



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART V

RIGHTS OF OWNERS ETC. TO REQUIRE PURCHASE OF INTERESTS

CHAPTER II

INTERESTS AFFECTED BY PLANNING PROPOSALS: BLIGHT

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.

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- (3) The 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 New Towns (Scotland) Act 1968 or, as the case may be, by an urban development corporation under Part XVI of the 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 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—
- (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”.

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 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 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.

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 Land Compensation (Scotland) Act 1963.

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—

“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.

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

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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 Housing (Scotland) Act 1987.
- (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.
- (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 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.
- (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—
 - (a) where the appropriate authority are a government department, to the Minister in charge of that department,
 - (b) where the appropriate authority are statutory undertakers, to the appropriate Minister, and
 - (c) in any other case, to the Secretary of State,

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and the decision of the Minister or, as the case may be, the Secretary of State shall be final.

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 Crofters (Scotland) Act 1993;
 - “crofter” has the meaning given in section 3(3) 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 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;
 - “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.
- (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

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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.