



# 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

#### *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.
- (6) In this Chapter “blight notice” means a notice served under section 101.

### *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 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,
 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
  - (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—

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- (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”.

## **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 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—

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- (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.
- (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.

### **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.
- (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)—

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- (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—
- (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 Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947”.

## **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—

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- (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;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 Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, as applied by section 42 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, containing a direction for minimum compensation under section 45 of that Act of 1997,

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 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 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.

#### *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.



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- (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
  - (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.

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- (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.

## **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)—

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- (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).
- (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—

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- (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
  - (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—

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- (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
  - (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.

- (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 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).

*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 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

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- (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

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- (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



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- (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 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,
- 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

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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 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.