



# Town and Country Planning Act 1990

## 1990 CHAPTER 8

### PART IX

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

##### *Extinguishment of certain rights affecting acquired or appropriated land*

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

- (1) Subject to the provisions of this section, upon the completion of a compulsory acquisition of land under section 226, 228 or 230—
  - (a) all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land shall be extinguished, and
  - (b) any such apparatus shall vest in the acquiring authority.
- (2) Subsection (1) shall not apply—
  - (a) to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of the carrying on of their undertaking, or
  - (b) to any right conferred by or in accordance with the [<sup>F1</sup>electronic communications code] on the operator of [<sup>F2</sup>an electronic communications code network] , or
  - (c) to any [<sup>F3</sup>electronic communications apparatus] kept installed for the purposes of any such [<sup>F4</sup>network] .
- (3) In respect of any right or apparatus not falling within subsection (2), subsection (1) shall have effect subject—
  - (a) to any direction given by the acquiring authority before the completion of the acquisition that subsection (1) shall not apply to any right or apparatus specified in the direction; and
  - (b) to any agreement which may be made (whether before or after the completion of the acquisition) between the acquiring authority and the person in or to whom the right or apparatus in question is vested or belongs.

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- (4) Any person who suffers loss by the extinguishment of a right or the vesting of any apparatus under this section shall be entitled to compensation from the acquiring authority.
- (5) Any compensation payable under this section shall be determined in accordance with the <sup>M1</sup>Land Compensation Act 1961.

#### Textual Amendments

- F1** Words in s. 236(2) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(a)(2)(a)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- F2** Words in s. 236(2) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(a)(2)(b)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- F3** Words in s. 236(2) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(a)(2)(c)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- F4** Word in s. 236(2) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(a)(2)(e)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)

#### Marginal Citations

- M1** 1961 c.33.

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

- (1) Subject to subsection (3), the erection, construction or carrying out or maintenance of any building or work on land which has been acquired or appropriated by a local authority for planning purposes (whether done by the local authority or by a person deriving title under them) is authorised by virtue of this section if it is done in accordance with planning permission, notwithstanding that it involves—
  - (a) interference with an interest or right to which this section applies, or
  - (b) a breach of a restriction as to the user of land arising by virtue of a contract.
- (2) Subject to subsection (3), the interests and rights to which this section applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.
- (3) Nothing in this section shall authorise interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is—
  - (a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
  - (b) a right conferred by or in accordance with the [<sup>F5</sup>electronic communications code] on the operator of [<sup>F6</sup>an electronic communications code network] .

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- (4) In respect of any interference or breach in pursuance of subsection (1), compensation—
- (a) shall be payable under section 63 or 68 of the <sup>M2</sup>Lands Clauses Consolidation Act 1845 or under section 7 or 10 of the <sup>M3</sup>Compulsory Purchase Act 1965, and
  - (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
    - (i) the compensation is to be estimated in connection with a purchase under those Acts, or
    - (ii) the injury arises from the execution of works on land acquired under those Acts.
- (5) Where a person deriving title under the local authority by whom the land in question was acquired or appropriated—
- (a) is liable to pay compensation by virtue of subsection (4), and
  - (b) fails to discharge that liability,
- the liability shall be enforceable against the local authority.
- (6) Nothing in subsection (5) shall be construed as affecting any agreement between the local authority and any other person for indemnifying the local authority against any liability under that subsection.
- (7) Nothing in this section shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in subsection (1).

#### Textual Amendments

- F5** Words in s. 237(3)(b) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(b)(2)(a)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)
- F6** Words in s. 237(3)(b) substituted (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 103(1)(b)(2)(b)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)

#### Marginal Citations

- M2** 1845 c.18.  
**M3** 1965 c.56.

### 238 Use and development of consecrated land.

- (1) Notwithstanding any obligation or restriction imposed under ecclesiastical law or otherwise in respect of consecrated land, any such land, which has been the subject of a relevant acquisition or appropriation, may subject to the following provisions of this section—
- (a) if it has been acquired by a Minister, be used in any manner by him or on his behalf for any purpose for which he acquired the land; and

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- (b) in any other case, be used by any person in any manner in accordance with planning permission.
- (2) Subsection (1) applies whether or not the land includes a building but it does not apply to land which consists of or forms part of a burial ground.
- (3) Any use of consecrated land authorised by subsection (1) shall be subject—
- (a) to compliance with the prescribed requirements with respect—
    - (i) to the removal and reinterment of any human remains, and
    - (ii) to the disposal of monuments and fixtures and furnishings; and
  - (b) to such provisions as may be prescribed for prohibiting or restricting the use of the land, either absolutely or until the prescribed consent has been obtained, so long as any church or other building used or formerly used for religious worship, or any part of it, remains on the land.
- (4) Any use of land other than consecrated land which—
- (a) has been the subject of a relevant acquisition or appropriation, and
  - (b) at the time of acquisition or appropriation included a church or other building used or formerly used for religious worship or the site of such a church or building,
- shall be subject to compliance with such requirements as are mentioned in subsection (3)(a).
- (5) Any regulations made for the purposes of subsection (3) or (4)—
- (a) shall contain such provisions as appear to the Secretary of State to be requisite for securing that any use of land which is subject to compliance with the regulations shall, as nearly as may be, be subject to the same control as is imposed by law in the case of a similar use authorised by an enactment not contained in this Act or by a Measure, or as it would be proper to impose on a disposal of the land in question otherwise than in pursuance of an enactment or Measure;
  - (b) shall contain such requirements relating to the disposal of any such land as is mentioned in subsection (3) or (4) as appear to the Secretary of State requisite for securing that the provisions of those subsections are complied with in relation to the use of the land; and
  - (c) may contain such incidental and consequential provisions (including provision as to the closing of registers) as appear to the Secretary of State to be expedient for the purposes of the regulations.
- (6) Nothing in this section shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in subsection (1).

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

- C1** Ss. 238, 239 modified by [National Health Service Act 1977 \(c. 49, SIF 113:2\)](#), [s. 87\(6\)](#) as substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), [s. 4](#), [Sch. 2 para. 40](#)
- C2** Ss. 238, 239 excluded (with modifications) by [S.I. 2000/90](#), [art. 4](#) (with [art. 2\(5\)](#))
- C3** Ss. 238-240 applied (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by [Communications Act 2003 \(c. 21\)](#), [ss. 118, 411](#), [Sch. 4 para. 3\(5\)\(6\)\(a\)](#) (with transitional provisions)

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

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

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

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

- C4** Ss. 238, 239 modified by National Health Service Act 1977 (c. 49, SIF 113:2), **s. 87(6)** as substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 40**
- C5** Ss. 238, 239 extended (with modifications) (8.2.2000) by S.I. 2000/90, **art. 4** (with art. 2(5))
- C6** Ss. 238-240 applied (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 118, 411, **Sch. 4 para. 3(5)(6)(a)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)  
Ss. 238-240 applied (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 86**; S.I. 2004/759, **art. 2**  
S. 239 applied (1.3.2007) by National Health Service Act 2006 (c. 41), **ss. 211(7)**, 277  
S. 239 applied (1.3.2007) by National Health Service (Wales) Act 2006 (c. 42), **ss. 159(7)**, 208 (with s. 19(3))

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

- (1) Provision shall be made by any regulations made for the purposes of sections 238(3) and (4) and 239(2)—
  - (a) for requiring the persons in whom the land is vested to publish notice of their intention to carry out the removal and reinterment of any human remains or the disposal of any monuments;

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- (b) for enabling the personal representatives or relatives of any deceased person themselves to undertake—
    - (i) the removal and reinterment of the remains of the deceased, and
    - (ii) the disposal of any monument commemorating the deceased,
 and for requiring the persons in whom the land is vested to defray the expenses of such removal, reinterment and disposal (not exceeding such amount as may be prescribed);
  - (c) for requiring compliance—
    - (i) with such reasonable conditions (if any) as may be imposed in the case of consecrated land, by the bishop of the diocese, with respect to the manner of removal and the place and manner of reinterment of any human remains and the disposal of any monuments, and
    - (ii) with any directions given in any case by the Secretary of State with respect to the removal and reinterment of any human remains.
- (2) Subject to the provisions of any such regulations, no faculty is required—
- (a) for the removal and reinterment in accordance with the regulations of any human remains, or
  - (b) for the removal or disposal of any monuments,
- and section 25 of the <sup>M4</sup>Burial Act 1857 (prohibition of removal of human remains without the licence of the Secretary of State except in certain cases) does not apply to a removal carried out in accordance with the regulations.
- (3) In sections 238 and 239 and this section—
- “burial ground” includes any churchyard, cemetery or other ground, whether consecrated or not, which has at any time been set apart for the purposes of interment,
  - “monument” includes a tombstone or other memorial, and
  - “relevant acquisition or appropriation” means an acquisition made by a Minister, a local authority or statutory undertakers under this Part or Chapter V of Part I of the <sup>M5</sup>Planning (Listed Buildings and Conservation Areas) Act 1990 or compulsorily under any other enactment, or an appropriation by a local authority for planning purposes.

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

- C7** Ss. 238-240 applied (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by [Communications Act 2003 \(c. 21\)](#), ss. 118, 411, [Sch. 4 para. 3\(5\)\(6\)\(a\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), [2\(1\)](#), [Sch. 1](#) (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), [3\(2\)](#) (with art. 11)
- Ss. 238-240 applied (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 34, 199, [Sch. 4 para. 86](#); S.I. 2004/759, [art. 2](#)

#### **Marginal Citations**

- M4** 1857 c. 81.  
**M5** 1990 c. 9.

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## 241 Use and development of open spaces.

- (1) Notwithstanding anything in any enactment relating to land which is or forms part of a common, open space or fuel or field garden allotment or in any enactment by which the land is specially regulated, such land which has been acquired by a Minister, a local authority or statutory undertakers under this Part or under Chapter V of Part I of the Planning (Listed Buildings and Conservation Areas) Act 1990 or compulsorily under any other enactment, or which has been appropriated by a local authority for planning purposes—
- (a) if it has been acquired by a Minister, may be used in any manner by him or on his behalf for any purpose for which he acquired the land; and
  - (b) in any other case, may be used by any person in any manner in accordance with planning permission.
- (2) Nothing in this section shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such enactment as is mentioned in subsection (1).

### Modifications etc. (not altering text)

- C8** S. 241 applied (25.7.2003 and 29.12.2003 in accordance with the commencing S.I.s) by Communications Act 2003 (c. 21), ss. 118, 411, **Sch. 4 para. 3(5)(6)(b)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, Sch. 1 (with transitional provisions in arts. 3-6); S.I. 2003/3142, arts. 1(2), **3(2)** (with art. 11)

## 242 Overriding of rights of possession.

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

- (a) has been acquired or appropriated by a local authority for planning purposes, and
- (b) is for the time being held by the authority for the purposes for which it was acquired or appropriated,

is immediately required for those purposes, nothing in the <sup>M6</sup>Rent Act 1977 or Part I of the <sup>M7</sup>Housing Act 1988 shall prevent the acquiring or appropriating authority from obtaining possession of the house.

### Marginal Citations

- M6** 1977 c.42.  
**M7** 1988 c. 50.

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**Changes to legislation:**

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