



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART XII

#### CROWN LAND

##### *Preliminary*

#### **242 Preliminary definitions.**

(1) In this Part—

“Crown land” means land in which there is a Crown interest;

“Crown interest” means an interest belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department; and

“private interest” means interest which is not a Crown interest.

(2) For the purposes of this Part “the appropriate authority”, in relation to any land—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;

(b) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land; and

(c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department.

(3) If any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

(4) A person who is entitled to occupy Crown land by virtue of a contract in writing shall be treated for the purposes of section 245(1)(c), so far as applicable to Parts III, VI and VII, and sections 243(2) to (7), 244, 248 and 249 as having an interest in land

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and references in section 248 to the disposal of an interest in Crown land, and in that section and sections 243(2) and 249 to a private interest in such land, shall be construed accordingly.

*Application of Act as respects Crown land*

**243 Control of development on Crown land: special enforcement notices.**

- (1) No enforcement notice shall be served under section 127 in respect of development carried out by or on behalf of the Crown after 1st July 1948 on land which was Crown land at the time when the development was carried out.
- (2) The following provisions of this section apply to development of Crown land carried out otherwise than by or on behalf of the Crown at a time when no person is entitled to occupy it by virtue of a private interest.
- (3) Where—
  - (a) it appears to a planning authority that development to which this section applies has taken place in their district, and
  - (b) they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations,
 they may issue a notice under this section (a “special enforcement notice”).
- (4) No special enforcement notice shall be issued except with the consent of the appropriate authority.
- (5) A special enforcement notice shall specify—
  - (a) the matters alleged to constitute development to which this section applies, and
  - (b) the steps which the authority issuing the notice require to be taken for restoring the land to its condition before the development took place or for discontinuing any use of the land which has been instituted by the development.
- (6) A special enforcement notice shall also specify—
  - (a) the date on which it is to take effect (“the specified date”), and
  - (b) the period within which any such steps as are mentioned in subsection (5)(b) are to be taken.
- (7) A special enforcement notice may specify different periods for the taking of different steps.

**244 Supplementary provisions as to special enforcement notices.**

- (1) Not later than 28 days after the date of the issue of a special enforcement notice and not later than 28 days before the specified date, the planning authority who issued it shall serve a copy of it—
  - (a) on the person who carried out the development alleged in the notice,
  - (b) on any person who is occupying the land when the notice is issued, and
  - (c) on the appropriate authority.
- (2) The planning authority need not serve a copy of the notice on the person mentioned in subsection (1)(a) if they are unable after reasonable enquiry to identify or trace him.

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- (3) Any such person as mentioned in subsection (1)(a) or (b) may, at any time before the date specified in the notice as the date on which it is to take effect, appeal against the notice to the Secretary of State on the ground that the matters alleged in the notice—
  - (a) have not taken place, or
  - (b) do not constitute development to which section 243 applies.
- (4) A person may appeal against a special enforcement notice under subsection (3) whether or not he was served with a copy of it.
- (5) The provisions contained in or having effect under sections 130(2) and (3), 131(1) to (3), 132 and 133(1) shall apply to special enforcement notices issued by planning authorities and to appeals against them under subsection (3) as they apply to enforcement notices and to appeals under section 130.
- (6) The Secretary of State may by regulations apply to special enforcement notices and to appeals under subsection (3) such other provisions of this Act (with such modifications as he thinks fit) as he thinks necessary or expedient.

#### **245 Exercise of powers in relation to Crown land.**

- (1) Notwithstanding any interest of the Crown in Crown land, but subject to the following provisions of this section—
  - (a) a plan approved, adopted or made under Part II may include proposals relating to the use of Crown land;
  - (b) any power to acquire land compulsorily under Part VIII may be exercised in relation to any interest in Crown land which is for the time being held otherwise than by or on behalf of the Crown;
  - (c) any restrictions or powers imposed or conferred by Part III, VI or VII, by the provisions of Chapter I of Part V relating to purchase notices, or by any of the provisions of sections 218 to 222, shall apply and be exercisable in relation to Crown land, to the extent of any interest in it for the time being held otherwise than by or on behalf of the Crown.
- (2) Except with the consent of the appropriate authority—
  - (a) no order or notice shall be made, issued or served under any of the provisions of section 71, 72, 125, 127, 129, 140, 145, 160 or 179 or paragraphs 1, 3, 5 and 6 of Schedule 8 or under any of those provisions as applied by any order or regulations made under Part VII, in relation to land which for the time being is Crown land;
  - (b) no interest in land which for the time being is Crown land shall be acquired compulsorily under Part VIII.
- (3) No purchase notice shall be served in relation to any interest in Crown land unless—
  - (a) an offer has been previously made by the owner of that interest to dispose of it to the appropriate authority on equivalent terms, and
  - (b) that offer has been refused by the appropriate authority.
- (4) In subsection (3) “equivalent terms” means that the price payable for the interest shall be equal to (and shall, in default of agreement, be determined in the same manner as) the compensation which would be payable in respect of it if it were acquired in pursuance of a purchase notice.

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- (5) The rights conferred by the provisions of Chapter II of Part V shall be exercisable by a person who (within the meaning of those provisions) is an owner-occupier of a hereditament or agricultural unit which is Crown land, or is a resident owner-occupier of a hereditament which is Crown land, in the same way as they are exercisable in respect of a hereditament or agricultural unit which is not Crown land, and those provisions shall apply accordingly.

#### **246 Agreements relating to Crown land.**

- (1) The appropriate authority and the planning authority for the district in which any Crown land is situated may make agreements—
- (a) for securing the use of the land, so far as may be prescribed by any such agreement, in conformity with the provisions of the development plan applicable to it, and
  - (b) for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement.
- (2) Any such agreement may contain such consequential provisions, including provisions of a financial character, as may appear to be necessary or expedient having regard to the purposes of the agreement.
- (3) Subject to subsection (4), an agreement made under subsection (1)(b) may, if it has been recorded in the appropriate Register of Sasines or, as the case may be, registered in the Land Register of Scotland, be enforceable at the instance of the planning authority against persons deriving title to the land from the appropriate authority.
- (4) An agreement made under subsection (1)(b) shall not be enforceable against a third party who has in good faith and for value acquired right (whether completed by infestment or not) to the land prior to the agreement being so recorded or, as the case may be, registered or against any person deriving title from such a third party.
- (5) An agreement made under this section by a government department shall not have effect unless it is approved by the Treasury.
- (6) In considering whether to make or approve an agreement under this section relating—
- (a) to land belonging to a government department, or
  - (b) to land held in trust for Her Majesty for the purposes of a government department,
- the department and the Treasury shall have regard to the purposes for which the land is held by or for the department.

#### **247 Supplementary provisions as to Crown interest.**

Where there is a Crown interest in any land, sections 78 to 82 of this Act, and Schedule 3 to the <sup>M1</sup>Planning (Consequential Provisions) (Scotland) Act 1997 in so far as it relates to those sections or sections 155 to 157 of the 1972 Act, shall have effect in relation to any private interest as if the Crown interest were a private interest.

#### **Marginal Citations**

**M1** 1997 c. 11.

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*Provisions relating to anticipated disposal of Crown land*

**248 Application for planning permission etc. in anticipation of disposal of Crown land.**

- (1) This section has effect for the purpose of enabling Crown land, or an interest in Crown land, to be disposed of with the benefit of planning permission or a certificate under section 151.
- (2) Notwithstanding the interest of the Crown in the land in question, an application for any such permission or certificate may be made by—
  - (a) the appropriate authority, or
  - (b) any person authorised by that authority in writing,and, subject to subsections (3) to (5), all the statutory provisions relating to the making and determination of any such application shall accordingly apply as if the land were not Crown land.
- (3) Any planning permission granted by virtue of this section shall apply only—
  - (a) to development carried out after the land in question has ceased to be Crown land, and
  - (b) so long as that land continues to be Crown land, to development carried out by virtue of a private interest in the land.
- (4) Any application made by virtue of this section for a certificate under section 151 shall be determined as if the land were not Crown land.
- (5) The Secretary of State may by regulations—
  - (a) modify or exclude any of the statutory provisions referred to in subsection (2) in their application by virtue of that subsection and any other statutory provisions in their application to permissions or certificates granted or made by virtue of this section,
  - (b) make provision for requiring a planning authority to be notified of any disposal of, or of an interest in, any Crown land in respect of which an application has been made by virtue of this section, and
  - (c) make such other provision in relation to the making and determination of applications by virtue of this section as he thinks necessary or expedient.
- (6) This section shall not be construed as affecting any right to apply for any such permission or certificate as is mentioned in subsection (1) in respect of Crown land in a case in which such an application can be made by virtue of a private interest in the land.
- (7) In this section “statutory provisions” means provisions contained in or having effect under any enactment and references to the disposal of an interest in Crown land include references to the grant of an interest in such land.

**249 Tree preservation orders in anticipation of disposal of Crown land.**

- (1) A planning authority may make a tree preservation order in respect of Crown land in which no interest is for the time being held otherwise than by or on behalf of the Crown, if they consider it expedient to do so for the purpose of preserving trees or woodlands on the land in the event of its ceasing to be Crown land or becoming subject to a private interest.

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- (2) No tree preservation order shall be made by virtue of this section except with the consent of the appropriate authority.
- (3) A tree preservation order made by virtue of this section shall not take effect until the first occurrence of a relevant event.
- (4) For the purposes of subsection (3), a relevant event occurs in relation to any land if it ceases to be Crown land or becomes subject to a private interest.
- (5) A tree preservation order made by virtue of this section—
  - (a) shall not require confirmation under section 161 until after the occurrence of the event by virtue of which it takes effect, and
  - (b) shall by virtue of this subsection continue in force until—
    - (i) the expiration of the period of 6 months beginning with the occurrence of that event, or
    - (ii) the date on which the order is confirmed,
 whichever occurs first.
- (6) Where a tree preservation order takes effect in accordance with subsection (3), the appropriate authority shall as soon as practicable give to the authority who made the order a notice in writing of the name and address of the person who has become entitled to the land in question or to a private interest in it.
- (7) The procedure prescribed under section 161 in connection with the confirmation of a tree preservation order shall apply in relation to an order made by virtue of this section as if the order were made on the date on which the notice under subsection (6) is received by the authority who made it.

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

C1 S. 249(3) extended (27.5.1997) by 1997 c. 11, ss. 5, 6(2), Sch. 3 para. 10(2)

**250 Requirement of planning permission for continuance of use instituted by the Crown.**

- (1) A planning authority in whose area any Crown land is situated may agree with the appropriate authority that subsection (2) shall apply to such use of land by the Crown as is specified in the agreement, being a use resulting from a material change made or proposed to be made by the Crown in the use of the land.
- (2) Where an agreement is made under subsection (1) in respect of any Crown land, then, if at any time the land ceases to be used by the Crown for the purpose specified in the agreement, this Act shall have effect in relation to any subsequent private use of the land as if—
  - (a) the specified use by the Crown had required planning permission, and
  - (b) that use had been authorised by planning permission granted subject to a condition requiring its discontinuance at that time.
- (3) The condition referred to in subsection (2) shall not be enforceable against any person who had a private interest in the land at the time when the agreement was made unless the planning authority by whom the agreement was made have notified him of the making of the agreement and of the effect of that subsection.

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- (4) An agreement made under subsection (1) shall be recorded in the appropriate Register of Sasines or, as the case may be, registered in the Land Register of Scotland, and the condition referred to in subsection (2) shall not be enforceable against any person acquiring title to the land after the agreement is made unless the agreement has been so recorded or registered before he acquired title.
- (5) References in this section to the use of land by the Crown include references to its use on behalf of the Crown, and “private use” means use otherwise than by or on behalf of the Crown.

*Enforcement in respect of war-time breaches of planning control by the Crown*

**251 Enforcement in respect of war-time breaches of planning control by the Crown.**

- (1) This section applies where during the war period—
  - (a) works not complying with planning control were carried out on land, or
  - (b) a use of land not complying with planning control was begun by or on behalf of the Crown.
- (2) Subject to subsection (4), if at any time after the end of the war period there subsists in the land a permanent or long-term interest which is neither held by or on behalf of the Crown nor subject to any interest or right to possession so held, the planning control shall, so long as such an interest subsists in the land, be enforceable in respect of those works or that use notwithstanding—
  - (a) that the works were carried out or the land used by or on behalf of the Crown, or
  - (b) the subsistence in the land of any interest of the landlord in a lease held by or on behalf of the Crown.
- (3) A person entitled to make an application under this subsection with respect to any land may apply at any time before the relevant date to an authority responsible for enforcing any planning control for a determination—
  - (a) whether works on the land carried out, or a use of the land begun, during the war period fail to comply with any planning control which the authority are responsible for enforcing, and
  - (b) if so, whether the works or use should be deemed to comply with that control.
- (4) Where any works on land carried out, or use of land begun, during the war period remain or continues after the relevant date and no such determination has been given, the works or use shall by virtue of this subsection be treated for all purposes as complying with that control unless steps for enforcing the control have been begun before that date.
- (5) Schedule 17 shall have effect for the purpose of making supplementary provision concerning the enforcement of breaches of planning control to which this section applies and the making and determination of applications under subsection (3).
- (6) In this section and that Schedule—

“authority responsible for enforcing planning control” means, in relation to any works on land or use of land, the authority empowered by virtue of section 72 of the 1947 Act or of paragraph 28 of Schedule 22 to the 1972 Act (including that paragraph as it continues in effect by virtue of paragraph

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3 of Schedule 3 to the <sup>M2</sup>Planning (Consequential Provisions) (Scotland) Act 1997) to serve an enforcement notice in respect of it or the authority who would be so empowered if the works had been carried out, or the use begun, otherwise than in compliance with planning control;

“the relevant date”, in relation to any land, means the date with which the period of 5 years from the end of the war period ends, but for the purposes of this definition any time during which, notwithstanding subsection (2), planning control is unenforceable by reason of the subsistence in or over the land of any interest or right to possession held by or on behalf of the Crown shall be disregarded;

“owner” includes in relation to any land any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and “owned” shall be construed accordingly;

“permanent or long-term interest”, in relation to any land, means the interest of the proprietor of the dominium utile or, in the case of land other than feudal land, of the owner, a tenancy of the land granted for a term of more than 10 years and not subject to a subsisting right of the landlord to determine the tenancy at or before the expiration of 10 years from the beginning of the term, or a tenancy granted for a term of 10 years or less with a right of renewal which would enable the tenant to prolong the term of the tenancy beyond 10 years;

“tenancy” includes a tenancy under a sub-lease and a tenancy under an agreement for a lease or sub-lease, but does not include an option to take a tenancy and does not include a mortgage;

“war period” means the period extending from 3rd September 1939 to 26th March 1946; and

“works” includes any building, structure, excavation or other work on land.

(7) References in this section and that Schedule to non-compliance with planning control mean—

- (a) in relation to works on land carried out, or a use of land begun, at a time when the land was subject to a resolution to prepare a scheme under the <sup>M3</sup>Town and Country Planning (Scotland) Act 1932, that the works were carried out or the use begun otherwise than in accordance with the terms of an interim development order or of permission granted under such an order, and
- (b) in relation to works on land carried out, or a use of land begun, at a time when the land was subject to such a scheme, that the works were carried out or the use begun otherwise than in conformity with the provisions of the scheme,

and references in this Act to compliance with planning control shall be construed accordingly.

(8) References in this section and that Schedule to the enforcement of planning control shall be construed as references to the exercise of the powers conferred by section 72 of the 1947 Act or by paragraph 28 of Schedule 22 to the 1972 Act (including that paragraph as it continues in effect by virtue of Schedule 3 to the <sup>M4</sup>Planning (Consequential Provisions) (Scotland) Act 1997).

#### Marginal Citations

**M2** 1997 c. 11.

**M3** 1932 c. 49.



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**M4** 1997 c. 11.

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