99** [1992 c. 53](#).

<sup>F265</sup>**240** .....

#### Textual Amendments

**F265** S. 240 repealed (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, **Sch. 2 Pt. I para. 127(18)**, Pt.IV; [S.I. 1998/3178](#), **art. 3**

### **241 Special provisions as to orders subject to special parliamentary procedure.**

(1) Where an order under section 202, 203 or 230 is subject to special parliamentary procedure, then—

- (a) if the order is confirmed by Act of Parliament under section 2(4), as read with section 10, of the <sup>M100</sup>Statutory Orders (Special Procedure) Act 1945, or under section 6 of that Act, sections 237 and 238 shall not apply to the order,
- (b) in any other case, section 238 shall have effect in relation to the order as if, in subsection (4) of that section, for the reference to the date there mentioned there were substituted a reference to the date on which the order becomes operative under that Act (“the operative date”).

(2) Where by virtue of Part X any such action as is mentioned in section 240 is required to be embodied in an order, and that order is subject to special parliamentary procedure, then—

- (a) if the order in which the action is embodied is confirmed by Act of Parliament under that Act of 1945, sections 237 and 239 shall not apply, and
- (b) in any other case, the provisions of section 239 shall apply with the substitution, for any reference to the date on which the action is taken, of a reference to the operative date.

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#### Marginal Citations

M100 1945 (9 & 10 Geo.6) c. 18.

## PART XII

### CROWN LAND

#### *Preliminary*

#### [<sup>F266</sup>241A] Application to the Crown

- (1) This Act binds the Crown.
- (2) But subsection (1) is subject to express provision made by this Part.]

#### Textual Amendments

**F266** S. 241A inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 90(1)**, 121(4) (with s. 111); S.S.I. 2006/268, art. 3(a)

#### 242 Preliminary definitions.

- (1) In this Part—
  - “Crown land” means land in which there is a Crown interest;
  - [<sup>F267</sup> “Crown interest” means any of the following—
  - ((a)) an interest belonging to Her Majesty in right of the Crown or in right of Her private estates,
  - ((b)) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department,
  - ((c)) such other interest as the Scottish Ministers specify by order;]
  - “private interest” means interest which is not a Crown interest.
- (2) For the purposes of this Part “the appropriate authority”, in relation to any land—
  - (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
  - (b) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land; and
  - [<sup>F268</sup>(ba) in relation to land belonging to Her Majesty in right of Her private estates means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers;]
  - (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department.

[<sup>F269</sup>(2A) For the purposes of an application for planning permission made by or on behalf of the Crown in respect of land which does not belong to the Crown or in respect of which

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the Crown has no interest, a reference to the appropriate authority must be construed as a reference to the person who makes the application.]

(3) If any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

[<sup>F270</sup>(3A) References to Her Majesty’s private estates must be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c. 37).]

<sup>F271</sup>(4) . . . . .

[<sup>F272</sup>(5) An order made for the purposes of paragraph (c) of the definition of Crown interest in subsection (1) must be made by statutory instrument.

(6) But no such order may be made unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.]

#### Textual Amendments

**F267** Words in s. 242(1) substituted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 6\(2\)](#) (with s. 111); [S.S.I. 2006/101](#), art. 2, sch.; [S.S.I. 2006/268](#), art. 3(f)

**F268** S. 242(2)(ba) inserted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 6\(3\)](#) (with s. 111); [S.S.I. 2006/101](#), art. 2, sch.; [S.S.I. 2006/268](#), art. 3(f)

**F269** S. 242(2A) inserted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 6\(4\)](#) (with s. 111); [S.S.I. 2006/101](#), art. 2, sch.; [S.S.I. 2006/268](#), art. 3(f)

**F270** S. 242(3A) inserted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 6\(5\)](#) (with s. 111); [S.S.I. 2006/101](#), art. 2, sch.; [S.S.I. 2006/268](#), art. 3(f)

**F271** S. 242(4) repealed (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 23](#), [Sch. 9](#) (with s. 111); [S.S.I. 2006/268](#), art. 3(e)(f)

**F272** S. 242(5)(6) inserted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 6\(6\)](#) (with s. 111); [S.S.I. 2006/101](#), art. 2, sch.; [S.S.I. 2006/268](#), art. 3(f)

#### *Application of Act as respects Crown land*

#### [<sup>F273</sup>242A] **Urgent Crown development: application**

- (1) This section applies to a development if the appropriate authority certifies—
  - (a) that the development is of national importance, and
  - (b) that it is necessary that the development is carried out as a matter of urgency.
- (2) The appropriate authority may, instead of making an application for planning permission to the planning authority in accordance with Part 3, make an application for planning permission to the Scottish Ministers under this section.
- (3) If the appropriate authority proposes to make the application to the Scottish Ministers, it must publish in one or more newspapers circulating in the locality of the proposed development a notice—
  - (a) describing the proposed development, and

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- (b) stating that the authority proposes to make the application to the Scottish Ministers.
- (4) For the purposes of an application under this section the appropriate authority must provide to the Scottish Ministers—
  - (a) any matter required to be provided by an applicant for planning permission in pursuance of regulations made under section 40,
  - (b) a statement of the authority’s grounds for making the application.
- (5) If the appropriate authority makes an application under this section subsections (6) to (11) below apply.
- (6) The Scottish Ministers may require the authority to provide them with such further information as they think necessary to enable them to determine the application.
- (7) As soon as practicable after they are provided with any document or other matter in pursuance of subsection (4) or (6) the Scottish Ministers must make a copy of the document or other matter available for inspection by the public in the locality of the proposed development.
- (8) The Scottish Ministers must in accordance with such requirements as they may specify in a development order publish notice of the application and of the fact that such documents and other material are available for inspection.
- (9) The Scottish Ministers must consult—
  - (a) the planning authority, and
  - (b) such other persons as may be so specified,
 about the application.
- (10) Subsection (7) above does not apply to the extent that the document or other matter is subject to any direction given under section 265A(3) of this Act.
- (11) Subsections (4) [<sup>F274</sup>and] (7) of section 46 apply to an application under this section as they apply to an application in respect of which a direction under section 46 has effect.]

#### Textual Amendments

**F273** S. 242A inserted (20.3.2006 for specified purposes, 11.5.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 92(1)**, 121(4) (with s. 111); S.S.I. 2006/101, art. 2, sch.; S.S.I. 2006/243, art. 3

**F274** Word in s. 242A(11) substituted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(13)**, 59(2) (with S.S.I. 2009/222, **art. 13**; S.S.I. 2009/219, art. 2, sch.

#### <sup>F275</sup>243 Control of development on Crown land: special enforcement notices.

.....

#### Textual Amendments

**F275** S. 243 repealed (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), Sch. 5 para. 9(1), **Sch. 9** (with s. 111, Sch. 5 para. 9(2)); S.S.I. 2006/268, art. 3(e)(f)

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<sup>F276</sup>**244 Supplementary provisions as to special enforcement notices.**

.....

**Textual Amendments**

**F276** S. 244 repealed (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), Sch. 5 para. 9(1), [Sch. 9](#) (with s. 111, Sch. 5 para. 9(2)); S.S.I. 2006/268, art. 3(e)(f)

<sup>F277</sup>**245 Exercise of powers in relation to Crown land.**

.....

**Textual Amendments**

**F277** S. 245 repealed (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), ss. 94(1), 121(4), [Sch. 9](#) (with s. 111); S.S.I. 2006/268, art. 3(b)(e)

<sup>F278</sup>**245A Enforcement in relation to the Crown**

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act; but the Court of Session may, on the application of a public authority or office-holder responsible for the enforcement of anything required to be done, or prohibited, by or under this Act, declare unlawful any act or omission so done or suffered.
- (2) A planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
- (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
- (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
- (5) A step taken for the purposes of enforcement includes—
  - (a) entering land,
  - (b) initiating proceedings,
  - (c) the making of an application.
- (6) A step taken for the purposes of enforcement does not include—
  - (a) service of a notice,
  - (b) the making of an order (other than a court order).]

**Textual Amendments**

**F278** S. 245A inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [ss. 94\(2\)](#), 121(4) (with s. 111); S.S.I. 2006/268, art. 3(b)

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## [<sup>F279</sup>245] **References to an interest in land**

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest.
- (2) Anything which requires or is permitted to be done by or in relation to the owner of the interest in land must be done by or in relation to the appropriate authority.
- (3) An interest in land includes an interest only as occupier of the land.]

### Textual Amendments

**F279** S. 245B inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 94(3)**, 121(4) (with s. 111); S.S.I. 2006/268, art. 3(b)

## [<sup>F280</sup>246] **Agreements relating to Crown land.**

.....

### Textual Amendments

**F280** S. 246 repealed (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), **Sch. 5 para. 23**, **Sch. 9** (with s. 111); S.S.I. 2006/268, art. 3(e)(f)

## [<sup>F281</sup>247] **Supplementary provisions as to Crown interest.**

.....

### Textual Amendments

**F281** S. 247 repealed (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), **Sch. 9** (with s. 111); S.S.I. 2006/268, art. 3(e)

## [<sup>F282</sup>247A] **Applications for planning permission by Crown**

- (1) This section applies to an application for planning permission or for a certificate under section 151 made by or on behalf of the Crown.
- (2) The Scottish Ministers may by regulations modify or exclude any statutory provision relating to the making and determination of such applications.
- (3) A statutory provision is a provision contained in or having effect under any enactment (including any enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament).]

### Textual Amendments

**F282** S. 247A inserted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), **Sch. 5 para. 10(1)** (with s. 111); S.S.I. 2006/101, art. 2, sch.; S.S.I. 2006/268, art. 3(f)

*Status: Point in time view as at 18/03/2011.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

*Provisions relating to anticipated disposal of Crown land*

**F283 248 Application for planning permission etc. in anticipation of disposal of Crown land.**

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**Textual Amendments**

**F283** S. 248 repealed (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), Sch. 5 para. 10(2), **Sch. 9** (with s. 111, Sch. 5 para. 10(3)); S.S.I. 2006/101, art. 2, Sch., S.S.I. 2006/268, art. 3(f)

**F284 249 Tree preservation orders in anticipation of disposal of Crown land.**

.....

**Textual Amendments**

**F284** S. 249 repealed (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), Sch. 5 para. 25(1), **Sch. 9** (with s. 111, Sch. 5 para. 25(2)); S.S.I. 2006/268, art. 3(e)(f)

**F285 250 Requirement of planning permission for continuance of use instituted by the Crown.**

.....

**Textual Amendments**

**F285** S. 250 repealed (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), Sch. 5 para. 26(1), **Sch. 9** (with s. 111, Sch. 5 para. 26(2)); S.S.I. 2006/268, art. 3(e)(f)

*Enforcement in respect of war-time breaches of planning control by the Crown*

**251 Enforcement in respect of war-time breaches of planning control by the Crown.**

- (1) This section applies where during the war period—
  - (a) works not complying with planning control were carried out on land, or
  - (b) a use of land not complying with planning control was begun by or on behalf of the Crown.
- (2) Subject to subsection (4), if at any time after the end of the war period there subsists in the land a permanent or long-term interest which is neither held by or on behalf of the Crown nor subject to any interest or right to possession so held, the planning control shall, so long as such an interest subsists in the land, be enforceable in respect of those works or that use notwithstanding—
  - (a) that the works were carried out or the land used by or on behalf of the Crown, or

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- (b) the subsistence in the land of any interest of the landlord in a lease held by or on behalf of the Crown.
- (3) A person entitled to make an application under this subsection with respect to any land may apply at any time before the relevant date to an authority responsible for enforcing any planning control for a determination—
- (a) whether works on the land carried out, or a use of the land begun, during the war period fail to comply with any planning control which the authority are responsible for enforcing, and
- (b) if so, whether the works or use should be deemed to comply with that control.
- (4) Where any works on land carried out, or use of land begun, during the war period remain or continues after the relevant date and no such determination has been given, the works or use shall by virtue of this subsection be treated for all purposes as complying with that control unless steps for enforcing the control have been begun before that date.
- (5) Schedule 17 shall have effect for the purpose of making supplementary provision concerning the enforcement of breaches of planning control to which this section applies and the making and determination of applications under subsection (3).
- (6) In this section and that Schedule—

“authority responsible for enforcing planning control” means, in relation to any works on land or use of land, the authority empowered by virtue of section 72 of the 1947 Act or of paragraph 28 of Schedule 22 to the 1972 Act (including that paragraph as it continues in effect by virtue of paragraph 3 of Schedule 3 to the <sup>M101</sup>Planning (Consequential Provisions) (Scotland) Act 1997) to serve an enforcement notice in respect of it or the authority who would be so empowered if the works had been carried out, or the use begun, otherwise than in compliance with planning control;

“the relevant date”, in relation to any land, means the date with which the period of 5 years from the end of the war period ends, but for the purposes of this definition any time during which, notwithstanding subsection (2), planning control is unenforceable by reason of the subsistence in or over the land of any interest or right to possession held by or on behalf of the Crown shall be disregarded;

“owner” includes in relation to any land any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and “owned” shall be construed accordingly;

“permanent or long-term interest”, in relation to any land, means the interest of the proprietor of the dominium utile or, in the case of land other than feudal land, of the owner, a tenancy of the land granted for a term of more than 10 years and not subject to a subsisting right of the landlord to determine the tenancy at or before the expiration of 10 years from the beginning of the term, or a tenancy granted for a term of 10 years or less with a right of renewal which would enable the tenant to prolong the term of the tenancy beyond 10 years;

“tenancy” includes a tenancy under a sub-lease and a tenancy under an agreement for a lease or sub-lease, but does not include an option to take a tenancy and does not include a mortgage;

“war period” means the period extending from 3rd September 1939 to 26th March 1946; and



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“works” includes any building, structure, excavation or other work on land.

(7) References in this section and that Schedule to non-compliance with planning control mean—

- (a) in relation to works on land carried out, or a use of land begun, at a time when the land was subject to a resolution to prepare a scheme under the <sup>M102</sup>Town and Country Planning (Scotland) Act 1932, that the works were carried out or the use begun otherwise than in accordance with the terms of an interim development order or of permission granted under such an order, and
- (b) in relation to works on land carried out, or a use of land begun, at a time when the land was subject to such a scheme, that the works were carried out or the use begun otherwise than in conformity with the provisions of the scheme,

and references in this Act to compliance with planning control shall be construed accordingly.

(8) References in this section and that Schedule to the enforcement of planning control shall be construed as references to the exercise of the powers conferred by section 72 of the 1947 Act or by paragraph 28 of Schedule 22 to the 1972 Act (including that paragraph as it continues in effect by virtue of Schedule 3 to the <sup>M103</sup>Planning (Consequential Provisions) (Scotland) Act 1997).

#### Marginal Citations

M101 1997 c. 11.

M102 1932 c. 49.

M103 1997 c. 11.

## PART XIII

### FINANCIAL PROVISIONS

#### 252 Fees for planning applications etc.

[<sup>F286</sup>(1) The Scottish Ministers may by regulations make provision for the payment of a charge or fee to a planning authority in respect of—

- (a) the performance by the planning authority of any of the authority's functions,
- (b) anything done by the authority which is calculated to facilitate, or is conducive or incidental to, the performance of any such function.

(1A) The regulations may (any or all)—

- (a) specify the person by whom the charge or fee is to be paid,
- (b) make provision as to how the charge or fee is to be calculated,
- (c) specify the person by whom the calculation is to be made,
- (d) make different provision for different classes of case,
- (e) specify circumstances in which no charge or fee is to be paid,
- (f) specify circumstances in which the charge or fee is to be transferred from one planning authority to another.

(1B) Without prejudice to the generality of paragraph (d) of subsection (1A), in relation to applications for planning permission, different provision may be made under that

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paragraph according to whether an application is made before or after the carrying out of the development to which it relates.]

(2) The Secretary of State may by regulations make such provision as he thinks fit for the payment—

- <sup>F287</sup>(a) . . . . .
- (b) of a fee of the prescribed amount to him in respect of any <sup>F288</sup>... application for planning permission which is deemed to be made to him under this Act or any order or regulations made under it.

[<sup>F289</sup>(3) Regulations under—

- (a) subsection (1), may provide for the remission or refunding of a prescribed charge or fee,
- (b) subsection (2), may provide for the remission or refunding of a prescribed fee, (in whole or in part) in prescribed circumstances.]

[<sup>F289</sup>(4) Without prejudice to the generality of subsection (3), circumstances prescribed under that subsection may include those where the Scottish Ministers consider (or a person appointed by them under or by virtue of this Act considers) that in the performance or actings in respect of which the charge or fee is payable—

- (a) the planning authority have behaved unreasonably, or
- (b) there has been unreasonable delay.]

[<sup>F289</sup>(5) Regulations under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament in so far as they are made by virtue of—

- (a) subsection (1A)(b) and consist in amendments consequential upon changes in the cost of living, in the retail prices index or in an inflation index, or
- (b) subsection (1A)(c).

(6) Subject to subsection (5), regulations under subsection (1) or (2) are not made unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.

(7) Where a charge or fee is calculated in pursuance of the regulations, the planning authority must secure that, taking one financial year with another, the income from the fee or charge does not exceed the cost of the performance of the function or, as the case may be, of the doing of the thing.

(8) A financial year is a period of 12 months beginning with 1 April.]

#### Textual Amendments

**F286** S. 252(1)-(1B) substituted for s. 252(1) (14.5.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 31(a)**, 59(2); S.S.I. 2009/179, art. 2

**F287** S. 252(2)(a) repealed (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), **sch.**; S.S.I. 2010/400, art. 3, sch.

**F288** Word in s. 252(2)(b) repealed (1.2.2011) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), s. 59(2), **sch.**; S.S.I. 2010/400, art. 3, sch.

**F289** S. 252(3)-(8) substituted for s. 252(3)-(5) (14.5.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 31(b)**, 59(2); S.S.I. 2009/179, art. 2

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

**C102** S. 252 applied (27.5.1997) by [1997 c. 10](#), **ss. 29(3)**, 40(2) (with **ss. 9(3)**, 10(5), 31, 38(6))

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## 253 Grants for research and education.

The Secretary of State may, <sup>F290</sup> . . . , make grants for assisting establishments engaged in promoting or assisting research relating to, and education with respect to, the planning and design of the physical environment.

### Textual Amendments

**F290** Words in 253 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(19), Pt. IV; S.I. 1998/3178, art. 3

## [<sup>F291</sup>253A] Grants for advice and assistance

- (1) The Scottish Ministers may make grants for the purpose of assisting any person to provide advice and assistance in connection with any matter which is related to the planning Acts or the Planning etc. (Scotland) Act 2006 (asp 17).
- (2) The Scottish Ministers may, as respects any such grant, provide that it is to be subject to such terms and conditions as they think appropriate.]

### Textual Amendments

**F291** S. 253A inserted (1.4.2007) by Planning etc. (Scotland) Act 2006 (asp 17), ss. 32, 59(2); S.S.I. 2007/130, art. 2(2), sch.

## 254 Contributions by Ministers towards compensation paid by planning authorities.

- (1) Where—
  - (a) compensation is payable by a planning authority under this Act in consequence of any decision or order to which this section applies, and
  - (b) that decision or order was given or made wholly or partly in the interest of a service which is provided by a government department and the cost of which is defrayed out of money provided by Parliament,the Minister responsible for the administration of that service may pay to that authority a contribution of such amount as he may with the consent of the Treasury determine.
- (2) This section applies to any decision or order given or made under Part III, [<sup>F292</sup>section 242A,] the provisions of Part V relating to purchase notices, Part VI, Part VII or Schedule 3 or 4 or Part I of Schedule 8.

### Textual Amendments

**F292** Words in s. 254(2) inserted (11.5.2006) by Planning and Compulsory Purchase Act 2004 (Commencement No.2 and Consequential Provisions) (Scotland) Order 2006 (S.S.I. 2006/243), arts. 1(1), 4(11)

## 255 Contributions by local authorities and statutory undertakers.

- (1) Without prejudice to section 5(9) of the <sup>M104</sup>Roads (Scotland) Act 1984 (power of local roads authority to contribute towards costs incurred by Secretary of State in

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construction or improvement of trunk road) any local authority may contribute towards any expenses incurred by a local roads authority or the Secretary of State—

- (a) in the acquisition of land under Part VIII of this Act or Chapter V of Part I of the <sup>M105</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997,
  - (b) in the construction or improvement of roads on land so acquired, or
  - (c) in connection with any development required in the interests of the proper planning of the area of the local authority.
- (2) Any local authority and any statutory undertakers may contribute towards any expenses incurred by a planning authority in or in connection with—
- (a) the [<sup>F293</sup>preparation of a strategic development plan or a local development] plan or the alteration, repeal or replacement of such a plan under Part II;
  - (b) the performance of any of their functions under Part III, the provisions of Part V relating to purchase notices, Part VI (except sections 156 and 157, Part VII (except section 168), Part VIII or Schedule 3 or 8.
- (3) In the application of subsection (2) to a local authority, “planning authority” means a planning authority other than that local authority.

#### Textual Amendments

**F293** Words in s. 255(2)(a) substituted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. **54(14)**, 59(2); S.S.I. 2009/70, art. 2, sch.

#### Marginal Citations

**M104** 1984 c. 54.

**M105** 1997 c. 9.

### **256 Assistance for acquisition of property where objection made to blight notice in certain cases.**

- (1) A local authority may, subject to such conditions as may be approved by the Secretary of State, advance money to any person for the purpose of enabling him to acquire a hereditament or agricultural unit in respect of which a counter-notice has been served under section 102 specifying the grounds mentioned in subsection (4)(d) of that section as, or as one of, the grounds of objection.
- (2) No advance may be made under subsection (1) in the case of a hereditament if its annual value exceeds such amount as may be prescribed for the purposes of section 100(3)(a).

### **257 Recovery from acquiring authorities of sums paid by way of compensation.**

- (1) This section applies where—
  - (a) an interest in land is compulsorily acquired or is sold to an authority possessing compulsory purchase powers, and
  - (b) a notice is recorded or registered under section 79(1) in respect of any of the land acquired or sold (whether before or after the completion of the acquisition or sale) in consequence of a planning decision or order made before the service

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of the notice to treat, or the making of the contract, in pursuance of which the acquisition or sale is effected.

- (2) Where this section applies the Secretary of State shall, subject to the following provisions of this section, be entitled to recover from the acquiring authority a sum equal to so much of the amount of the compensation specified in the notice as (in accordance with section 79(2)) is to be treated as attributable to that land.
- (3) If, immediately after the completion of the acquisition or sale, there is outstanding some interest in the land acquired or sold to which a person other than the acquiring authority is entitled, the sum referred to in subsection (2) shall not accrue due until that interest either ceases to exist or becomes vested in the acquiring authority.
- (4) No sum shall be recoverable under this section in the case of a compulsory acquisition or sale where the Secretary of State is satisfied that the interest in question is being acquired for the purposes of the use of the land as a public open space.
- (5) In this section “authority possessing compulsory purchase powers”, in relation to the compulsory acquisition of an interest in land, means the person or body of persons effecting the acquisition and, in relation to any other transaction relating to an interest in land, means any person or body of persons who could be or have been authorised to acquire that interest compulsorily for the purposes for which the transaction is or was effected.

## **258 Sums recoverable from acquiring authorities reckonable for purposes of grant.**

Where—

- (a) a sum is recoverable from any authority under section 257 by reference to an acquisition or purchase of an interest in land, and
- (b) a grant became or becomes payable to that or some other authority under an enactment in respect of that acquisition or purchase or of a subsequent appropriation of the land,

the power conferred by that enactment to pay the grant shall include, and shall be deemed always to have included, power to pay a grant in respect of that sum as if it had been expenditure incurred by the acquiring authority in connection with the acquisition or purchase.

## **259 Financial provision.**

- (1) There shall be paid out of money provided by Parliament—
  - (a) any expenses incurred by the Secretary of State in the payment of expenses of any committee established under section 182(2)(d),
  - (b) any sums necessary to enable the Secretary of State to make any payments becoming payable by him under Part IV or sections 143, 165, 166 or 185,
  - (c) any expenses incurred by the Secretary of State under Part IX,
  - (d) any expenses incurred by the Secretary of State in the making of grants under section 253, and
  - (e) any administrative expenses incurred by the Secretary of State for the purposes of this Act.
- (2) There shall be paid out of money provided by Parliament any expenses incurred by any government department (including the Secretary of State)—
  - (a) in the acquisition of land under Part VIII,

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- (b) in the payment of compensation under section 194(4), 232(2) or 270, or
- (c) under section 254.

## 260 General provision as to receipts of Secretary of State.

Subject to section 82, any sums received by the Secretary of State under any provision of this Act shall be paid into the Consolidated Fund.

### *Expenses of local authorities*

## 261 Expenses of, and borrowing by, local authorities.

- (1) Any expenses incurred by a local roads authority under the provisions of this Act specified in Part I of Schedule 18 shall be defrayed in the same manner as expenses incurred by the authority on roads.
- (2) Any expenses incurred by a local authority under the provisions of this Act specified in Part I of Schedule 18 in pursuance of a purchase notice or in the acquisition of land under this Act for the purposes of any function of that authority, shall be defrayed in the same manner as other expenses incurred by that authority for the purposes of that function.
- (3) A local authority may borrow for the purposes of this Act in accordance with the provisions of Part VII of the <sup>M106</sup>Local Government (Scotland) Act 1973.
- (4) Nothing in this section shall authorise the exercise of the power of borrowing money thereby conferred otherwise than in compliance with the provisions of the <sup>M107</sup>Local Authorities Loans Act 1945.

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

**C103** S. 261(3)(4) extended (27.5.1997) by 1997 c. 9, ss. 80(5), 83(2) (with s. 45(4))

**C104** S. 261(3)(4) applied (27.5.1997) by 1997 c. 10, ss. 37(4), 40(2) (with ss. 9(3), 10(5), 38(6))

#### **Marginal Citations**

**M106** 1973 c. 65.

**M107** 1945 c. 18.

## PART XIV

### MISCELLANEOUS AND GENERAL PROVISIONS

#### *Application of Act in special cases*

## 262 Power to modify Act in relation to minerals.

- (1) In relation to development consisting of the winning and working of minerals or involving the depositing of mineral waste, the provisions specified in Part I of Schedule 18 shall have effect subject to such adaptations and modifications as may be prescribed by regulations.

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- (2) Such regulations <sup>F294</sup>. . . shall be of no effect unless they are approved by resolution of each House of Parliament.
- (3) Any such regulations shall not apply—
- (a) to the winning and working, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use, including the fertilisation of the land so used and the maintenance, improvement or alteration of buildings or works on it which are occupied or used for those purposes, or
  - (b) to the winning and working of peat by any person for the domestic requirements of that person.
- (4) Nothing in subsection (1) or (3) shall be construed as affecting the prerogative right of Her Majesty to any gold or silver mine.

**Textual Amendments**

**F294** Words in s. 262(2) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(20)**, Pt. IV; S.I. 1998/3178, **art. 3**

<sup>F295</sup>**263 Application of certain provisions to planning authorities.**

**Textual Amendments**

**F295** S. 263 repealed (1.4.2007) by **Planning etc. (Scotland) Act 2006** (asp 17), s. 59(2), **sch.** (with S.S.I. 2007/176, arts. 1, 4); S.S.I. 2007/130, art. 2(2), sch.

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

**C105** S. 263 savings for effects of 2006 asp 17, s. 56, sch. (1.4.2007) by **Planning etc. (Scotland) Act 2006** (Consequential Provisions) Order 2007 (S.S.I. 2007/176), arts. 1, 4

*<sup>F296</sup>National Scenic Areas*

**Textual Amendments**

**F296** S. 263A and cross-heading inserted (1.4.2007 for specified purposes, 26.11.2010 in so far as not already in force) by **Planning etc. (Scotland) Act 2006** (asp 17), **ss. 50, 59(2)**; S.S.I. 2007/130, art. 2(2)(3), sch.; S.S.I. 2010/400, art. 2(1)(2)(b)

**263A National Scenic Areas**

- (1) Where it appears to the Scottish Ministers that an area is of outstanding scenic value in a national context and that the special protection measures specified in subsection (2) are appropriate for it, they may by direction designate the area as a National Scenic Area.



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- (2) Where any area is for the time being designated as a National Scenic Area, special attention is to be paid to the desirability of safeguarding or enhancing its character or appearance in the exercise, with respect to any land in that area, of any powers under this Act.
- (3) The Scottish Ministers may issue guidance to a planning authority for the purposes of this section and that authority must have regard to any guidance so issued.
- (4) In deciding whether to designate an area as a National Scenic Area, the Scottish Ministers are to take account of—
  - (a) whether the area is of outstanding natural beauty,
  - (b) the amenity of the area, including—
    - (i) whether it is of historical, cultural or environmental importance; and
    - (ii) the nature of any buildings or other structures within it, and
  - (c) any flora, fauna or physiographical features of the area, whether or not to any extent the product of human intervention in the landscape.
- (5) Any designation under subsection (1) may be varied or cancelled by a subsequent direction.
- (6) Before issuing a direction under subsection (1) or (5), the Scottish Ministers are to consult with—
  - (a) Scottish Natural Heritage, and
  - (b) such other persons as are prescribed.
- (7) The Scottish Ministers are to compile and make available for inspection free of charge a list containing particulars of any area which has been designated as a National Scenic Area.
- (8) For the purposes of subsection (7), a list may be made available by electronic means.
- (9) The Scottish Ministers may by regulations make provision as to—
  - (a) the form of any direction under subsection (1) or (5),
  - (b) the manner in which a National Scenic Area is to be described in such a direction,
  - (c) the publicity to be given to any such direction, and
  - (d) other procedural matters in connection with the making of such a direction.
- (10) Regulations under this section may make different provision for different purposes.]

### *Natural Heritage Areas*

#### <sup>F297</sup> **264 Natural Heritage Areas.**

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#### **Textual Amendments**

**F297** S. 264 repealed (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), s. 59(2), [Sch. 7 para. 12\(2\)](#) (with s. 55(2)); S.S.I. 2004/495, art. 2



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## <sup>F298</sup> National Parks

### Textual Amendments

**F298** S. 264A and cross heading inserted (8.9.2001) by 2000 asp 10, s. 36, **Sch. 5 para. 18** (with s. 32); S.I. 2000/312, **art. 2**

F299

### National Parks

264A

In the exercise, with respect to any land in a National Park, of any power under the planning Acts, special attention shall be paid to the desirability of exercising the power consistently with the National Park Plan as adopted under section 12(7)(a) of the National Parks (Scotland) Act 2000 (asp 10).]

### Textual Amendments

**F299** S. 264A inserted (8.9.2001) by 2000 asp 10, s. 36, **Sch. 5 para. 18** (with s. 32); S.I. 2000/312, **art. 2**

## *Local inquiries and other hearings*

### 265 Local inquiries.

- (1) Subject to the provisions of this section, the Minister may cause a local inquiry to be held for the purposes of the exercise of any of his functions under this Act.
- (2) The Minister shall appoint a person to hold the inquiry and to report on it to him.
- (3) Notification of the time when and the place where the inquiry is to be held shall be sent to any person who has lodged and has not withdrawn objections in relation to any matter in question at the inquiry, and shall be published in such newspaper or newspapers as the Minister may direct.
- (4) Subject to subsections (5) and (6), the person appointed to hold the inquiry may, on the motion of any party to it or of his own motion, serve a notice in writing on any person requiring him to attend at the time and place set forth in the notice to give evidence or to produce any books or documents in his custody or under his control which relate to any matter in question at the inquiry.
- (5) No person shall be required in obedience to such a notice to attend at any place which is more than 10 miles from the place where he resides unless the necessary expenses are paid or tendered to him.
- (6) Nothing in subsection (4) shall empower the person appointed to hold the inquiry to require any person to produce any book or document or to answer any question which he would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.
- (7) The person appointed to hold the inquiry may administer oaths and examine witnesses on oath and may accept, in place of evidence on oath by any person, a statement in writing by that person.
- (8) Any person who—

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- (a) refuses or wilfully neglects to attend in obedience to a notice under subsection (4) or to give evidence, or
- (b) wilfully alters, suppresses, conceals, destroys or refuses to produce any book or document which he may be required to produce by any such notice,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale or to imprisonment for a period not exceeding 3 months.
- (9) The Minister may make orders as to the expenses incurred—
- (a) by the Minister in relation to—
- (i) the inquiry, and
- (ii) arrangements made for an inquiry which does not take place, and
- (b) by the parties to the inquiry,
- and as to the parties by whom any of the expenses mentioned in paragraphs (a) and (b) shall be paid.
- (10) What may be recovered by the Minister is the entire administrative expense of the inquiry, so that, in particular—
- (a) there shall be treated as expenses incurred in relation to the inquiry such reasonable sum as the Minister may determine in respect of the general staff expenses and overheads of his department, and
- (b) there shall be treated as expenses incurred by the Minister holding the inquiry any expenses incurred in relation to the inquiry by any other Minister or Government department and, where appropriate, such reasonable sum as that Minister or department may determine in respect of general staff expenses and overheads.
- (11) The Minister may by regulations prescribe for any description of inquiry a standard daily amount and where an inquiry of that description does take place what may be recovered is—
- (a) the prescribed standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the inquiry sits or the person appointed to hold the inquiry is otherwise engaged on work connected with the inquiry,
- (b) expenses actually incurred in connection with the inquiry on travelling or subsistence allowances or the provision of accommodation or other facilities for the inquiry,
- (c) any expenses attributable to the appointment of an assessor to assist the person appointed to hold the inquiry, and
- (d) any legal expenses or disbursements incurred or made by or on behalf of the Minister in connection with the inquiry.
- (12) Any order of the Minister under subsection (9) requiring any party to pay expenses may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (13) In this section, except where the context otherwise requires, “Minister” means the Secretary of State, or any other Minister authorised under this Act to hold a local inquiry.

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

**C106** S. 265 applied (27.5.1997) by 1997 c. 10, ss. 36, 40(2) (with ss. 9(3), 10(5), 38(6))

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- C107** S. 265(2)-(13) applied (9.2.2005) by Land Reform (Scotland) Act 2003 (asp 2), **ss. 11(6)**, 18(6), 20A(7) (as inserted (31.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), **ss. 83(4)**, 130(1) (with s. 128); S.S.I. 2016/372, reg. 2), 100(3) (with s. 100(2)); S.S.I. 2005/17, art. 2(a)
- C108** S. 265(4)-(13) applied (27.5.1997) by 1997 c. 10, ss. 19, 40(2), **Sch. para. 6(4)-(6)** (with ss. 9(3), 10(5), 31, 38(6))

## <sup>F300</sup> 265A Planning inquiries to be held in public subject to certain exceptions

- (1) This section applies in relation to the holding of inquiries under section 265(1), paragraph 6 of Schedule 4, paragraph 5 of Schedule 6 or paragraph 8 of Schedule 7.
- (2) Subject to subsection (3), at any such inquiry oral evidence shall be heard in public and documentary evidence shall be open to public inspection.
- (3) If the Secretary of State is, or after consultation with the Secretary of State the Scottish Ministers are, satisfied in the case of any such inquiry—
  - (a) that giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in subsection (4), and
  - (b) that the public disclosure of that information would be contrary to the national interest,he or as the case may be they may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry by such persons, or persons of such descriptions, as may be specified in the direction.
- (4) The matters referred to in subsection (3)(a) are—
  - (a) national security, and
  - (b) the measures taken, or to be taken, to ensure the security of any premises or property.
- (5) The Lord Advocate may appoint a person to represent the interests of any person who—
  - (a) if a direction is given under subsection (3), will be prevented from hearing or inspecting any evidence at any such inquiry; or
  - (b) is so prevented by such a direction given before any appointment is made by virtue of paragraph (a).
- (6) By rules—
  - (a) the Secretary of State may make provision as to the procedure to be followed by him before he gives a direction under subsection (3) in a case where a person has been appointed under subsection (5) and as to the functions of a person appointed under subsection (5),
  - (b) the Scottish Ministers may make provision as to the procedure to be followed by them before they give such a direction in such a case and as to such functions.
- (7) If a person (the representative) is appointed—
  - (a) under paragraph (a) of subsection (5) and either no direction in relation to the evidence in question has been given under subsection (3) or any such direction so given has been given by the Secretary of State, the Secretary of State may direct any person who he thinks,

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- (b) under paragraph (a) of subsection (5) and such a direction has been given under subsection (3) by the Scottish Ministers, the Scottish Ministers may direct any person who they think,
  - (c) under paragraph (b) of subsection (5) and the direction referred to in that paragraph was given by the Secretary of State, the Secretary of State may direct any person who he thinks,
  - (d) under paragraph (b) of that subsection and the direction so referred to was given by the Scottish Ministers, the Scottish Ministers may direct any person who they think,
- is interested in the inquiry, or prospective inquiry, in relation to a matter mentioned in subsection (4) (the responsible person) to pay remuneration or allowances to, and to reimburse any expenses incurred by, the representative.
- (8) If the representative and the responsible person are unable to agree an amount payable by virtue of—
    - (a) paragraph (a) or (c) of subsection (7), the amount must be determined by the Secretary of State,
    - (b) paragraph (b) or (d) of that subsection, the amount must be determined by the Scottish Ministers.
  - (9) The Secretary of State must cause an amount payable by virtue of paragraph (a) or (c) of subsection (7) (whether determined under subsection (8) or agreed between the representative and the responsible person) to be certified.
  - (10) The Scottish Ministers must cause an amount payable by virtue of paragraph (b) or (d) of subsection (7) (whether so determined or so agreed) to be certified.
  - (11) An amount certified under subsection (9) or (10) is recoverable from the responsible person as a debt.
  - (12) Subsections (7) to (11) apply even if the inquiry does not take place.
  - (13) The power to make rules under—
    - (a) paragraph (a) of subsection (6) must be exercised by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament,
    - (b) paragraph (b) of that subsection must be exercised by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.]

#### **Textual Amendments**

**F300** S. 265A inserted (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), s. 91\(1\)](#) (with s. 111); [S.I. 2004/2097, art. 2](#); [S.I. 2006/1281, art. 3](#)

## **266 Orders as to expenses of parties where no local inquiry held.**

- (1) This section applies to—
  - [<sup>F301</sup>(a)] proceedings under this Act where the Secretary of State is required, before reaching a decision, to afford any person an opportunity of appearing before and being heard by a person appointed by him[<sup>F302</sup>, and

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- (b) proceedings arising under or by virtue of sections 46, 47, 75B, 75F, 130, 154, 169 and 180].
- (2) The Secretary of State has the same power to make orders under section 265(9) in relation to proceedings to which this section applies which do not give rise to a local inquiry as he has in relation to a local inquiry.

#### Textual Amendments

**F301** Words in s. 266(1) renumbered as s. 266(1)(a) (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Consequential Amendments\) Order 2009 \(S.S.I. 2009/256\)](#), arts. 1(3), **2(5)**

**F302** S. 266(1)(b) and word inserted (3.8.2009) by [Planning etc. \(Scotland\) Act 2006 \(Consequential Amendments\) Order 2009 \(S.S.I. 2009/256\)](#), arts. 1(3), **2(5)**

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

**C109** S. 266 extended (27.5.1997) by [1997 c. 9, ss. 79\(1\), 83\(2\)](#) (with s. 45(4))

S. 266 applied (27.5.1997) by [1997 c. 10, ss. 36, 40\(2\)](#) (with ss. 9(3), 10(5), 38(6))

### <sup>F303</sup>267 [<sup>F303</sup> Appeals and applications under this Act: procedure etc.]

- (1) The Secretary of State may by regulations prescribe the procedure to be followed in connection with [<sup>F304</sup> appeals and applications under this Act and as to the manner in which such appeals and applications are to be conducted].
- <sup>F305</sup>(1A) Without prejudice to the generality of subsection (1), the regulations may—
- (a) make different provision for different cases or classes of case and in particular according to whether an appeal is under subsection (1) of section 47 or under subsection (2) of that section,
  - (b) as regards the manner in which an appeal or application is to be conducted, make different provision for different stages of a case,
  - (c) make provision in relation to oral or written submissions and to documents in support of such submissions, and
  - (d) make provision in relation to time limits.
- (1B) The provision which may be made by virtue of subsections (1) and (1A) includes provision as to—
- (a) the making of oral submissions, or as to any failure to make such submissions or to lodge documents in support of such submissions,
  - (b) the lodging of, or as to any failure to lodge, written submissions or documents in support of such submissions, and
  - (c) subject to section 47A, as to what matters may be raised in the course of the appeal or application.
- (1C) The provision which may be made by virtue of subsections (1) and (1A) includes provision that the manner in which an appeal or application, or any stage of an appeal or application, is to be conducted (as for example whether written submissions are to be presented or persons are to be heard) is to be at the discretion of the Scottish Ministers (or of a person appointed by them under or by virtue of this Act).]
- (2) The regulations may in particular make provision as to the procedure to be followed—
- (a) where steps have been taken with a view to the holding of <sup>F306</sup>... an inquiry or hearing which does not take place, or

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- (b) where steps have been taken with a view to the determination of any matter by a person appointed by the Secretary of State and the proceedings are the subject of a direction that the matter shall instead be determined by the Secretary of State, or
- (c) where steps have been taken in pursuance of such a direction and a further direction is made revoking that direction,

and may provide that such steps shall be treated as compliance, in whole or in part, with the requirements of the regulations.

<sup>F307</sup>(3) .....

#### Textual Amendments

- F303** S. 267 heading substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(6)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 20009/210, art. 2, sch.
- F304** Words in s. 267(1) substituted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(5)(a)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 20009/210, art. 2, sch.
- F305** S. 267(1A)-(1C) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(5)(b)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 20009/210, art. 2, sch.
- F306** Word in s. 267(2)(a) repealed (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(5)(c)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 20009/210, art. 2, sch.
- F307** S. 267(3) repealed (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 19(5)(d)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(a), S.S.I. 20009/210, art. 2, sch.

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

- C110** S. 267 applied (27.5.1997) by [1997 c. 10](#), **ss. 36**, 40(2) (with **ss. 9(3)**, 10(5), 38(6))  
 S. 267 extended (27.5.1997) by [1997 c. 9](#), **ss. 79(1)**, 83(2) (with s. 45(4))

## 268 Inquiries under Private Legislation Procedure (Scotland) Act 1936.

- (1) Where the Ministers concerned so direct—
- (a) any inquiry in relation to an order under this Act which in certain events becomes subject to special parliamentary procedure, and
  - (b) any hearing in connection with—
    - (i) an appeal against the refusal, or the grant, subject to conditions, of an application by statutory undertakers for planning permission to develop operational land,
    - (ii) such an application made by statutory undertakers and referred to the Secretary of State, or
    - (iii) the revocation or modification of planning permission to develop operational land granted to statutory undertakers,
 shall be held by Commissioners under the <sup>M108</sup>Private Legislation Procedure (Scotland) Act 1936.
- (2) Any such direction shall be deemed to have been given under section 2, as read with section 10, of the <sup>M109</sup>Statutory Orders (Special Procedure) Act 1945.



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- (3) Subsections (5), (6) and (7) of section 231 shall not apply to an order mentioned in subsection (1)(a).
- (4) Nothing in subsections (2) to (13) of section 265 shall apply to any inquiry to which subsection (1)(a) applies.
- (5) The provisions of the Statutory Orders (Special Procedure) Act 1945 in relation to the publication of notices in the Edinburgh Gazette and in a newspaper shall, notwithstanding anything contained in that Act, not apply to any order under this Act which is subject to special parliamentary procedure.

#### Marginal Citations

M108 1936 c. 52.

M109 1945 (9 & 10 Geo. 6) c. 18.

### *Rights of entry*

#### **269 Rights of entry.**

- (1) Any person duly authorised in writing by the Secretary of State or by a planning authority may at any reasonable time enter upon any land for the purpose of surveying it in connection with—
  - (a) the preparation, approval, adoption, making or amendment of a [<sup>F308</sup>strategic development plan or local development] plan relating to the land under Part II, <sup>F309</sup>...,
  - (b) any application under Part III or sections 182 or 183, or under any order or regulations made under any of those provisions, for any permission, consent or determination to be given or made in connection with that land or any other land under that Part or those sections or under any such order or regulations, or
  - (c) any proposal by the planning authority or by the Secretary of State to make or serve any order or notice under Part III (other than section 61), Part VII (other than sections 160 to 163, 167 and 172 to 175) or under any order or regulations made under any of those provisions.

[<sup>F310</sup>(1A) Any person duly authorised in writing by the planning authority may, at any reasonable time, enter upon land for the purposes of section 144A(4).]

- (2) Any person duly authorised in writing by the Secretary of State or the planning authority may at any reasonable time enter upon any land for the purpose of ascertaining whether a stop notice [<sup>F311</sup>, temporary stop notice] or an enforcement notice is being complied with.
- (3) Any person who is an officer of the Valuation Office or is duly authorised in writing by the Secretary of State may at any reasonable time enter upon any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation under this Act in respect of that land or any other land.
- (4) Any person who is an officer of the Valuation Office or is duly authorised in writing by a planning authority may at any reasonable time enter upon any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation in

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respect of that land or any other land which is payable by the planning authority under Part IV, section 204(1) or Part X (other than section 232(2) or (3) or 233(1)(a)(iii)).

- (5) Any person who is an officer of the Valuation Office or is duly authorised in writing by a local authority or Minister authorised to acquire land under section 189 or 190, or by a local authority who have power to acquire land under Part VIII, may at any reasonable time enter upon any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that land or any other land, or in connection with any claim for compensation in respect of any such acquisition.
- (6) Subject to section 270, any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals in it.

#### Textual Amendments

- F308** Words in s. 269(1)(a) substituted (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(15)(a)**, 59(2); S.S.I. 2009/70, art. 2, sch.
- F309** Words in s. 269(1)(a) repealed (28.2.2009) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(15)(b)**, 59(2); S.S.I. 2009/70, art. 2, sch.
- F310** S. 269(1A) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 26(2)(a)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(b); S.S.I. 2009/219, art. 2, sch.
- F311** Words in s. 269(2) inserted (12.12.2008 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 26(2)(b)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(b); S.S.I. 2009/219, art. 2, sch.

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

- C111** S. 269(6) applied (with modifications) (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. 7(3)(4) (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)

## 270 Supplementary provisions as to rights of entry.

- (1) A person authorised under section 269 to enter upon any land—
- (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering, and
  - (b) shall not demand admission as of right to any land which is occupied unless 24 hours' notice of the intended entry has been given to the occupier.
- (2) Any person who wilfully obstructs a person acting in the exercise of his powers under section 269 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) If any person who, in compliance with the provisions of section 269, is admitted into a factory, workshop or workplace discloses to any person any information obtained by him therein as to any manufacturing process or trade secret, he shall be guilty of an offence.
- (4) Subsection (3) does not apply if the disclosure is made in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.



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- (5) A person who is guilty of an offence under subsection (3) shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.
- (6) Where any damage is caused to land or moveable property—
  - (a) in the exercise of a right of entry conferred under section 269, or
  - (b) in the making of any survey for the purpose of which any such right of entry has been so conferred,compensation may be recovered by any person suffering the damage from the Secretary of State or authority on whose behalf the entry was effected.
- (7) Section 86 shall apply in relation to compensation under subsection (6) as it applies in relation to compensation under Part IV.
- (8) No person shall carry out under section 269 any works authorised by virtue of subsection (6) of that section unless notice of his intention to do so was included in the notice required by subsection (1).
- (9) The authority of the [<sup>F312</sup>Scottish Minister] shall be required for the carrying out under section 269(6) of works so authorised if the land in question is held by statutory undertakers, and they object to the proposed works on the ground that the carrying out of the work would be seriously detrimental to the carrying on of their undertaking.

#### Textual Amendments

**F312** Words in s. 270(9) substituted (1.7.1999) by 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(21); S.I. 1998/3178, art. 3

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

- C112** S. 270(1)-(5) applied (with modifications) (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. 7(3)(4) (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)
- C113** S. 270(8) applied (with modifications) (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. 7(3)(4) (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)
- C114** S. 270(9) applied (with modifications) (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. 7(3)(4) (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)

#### [<sup>F313</sup>270A] Rights of entry: Crown land

- (1) Section 269 applies to Crown land subject to the following modifications.
- (2) A person must not enter Crown land unless he has the relevant permission.
- (3) Relevant permission is the permission of—
  - (a) a person appearing to the person seeking entry to the land to be entitled to give it, or

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- (b) the appropriate authority.
- (4) In subsection (6) the words “Subject to section 270” must be ignored.
- (5) Section 270 does not apply to anything done by virtue of this section.
- (6) “ Appropriate authority ” must be construed in accordance with section 242. ]

#### Textual Amendments

**F313** S. 270A inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 14](#) (with s. 111); S.S.I. 2006/268, art. 3(f)

### *Miscellaneous and general provisions*

#### [<sup>F314</sup>270] **Equal opportunities**

- (1) The Scottish Ministers and planning authorities must perform their functions under this Act in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) “ Equal opportunities ” and “ equal opportunity requirements ” have the same meanings in this section as they have in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46). ]

#### Textual Amendments

**F314** S. 270B inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), ss. 51, 59(2); S.S.I. 2007/130, art. 2(2), sch.

#### **271 Service of notices.**

- (1) Subject to the provisions of this section, any notice or other document required or authorised to be served or given under this Act may be served or given—
  - (a) by delivering it to the person on whom it is to be served or to whom it is to be given,
  - (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address,
  - (c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode, or, in a case where an address for service has been given by that person, at that address,
  - [<sup>F315</sup>(cc) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection (4), to that person at that address (subject to subsection (5)); or]
  - (d) in the case of a person on whom the notice is required to be served as being a person appearing from the valuation roll to have an interest in land, by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his address as entered in the valuation roll, or

*Status: Point in time view as at 18/03/2011.*

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- (e) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.
- (2) Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if—
- (a) being addressed to him either by name or by the description of “the owner”, “the lessee” or “the occupier”, as the case may be, of the premises (describing them) it is delivered or sent in the manner specified in subsection (1)(a), (b) or (c), or
  - (b) it is so addressed and is marked in such manner as may be prescribed for securing that it shall be plainly identifiable as a communication of importance, and—
    - (i) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or
    - (ii) is delivered to some person on those premises, or is affixed conspicuously to some object on those premises.
- (3) Where—
- (a) the notice or other document is required to be served on or given to all persons who have interests in or are occupiers of premises comprised in any land, and
  - (b) it appears to the authority required or authorised to serve or give the notice or other document that any part of that land is unoccupied,
- the notice or document shall be taken to be duly served on all persons having interests in, and on any occupiers of, premises comprised in that part of the land (other than a person who has given to that authority an address for the service of the notice or document on him) if it is addressed to “the owners and any lessees and occupiers” of that part of the land (describing it) and is affixed conspicuously to some object on the land.
- [<sup>F316</sup>(4) The condition mentioned in subsection (1)(cc) is that the notice or other document shall be—
- (a) capable of being accessed by the person mentioned in that provision;
  - (b) legible in all material respects; and
  - (c) in a form sufficiently permanent to be used for subsequent reference;
- and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.
- (5) Subsection (1)(cc) shall not apply to—
- (a) serving a planning contravention notice;
  - (b) serving or giving notice to parties who must be notified of applications for planning permission and other matters in accordance with regulations made under sections 34 and 35;
  - (c) serving any notice, or withdrawal of any such notice under section 61;
  - (d) serving a notice under section 66(2);

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- (e) serving a notice under section 72(2) or a copy of an order under section 72(5);
- (f) serving a purchase notice under section 88(2);
- (g) serving any notice under section 90;
- (h) serving a counter-notice under section 96(2) or 96(5)
- (i) serving a counter-notice under 102;
- (j) serving a blight notice under section 101(1);
- (k) serving a copy of any enforcement notice by a planning authority;
- (l) giving any notice under section 129 of the exercise of powers conferred by subsection (1) of that section;
- (m) serving an enforcement notice issued by the Scottish Ministers;
- (n) serving a stop notice, or of notice of withdrawal of a stop notice, by a planning authority;
- (o) serving a stop notice by the Scottish Ministers;
- (p) serving a breach of condition notice or of notice of withdrawal of a breach of condition notice;
- (q) giving notice of the making of a tree preservation order, or service of a copy of such an order, in accordance with regulations under section 161;
- (r) serving notice by a planning authority under section 179 requiring steps to be taken to abate the adverse effect on the amenity of any part of its district by reason of condition of any land within that district or an adjoining district;
- (s) serving a notice under section 272 requiring information as to interests in land;
- (t) serving a copy of a discontinuance, prohibition, suspension or supplementary suspension order made under Schedule 8; and
- (u) serving a reminder under paragraph 4 of Schedule 10.]

#### **Textual Amendments**

**F315** S. 271(1)(cc) inserted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), **4(1)(2)**

**F316** S. 271(4)(5) inserted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), **4(1)(3)**

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

**C115** S. 271 extended (27.5.1997) by 1997 c. 9, **ss. 79(1), 83(2)** (with s. 45(4))

S. 271 applied (27.5.1997) by 1997 c. 10, **ss. 36, 40(2)** (with ss. 9(3), 10(5), 38(6))

**C116** S. 271 applied (with application in accordance with reg. 2 of the amending S.S.I.) by [Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/432\)](#), regs. 1(2), **44**

### **[<sup>F317</sup>271A] Service of notices on the Crown**

- (1) Any notice or other document required under this Act to be served on the Crown must be served on the appropriate authority.
- (2) Section 271 does not apply for the purposes of the service of such a notice or document.
- (3) “ Appropriate authority ” must be construed in accordance with section 242. ]

*Status: Point in time view as at 18/03/2011.*

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### Textual Amendments

**F317** S. 271A inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 17](#) (with s. 111); S.S.I. 2006/268, art. 3(f)

## 272 Power to require information as to interests in land.

- (1) For the purpose of enabling any order to be made or any notice or other document to be served by him or them under this Act, the Secretary of State or a local authority may in writing require the occupier of any land and any person who, either directly or indirectly, receives rent in respect of any land to supply in writing such information as to the matters mentioned in subsection (2) as may be so specified.
- (2) Those matters are—
  - (a) the nature of his interest in the land,
  - (b) the name and [<sup>F318</sup>postal] address of any other person known to him as having an interest in the land, whether as <sup>F319</sup>... owner, heritable creditor, lessee or otherwise,
  - (c) the purpose for which the land is currently being used,
  - (d) the time when that use began,
  - (e) the name and [<sup>F320</sup>postal] address of any person known to the person on whom the notice is served as having used the premises for that purpose, and
  - (f) the time when any activities being carried out on the premises began.
- (3) A notice under subsection (1) may require information to be given within a specified period which is not less than 21 days from the date of service on him.
- (4) Any person who has been required under subsection (1) to give any information and fails to give it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Any person who has been so required to give any information and knowingly makes any misstatement in respect of it shall be guilty of an offence and liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or both.
- (6) It shall be a defence in any proceedings under subsection (4) that the accused did not know and had no reasonable cause to know the information required of him.

### Textual Amendments

**F318** Word in s. 272(2)(b) inserted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), [5\(b\)](#)

**F319** Word in s. 272(2)(b) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [Sch. 12 para. 60\(4\)](#), [Sch. 13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

**F320** Word in s. 272(2)(e) inserted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), [5\(b\)](#)

### Modifications etc. (not altering text)

**C117** S. 272 extended (27.5.1997) by [1997 c. 9](#), ss. s.79(1), 83(2) (with s. 45(4))

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S. 272 applied (27.5.1997) by 1997 c. 10, ss. 36, 40(2) (with ss. 9(3), 10(5), 38(6))

**C118** S. 272: power to modify conferred (27.5.1997) by 1980 c. 65, **Sch. 30 Pt. II para. 9** (as replaced (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 31(12)**)

## <sup>F321</sup>**272A Information as to interests in Crown land**

- (1) This section applies to an interest in Crown land which is not a private interest.
- (2) Section 272 does not apply to an interest to which this section applies.
- (3) For a purpose mentioned in section 272(1) the Scottish Ministers may request the appropriate authority to give them such information as to the matters mentioned in section 272(2) as they specify in the request.
- (4) The appropriate authority must comply with a request under subsection (3) except to the extent—
  - (a) that the matter is not within the knowledge of the authority, or
  - (b) that to do so will disclose information as to any of the matters mentioned in section 265A(4).
- (5) Expressions used in this section and in Part 12 (Crown Land) must be construed in accordance with that Part.]

### **Textual Amendments**

**F321** S. 272A inserted (12.6.2006) by **Planning and Compulsory Purchase Act 2004 (c. 5)**, s. 121(4), **Sch. 5 para. 18** (with s. 111); S.S.I. 2006/268, art. 3(f)

## **273 Offences by corporations.**

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
 he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against accordingly.
- (2) In subsection (1) “director”, in relation to any body corporate—
  - (a) which was established by or under an enactment for the purpose of carrying on under national ownership an industry or part of an industry or undertaking, and
  - (b) whose affairs are managed by its members,
 means a member of that body corporate.

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

**C119** S. 273 extended (27.5.1997) by 1997 c. 9, ss. 79(1), 83(2) (with s. 45(4))

S. 273 excluded (27.5.1997) by 1997 c. 9, ss. 79(2), 83(2) (with s. 45(4))

S. 273 applied (27.5.1997) by 1997 c. 10, ss. 36, 40(2) (with ss. 9(3), 10(5), 38(6))

*Status: Point in time view as at 18/03/2011.*

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## 274 Combined applications.

- (1) Regulations may provide for the combination in a single document, made in such form and transmitted to such authority as may be prescribed, of—
  - (a) an application for planning permission in respect of any development and
  - (b) an application required, under any enactment specified in the regulations, to be made to a local authority in respect of that development.
- (2) Before making such regulations, the Secretary of State shall consult such local authorities or associations of local authorities as appear to him to be concerned.
- (3) Different provision may be made by any such regulations in relation to areas in which different enactments are in force.
- (4) If an application required to be made to a local authority under an enactment specified in any such regulations is made in accordance with the provisions of the regulations, it shall be valid notwithstanding anything in that enactment prescribing, or enabling any authority to prescribe, the form in which, or the manner in which, such an application is to be made.
- (5) Subsection (4) is without prejudice to—
  - (a) the validity of any application made in accordance with the enactment in question, or
  - (b) any provision of that enactment enabling a local authority to require further particulars of the matters to which the application relates.
- (6) In this section “application” includes a submission.
- (7) Subsection (1) shall apply in relation to applications for an approval required by a development order as it applies in relation to applications for planning permission.

### Modifications etc. (not altering text)

C120 S. 274(2)-(6) applied (22.9.2004 for specified purposes, 1.5.2005 in so far as not already in force) by Building (Scotland) Act 2003 (asp 8), ss. 33(4), 59(1) (with s. 53); S.S.I. 2004/404, art. 2(1)(2), Sch. 1

## 275 Regulations and orders.

- (1) The Secretary of State may make regulations—
  - (a) for prescribing the form of any notice, order or other document authorised or required by this Act to be served, made or issued by any planning authority which is a local authority,
  - (b) for any purpose for which regulations are authorised or required to be made under this Act, other than a purpose for which regulations are authorised or required to be made by another Minister, and
  - (c) for any of the purposes mentioned in section 28 of the<sup>M110</sup>Land Compensation (Scotland) Act 1963 (power to prescribe matters relevant to Part IV).
- (2) Any power conferred by this Act to make regulations shall be exercisable by statutory instrument.

[<sup>F322</sup>(2A) Regulations may make different provision for different purposes.]



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- [<sup>F323</sup>(2A) Any power conferred by this Act to make regulations or orders includes power to make such incidental, supplemental, consequential, transitory, transitional or saving provision as the Scottish Ministers consider necessary or expedient.]
- (3) Any statutory instrument containing regulations made under this Act (except regulations which, by virtue of any provision of this Act, are of no effect unless approved by a resolution of each House of Parliament) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The power to make development orders under section 30 and to make orders under sections [<sup>F324</sup>4(1)], 26(2)(f)[<sup>F325</sup>, (6A) and (6C), 31A], 54 and 100(3)(a) or paragraph 7 or 8 of Schedule 1 shall be exercisable by statutory instrument.
- (5) Any statutory instrument which contains a development order or an order under section [<sup>F326</sup>4(1), 54, 100(3)(a), 241B(3), 241C(6) or 241D(3)(f)] or paragraph 4(5) or 5(5) of Schedule 9 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- [<sup>F327</sup>(5A) No order made under section 26(6A) [<sup>F328</sup>or (6C)] is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Scottish Parliament.]
- (6) Without prejudice to subsection (5), where a development order makes provision for excluding or modifying any enactment contained in a public general Act (other than an enactment specified in subsection (7)) [<sup>F329</sup>or in an Act of the Scottish Parliament (other than a private Act or an enactment specified in subsection (7))] the order shall not have effect until that provision is approved by a resolution of each House of Parliament.
- (7) The enactments referred to in subsection (6) are—
- <sup>F330</sup>(a) .....
- (b) any enactment making such provision as might by virtue of any Act of Parliament [<sup>F331</sup>or of the Scottish Parliament] have been made in relation to the area to which the development order applies by means of a byelaw, order or regulation not requiring confirmation by Parliament [<sup>F332</sup>or by the Scottish Parliament], and
- (c) any enactment which has been previously excluded or modified by a development order, and any enactment having substantially the same effect as any such enactment.
- [<sup>F333</sup>(7A) On the first occasion on which regulations are made under each of paragraph (d) of section 7(1) and paragraph (a)(i) of section 19(10), the statutory instrument containing the regulations is not made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.]
- (7B) A statutory instrument containing regulations made under section 136A(4) or 145A(4) is not made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.]
- (8) Without prejudice to section 14 of the <sup>M111</sup>Interpretation Act 1978, any power conferred by this Act to make an order shall include power to vary or revoke any such order by a subsequent order.



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### Textual Amendments

- F322** S. 275(2A) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 7 para. 20\(3\)](#) (with s. 111); S.S.I. 2006/268, art. 3(d)
- F323** Second s. 275(2A) inserted (6.2.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(16\)\(a\)](#), 59(2); S.S.I. 2007/49, art. 2, sch.
- F324** Word in s. 275(4) substituted (19.5.2008 for specified purposes, 28.2.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(16\)\(b\)\(i\)](#), 59(2); S.S.I. 2008/164, art. 2(1), S.S.I. 2009/70, art. 2, sch.
- F325** Words in s. 275(4) substituted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 3\(4\)\(a\)](#), 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/130, art. 2, sch
- F326** Words in s. 275(5) substituted (19.5.2008 for specified purposes) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(16\)\(c\)](#), 59(2); S.S.I. 2008/164, art. 2(1)
- F327** S. 275(5A) inserted (6.2.2007 for specified purposes, 31.3.2007 in so far as not already in force) by [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#), [ss. 24\(4\)\(b\)](#), 38(1); S.S.I. 2007/50, art. 2
- F328** Words in s. 275(5A) inserted (6.2.2007 for specified purposes, 1.4.2007 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 3\(4\)\(b\)](#), 59(2); S.S.I. 2007/49, art. 2, sch., S.S.I. 2007/130, art. 2, sch
- F329** Words in s. 275(6) inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(16\)\(d\)](#), 59(2); S.S.I. 2007/130, art. 2(2), sch.
- F330** S. 275(7)(a) repealed (1.1.2010) by [The Public Health etc. \(Scotland\) Act 2008 \(Commencement No.3, Consequential Provisions and Revocation\) Order 2009 \(S.S.I. 2009/404\)](#), art. 2(4), [sch. 4 Pt. 1](#)
- F331** Words in s. 275(7)(b) inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(16\)\(e\)\(i\)](#), 59(2); S.S.I. 2007/130, art. 2(2), sch.
- F332** Words in s. 275(7)(b) inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(16\)\(e\)\(ii\)](#), 59(2); S.S.I. 2007/130, art. 2(2), sch.
- F333** S. 275(7A)(7B) inserted (19.5.2008 for specified purposes, 28.2.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 54\(16\)\(f\)](#), 59(2); S.S.I. 2008/164, art. 2(1), S.S.I. 2009/70, art. 2, sch.

### Marginal Citations

- M110** 1963 c. 51.  
**M111** 1978 c. 30.

### [<sup>F334</sup>275A Further provision as regards regulations: inquiries etc.

- (1) Subject to any other provision made by this Act as regards the procedure to be followed in connection with inquiries, hearings, referrals or reviews conducted under or by virtue of the Act, the Scottish Ministers may under this subsection make regulations as regards such procedure.
- (2) Without prejudice to the generality of subsection (1), such regulations may relate to procedure in connection with matters preparatory to such inquiries, hearings, referrals or reviews and in connection with matters subsequent to them.]

### Textual Amendments

- F334** S. 275A inserted (12.12.2008) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [ss. 52\(1\)](#), 59(2); S.S.I. 2008/411, art. 2(1)

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## 276 Act not excluded by special enactments.

For the avoidance of doubt it is hereby declared that the provisions of this Act, and any restrictions or powers thereby imposed or conferred in relation to land, apply and may be exercised in relation to any land notwithstanding that provision is made by any enactment in force at the passing of the 1947 Act, or by any local Act passed at any time during the Session of Parliament held during the regnal years 10 & 11 Geo. 6, for authorising or regulating any development of the land.

### Modifications etc. (not altering text)

**C121** S. 276 extended (27.5.1997) by 1997 c. 9, ss. 79(1), 83(2) (with s. 45(4))

S. 276 applied (27.5.1997) by 1997 c. 10, ss. 36, 40(2) (with ss. 9(3), 10(5), 38(6))

**C122** S. 276 applied (4.10.2005) by Inverness Harbour Revision (Works) Order 2005 (S.S.I. 2005/489), arts. 1(1), 15(1) (with reg. 16)

## 277 Interpretation.

- (1) In this Act, except in so far as the context otherwise requires and subject to the following provisions of this section and to any transitional provision made by the <sup>M112</sup>Planning (Consequential Provisions) (Scotland) Act 1997—

“acquiring authority”, in relation to the acquisition of an interest in land (whether compulsorily or by agreement) or to a proposal so to acquire such an interest, means the government department, local authority or other body by whom the interest is, or is proposed to be, acquired;

“the 1947 Act” means the <sup>M113</sup>Town and Country Planning (Scotland) Act 1947;

“the 1972 Act” means the <sup>M114</sup>Town and Country Planning (Scotland) Act 1972;

[<sup>F335</sup>“address”, in relation to electronic communications, means any number or address used for the purposes of such communications;]

“advertisement” means any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the foregoing provisions of this definition), includes any hoarding or similar structure used or designed, or adapted for use and anything else used, or designed or adapted principally for use, for the display of advertisements, and references to the display of advertisements shall be construed accordingly;

“aftercare condition” has the meaning given by paragraph 2(2) of Schedule 3;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly;

<sup>F336</sup> . . . ;

“breach of condition notice” has the meaning given by section 145;

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- “breach of planning control” has the meaning given by section 123;
- “bridleway” has the same meaning as in section 47 of the <sup>M115</sup>Countryside (Scotland) Act 1967;
- “building” includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;
- “building or works” includes waste materials, refuse and other matters deposited on land, and references to the erection or construction of buildings or works shall be construed accordingly and references to the removal of buildings or works include demolition of buildings and filling in of trenches;
- “building operations” has the meaning given by section 26;
- “caravan site” has the meaning given by section 1(4) of the <sup>M116</sup>Caravan Sites and Control of Development Act 1960;
- “common” includes any town or village green;
- “compliance period”, in relation to an enforcement notice, shall be construed in accordance with section 135(11);
- “compulsory acquisition” does not include the vesting in a person by an Act of Parliament<sup>[F337</sup> or of the Scottish Parliament] of property previously vested in some other person;
- “conservation area” means an area designated under section 61 of the <sup>M117</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997;
- “depositing of mineral waste” means any process whereby a mineral-working deposit is created or enlarged and “depositing of refuse or waste materials” includes the depositing of mineral waste;
- “development” has the meaning given by section 26, and “develop” shall be construed accordingly;
- <sup>[F338</sup>“development consent” means development consent under the Planning Act 2008;]
- “development order” has the meaning given by section 30;
- “development plan” shall be construed in accordance with section 24;
- “disposal” <sup>F339</sup>... means disposal by way of sale, excambion or lease, or by way of the creation of any servitude, right or privilege, or in any other manner, except by way of appropriation, gift or the creation of a heritable security, and “dispose of” shall be construed accordingly;
- <sup>[F335</sup> “electronic communication” has the same meaning as in the Electronic Communications Act 2000 (c. 7) ; ]
- <sup>[F340</sup> “enactment” includes an Act of the Scottish Parliament, an enactment in any local or private Act of Parliament or in any private Act of the Scottish Parliament, and an order, rule, regulation, byelaw or scheme made under an Act of Parliament or of the Scottish Parliament, including an order or scheme confirmed by Parliament or by the Scottish Parliament; ]
- “enforcement notice” means a notice under section 127;
- “engineering operations” includes the formation or laying out of means of access to roads;
- “enterprise zone scheme” means a scheme or modified scheme having effect to grant planning permission in accordance with section 55;
- “erection”, in relation to buildings as defined in this subsection, includes, extension, alteration and re-erection;
- “footpath” has the same meaning as in section 47 of the <sup>M118</sup>Countryside (Scotland) Act 1967;

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- “functions” includes powers and duties;
- “government department” includes any Minister of the Crown;
- “heritable security” means—
- (a) a heritable security within the meaning of the <sup>M119</sup>Conveyancing (Scotland) Act 1924, but excluding <sup>F339</sup>... a real burden ad factum praestandum and including a security constituted by way of ex facie absolute disposition, or
  - (b) an assignation in security of a lease recorded under the <sup>M120</sup>Registration of Leases (Scotland) Act 1857,
- and “heritable creditor” shall be construed accordingly;
- “improvement”, in relation to a road, has the same meaning as in the <sup>M121</sup>Roads (Scotland) Act 1984;
- “land” includes land covered with water and any building as defined by this section and, in relation to the acquisition of land under Part VIII, includes any interest in land and any servitude or right in or over land;
- “Lands Tribunal” means the Lands Tribunal for Scotland;
- “lease” includes a sub-lease, but does not include an option to take a lease;
- “local authority” means a council constituted under section 2 of the <sup>M122</sup>Local Government etc. (Scotland) Act 1994;
- [<sup>F341</sup> “ local development plan ” shall be construed in accordance with section 15; ]
- [<sup>F341</sup> “ local developments ” has the meaning given by section 26A; ]
- “local roads authority” has the same meaning as in the Roads (Scotland) Act 1984;
- [<sup>F341</sup> “ major developments ” has the meaning given by section 26A; ]
- “mineral-working deposit” means any deposit of material remaining after minerals have been extracted from land or otherwise deriving from the carrying out of operations for the winning and working of minerals in, on or under land;
- “minerals” includes all substances of a kind ordinarily worked for removal by underground or surface working;
- “mining operations” has the meaning given by section 26;
- “Minister” means any Minister of the Crown or other government department;
- [<sup>F341</sup> “ national developments ” has the meaning given by section 3A(4)(b); ]
- [<sup>F341</sup> “ National Planning Framework ” has the meaning given by section 3A(1); ]
- “open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground;
- “operational land” has the meaning given by section 215;
- “owner”, in relation to any land, includes (except in [<sup>F342</sup>sections 35, 75, 75C, 75D and 75G]) any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking, and includes also a lessee under a lease of agreement, the unexpired period of which exceeds 3 years;
- “the planning Acts” means this Act, the <sup>M123</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the <sup>M124</sup>Planning (Hazardous

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Substances) (Scotland) Act 1997 and the <sup>M125</sup>Planning (Consequential Provisions) (Scotland) Act 1997;

“planning authority” has the meaning given by section 1;

“planning contravention notice” has the meaning given by section 125;

“planning decision” means a decision made on an application under Part III<sup>F343</sup> or section 242A];

“planning permission” means permission under Part III<sup>F344</sup> or permission granted on an application made under section 242A];

“planning permission granted for a limited period” has the meaning given by section 41(3);

“prescribed” (except in relation to matters expressly required or authorised by this Act to be prescribed in some other way) means prescribed by regulations under this Act;

“public gas transporter” has the same meaning as in Part I of the <sup>M126</sup>Gas Act 1986;

“purchase notice” has the meaning given by section 88;

“restoration condition” has the meaning given by paragraph 2(2) of Schedule 3;

“road” has the same meaning as in the <sup>M127</sup>Roads (Scotland) Act 1984;

“simplified planning zone” and “simplified planning zone scheme” shall be construed in accordance with section 49;

“statutory undertakers” and “statutory undertaking” have the meanings given by section 214;

“steps for the protection of the environment” has the meaning given by paragraph 5(3) of Schedule 8;

“stop notice” has the meaning given by section 140;

[<sup>F341</sup> “ strategic development plan ” shall be construed in accordance with section 7; ]

[<sup>F341</sup> “ strategic development plan area ” shall be construed in accordance with section 5; ]

[<sup>F341</sup> “ strategic development planning authority ” has the meaning given by section 4(5); ]

“suspension order” and “supplementary suspension order” have the meanings given by paragraphs 5 and 6 respectively of Schedule 8;

[<sup>F341</sup> “ temporary stop notice ” shall be construed in accordance with section 144A; ]

“tree preservation order” has the meaning given by section 160;

[<sup>F345</sup> “universal postal service provider” means a universal service provider within the meaning of the Postal Services Act 2000; and references to the provision of a universal postal service shall be construed in accordance with that Act;]

“urban development area” and “urban development corporation” have the same meaning as in section 171 of the <sup>M128</sup>Local Government, Planning and Land Act 1980;

“use”, in relation to land, does not include the use of land for the carrying out of any building or other operations on it;

“Valuation Office” means the Valuation Office of the Inland Revenue Department; and

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“the winning and working of minerals” includes the extraction of minerals from a mineral working deposit.

<sup>F346</sup>(2) .....

<sup>F347</sup>[( 3 ) If, in relation to anything required or authorised to be done under this Act, any question arises whether land of statutory undertakers is operational land, that question shall be determined by the Scottish Ministers.]

(4) Words in this Act importing a reference to service of a notice to treat shall be construed as including a reference to the constructive service of such a notice which, by virtue of any enactment, is to be deemed to be served.

<sup>F348</sup>(4A) Where an electronic communication is used for the purpose of serving on, or giving to, a person any notice or other document for the purposes of this Act, and the communication is received by that person—

- (a) at any time before the end of a day which is a working day, it shall be deemed to have been received on that day; or
- (b) at any time during a day which is not a working day, it shall be deemed to be received on the next working day,

and in this subsection “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971, a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.]

(5) With respect to references in this Act to planning decisions—

- (a) in relation to a decision altered on appeal<sup>F349</sup> or review] by the reversal or variation of the whole or part of it, such references shall be construed as references to the decision as so altered;
- (b) in relation to a decision upheld on appeal, such references shall be construed as references to the decision of the planning authority and not to the decision of the Secretary of State on the appeal;

<sup>F350</sup>(ba) in relation to a decision upheld on review under section 43A(8)(a) or (b), such references shall be construed as references to the decision of the person appointed under the scheme of delegation to determine the application and not to the decision of the planning authority on review; ]

(c) in relation to a decision given on an appeal in the circumstances mentioned in section 47(2), such references shall be construed as references to the decision so given;

<sup>F351</sup>(ca) in relation to a decision given on a review under section 43A(8)(c), such references shall be construed as references to the decision so given; ]

(d) the time of a planning decision, in a case where there is or was an appeal, shall be taken to be or have been the time of the decision as made by the planning authority (whether or not that decision is or was altered on that appeal) or, in the case of a decision given on an appeal in the circumstances mentioned in section 47(2), the time when in accordance with that section notification of a decision of the planning authority is deemed to have been received.

<sup>F352</sup>(da) the time of a planning decision—

- (i) in the case where there is or was a review under section 43A(8)(a) or (b), shall be taken to be or have been the time of the decision as made by the person appointed under the scheme of delegation to determine

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- the application (whether or not that decision is or was altered on review); or
- (ii) in the case of a decision given on a review under section 43A(8)(c), shall be taken to be or have been the time when the application is deemed to have been refused under section 43A(9). ]
- (6) Section 27 shall apply for determining for the purposes of this Act when development of land shall be taken to be initiated.
- (7) In this Act any reference to a sale or purchase includes a reference to a sale or purchase by way of feu, and any reference to the price in relation to a sale or purchase includes a reference to grassum, feuduty and ground annual.
- <sup>F353</sup>(8) .....
- <sup>F354</sup>(9) .....
- (10) Without prejudice to section 20(2) of the <sup>M129</sup>Interpretation Act 1978, references in this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment.
- [<sup>F355</sup>(11) Any reference in this Act to registering an instrument (or any other document, however described) in the Land Register of Scotland is to be construed as a reference to registering the information contained in the instrument (or other document) in that Register.]

#### Textual Amendments

- F335** Definitions of “address” and “electronic communication” in s. 277(1) inserted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), **6(2)**
- F336** S. 277(1): definition of “the appropriate Minister” repealed (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, **Sch. 2 Pt. I para. 127(22)(a)**, Pt. IV; [S.I. 1998/3178](#), **art. 3**
- F337** Words in s. 277(1) inserted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(17)(a)(ii)**, 59(2); [S.S.I. 2007/130](#), art. 2(2), sch.
- F338** Words in s. 277(1) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 58** (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)
- F339** Words in s. 277(1) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), **Sch. 12 para. 60(5)(a)**, **Sch. 13 Pt. 1** (with ss. 58, 62, 75); [S.S.I. 2003/456](#), art. 2
- F340** Words in s. 277(1) substituted (1.4.2007) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(17)(a)(iii)**, 59(2); [S.S.I. 2007/130](#), art. 2(2), sch.
- F341** Words in s. 277(1) inserted (1.4.2007 for specified purposes, 25.6.2008 for specified purposes, 12.12.2008 for specified purposes, 28.2.2009 for specified purposes, 6.4.2009 for specified purposes, 3.8.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(17)(a)(i)**, 59(2); [S.S.I. 2007/130](#), art. 2(2)(3), sch., [S.S.I. 2008/164](#), art. 2(2), sch. (as amended (1.6.2008) by [S.S.I. 2008/191](#), art. 3), [S.S.I. 2008/411](#), art. 2(2)(3)(c), [S.S.I. 2009/70](#), art. 2, sch., [S.S.I. 2009/100](#), art. 2, sch., [S.S.I. 2009/219](#), art. 2, sch.
- F342** Words in s. 277(1) substituted (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 54(17)(a)(iv)**, 59(2); [S.S.I. 2008/411](#), art. 2(2)(3)(c), [S.S.I. 2010/400](#), art. 3, sch.
- F343** Words in s. 277(1) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), **4(12)(a)**



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- F344** Words in s. 277(1) inserted (11.5.2006) by Planning and Compulsory Purchase Act 2004 (Commencement No.2 and Consequential Provisions) (Scotland) Order 2006 (S.S.I. 2006/243), arts. 1(1), **4(12)(b)**
- F345** Definition of “universal service provider” in s. 277 inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 115** (subject to art. 1(3))
- F346** S. 277(2) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(22)(b)**, Pt. IV; S.I. 1998/3178, **art. 3**
- F347** S. 277(3) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(22)(c)**; S.I. 1998/3178, **art. 3**
- F348** S. 277(4A) inserted (28.7.2004) by Town and Country Planning (Electronic Communications) (Scotland) Order 2004 (S.S.I. 2004/332), arts. 1(1), **6(3)**
- F349** Words in s. 277(5)(a) inserted (3.8.2009) by Planning etc. (Scotland) Act 2006 (Consequential Amendments) Order 2009 (S.S.I. 2009/256), arts. 1(3), **2(6)(a)**
- F350** S. 277(5)(ba) inserted (3.8.2009) by Planning etc. (Scotland) Act 2006 (Consequential Amendments) Order 2009 (S.S.I. 2009/256), arts. 1(3), **2(6)(b)**
- F351** S. 277(5)(ca) inserted (3.8.2009) by Planning etc. (Scotland) Act 2006 (Consequential Amendments) Order 2009 (S.S.I. 2009/256), arts. 1(3), **2(6)(c)**
- F352** S. 277(5)(da) inserted (3.8.2009) by Planning etc. (Scotland) Act 2006 (Consequential Amendments) Order 2009 (S.S.I. 2009/256), arts. 1(3), **2(6)(d)**
- F353** S. 277(8) repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), Sch. 12 para. 60(5)(b), **Sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F354** S. 277(9) repealed (3.8.2009) by Planning etc. (Scotland) Act 2006 (asp 17), s. 59(2), **sch.**; S.S.I. 2009/219, art. 2, sch.
- F355** S. 277(11) added (12.12.2008 for specified purposes, 1.2.2011 in so far as not already in force) by Planning etc. (Scotland) Act 2006 (asp 17), **ss. 54(17)(b)**, 59(2); S.S.I. 2008/411, art. 2(2)(3)(c), S.S.I. 2010/400, art. 3, sch.

#### Marginal Citations

- M112** 1997 c. 11.  
**M113** 1947 c. 53.  
**M114** 1972 c. 52.  
**M115** 1967 c. 86.  
**M116** 1960 c. 62.  
**M117** 1997 c. 9.  
**M118** 1967 c. 86.  
**M119** 1924 c. 27.  
**M120** 1857 c. 26.  
**M121** 1984 c. 54.  
**M122** 1994 c. 39.  
**M123** 1997 c. 9.  
**M124** 1997 c. 10.  
**M125** 1997 c. 11.  
**M126** 1986 c. 44.  
**M127** 1984 c. 54.  
**M128** 1980 c. 65.  
**M129** 1978 c. 30.

#### 278 Citation, commencement and extent.

- (1) This Act may be cited as the Town and Country Planning (Scotland) Act 1997.



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- (2) Except as provided in Schedule 3 to the <sup>M130</sup>Planning (Consequential Provisions) (Scotland) Act 1997, this Act shall come into force at the end of the period of 3 months beginning with the day on which it is passed.
- (3) Subject to subsection (4), this Act extends to Scotland only.
- (4) Section 70 and Schedule 7 extend also to England and Wales.

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**Marginal Citations**

M130 1997 c. 11.

**Status:**

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