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SCHEDULES

SCHEDULE 12 **E+W+S**

Section 236

APPLICATION OF ACT TO SCOTLAND: MODIFICATIONS

- 1 Section 5(10) applies as if the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).

Commencement Information

- II** Sch. 12 para. 1 in force at 6.4.2009 for S. by [S.I. 2009/400](#), [art. 4\(c\)](#)

- 2 Section 14 applies as if—
(a) in subsection (1)—
(i) the words “any of the following” were omitted, and
(ii) paragraphs (a) to (f) and (h) to (p) were omitted, and
(b) in subsection (2) for “sections 15 to 30” there were substituted “section 21”.
- 3 Section 32 applies as if—
(a) in subsection (1)—
(i) the reference to TCPA 1990 were a reference to section 26 of the Town and Country Planning (Scotland) Act 1997, and
(ii) the words “This is subject to subsections (2) and (3).” were omitted, and
(b) subsections (2) to (4) were omitted.
- 4 Section 33 applies as if—
(a) in subsection (1)—
[^{F1}(i) for “none of the following is” there were substituted “the following are not”, and]
(ii) paragraphs (b) and (d) to (j) were omitted, ^{F2}...
(b) [^{F3}paragraphs (a) to (c) of subsection (2), and subsections (3) and (4),] were omitted [^{F4}, and
(c) in subsection (7) “Act” includes an Act of the Scottish Parliament.]

Textual Amendments

- F1** Sch. 12 para. 4(a)(i) substituted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), [ss. 131\(4\)\(a\)](#), 240(2) (with [s. 144](#)); [S.I. 2012/628](#), [art. 7\(a\)](#)
- F2** Word in Sch. 12 para. 4(a) repealed (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), [ss. 131\(4\)\(b\)](#), 240(2), [Sch. 25 Pt. 21](#) (with [s. 144](#)); [S.I. 2012/628](#), [art. 7](#)
- F3** Words in Sch. 12 para. 4(b) substituted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), [ss. 131\(4\)\(c\)](#), 240(2) (with [s. 144](#)); [S.I. 2012/628](#), [art. 7\(a\)](#)

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F4 Sch. 12 para. 4(c) and preceding word inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 131(4)(d), 240(2)** (with s. 144); [S.I. 2012/628](#), art. 7(a)

- 5 Section 44 applies as if—
- (a) in subsection (2)(b), the words from “or” to the end were omitted,
 - (b) in subsection (3), references to section 5(1) of the Compulsory Purchase Act 1965 (c. 56) were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19), and
 - (c) in subsection (6)—
 - (i) for paragraph (a) there were substituted—
 - “(a) a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)”, and
 - (ii) in paragraph (b), the reference to Part 1 of the Land Compensation Act 1973 (c. 26) were a reference to Part 1 of the Land Compensation (Scotland) Act 1973 (c. 56).
- 6 Section 52 applies as if—
- (a) in subsection (2)(c), the words from “or” to the end were omitted,
 - (b) in subsection (3)(b)—
 - (i) the reference to a freeholder were a reference to an owner, and
 - (ii) the reference to a mortgagee were a reference to a heritable creditor,^{F5} ...
 - (c) in subsection (11), references to section 5(1) of the Compulsory Purchase Act 1965 (c. 56) were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19).
 - [^{F6}(d) in subsection (14) for paragraph (a) there were substituted—
 - “(a) a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42);”, and
 - (e) in subsection (14)(b) the reference to Part 1 of the Land Compensation Act 1973 were a reference to Part 1 of the Land Compensation (Scotland) Act 1973.]

Textual Amendments

- F5** Word in Sch. 12 para. 6(b) repealed (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), **Sch. 25 Pt. 20**; [S.I. 2012/628](#), art. 7(b)
- F6** Sch. 12 para. 6(d)(e) inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 135(10), 240(2)** (with s. 144); [S.I. 2012/628](#), art. 7(a)

- 7 Section 53 applies as if—
- [^{F7}(za) in subsection (1A), the reference to an Act included an Act of the Scottish Parliament,]
 - (a) in subsection (7), the reference to chattels were a reference to moveable property,
 - (b) in subsection (8), the reference to the [^{F8}Upper Tribunal were] a reference to the Lands Tribunal for Scotland, and

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- (c) in subsection (11), in the definition of “statutory undertakers”, the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).

Textual Amendments

- F7** Sch. 12 para. 7(za) inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 136(7)**, 240(2) (with s. 144); [S.I. 2012/628](#), art. 7(a)
- F8** Words in Sch. 12 para. 7(b) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 298(a)** (with Sch. 5)

- 8 Section 57 applies as if—
- (a) in subsection (2)(b), the words from “or” to the end were omitted,
- (b) in subsection (3), references to section 5(1) of the Compulsory Purchase Act 1965 were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845, and
- (c) in subsection (6)—
- (i) for paragraph (a) there were substituted—
- “(a) a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)”, and
- (ii) in paragraph (b), the reference to Part 1 of the Land Compensation Act 1973 (c. 26) were a reference to Part 1 of the Land Compensation (Scotland) Act 1973 (c. 56).
- 9 Section 58 applies as if—
- (a) for subsection (6) there were substituted—
- “(6) Summary proceedings relating to an offence under this section may be commenced regardless of when the contravention occurred.”,
- and
- (b) in subsection (7), the reference to section 127 of the Magistrates' Courts Act 1980 (c. 43) were a reference to section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46).
- [^{F9}9A Section 102B applies as if—
- (a) in subsection (2)(b), the words from “or” to the end were omitted,
- (b) in subsection (3), references to section 5(1) of the Compulsory Purchase Act 1965 were references to section 17 of the Lands Clauses Consolidation (Scotland) Act 1845, and
- (c) in subsection (5)—
- (i) for paragraph (a) there were substituted—
- “(a) a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947”;
- and
- (ii) in paragraph (b), the reference to Part 1 of the Land Compensation Act 1973 were a reference to Part 1 of the Land Compensation (Scotland) Act 1973.]

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Textual Amendments

F9 Sch. 12 para. 9A inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 138(10)**, 240(2) (with s. 144); S.I. 2012/628, art. 7(a)

10 Section 120(6) applies as if the references to an Act included references to an Act of the Scottish Parliament.

11 Section 127(8) applies as if, for the definition of “statutory undertakers” there were substituted—

““statutory undertakers” has the meaning given by section 214 of the Town and Country Planning (Scotland) Act 1997 and also includes the undertakers—

- (a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
- (b) which are statutory undertakers for the purposes of paragraphs 9 and 10 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) (see paragraph 10A of that Schedule).”

^{F10}12

Textual Amendments

F10 Sch. 12 paras. 12, 13 repealed (25.6.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 24(4)(a)**, 35(1) (with s. 24(6)); S.I. 2013/1124, art. 4(c) (with art. 7)

^{F10}13

Textual Amendments

F10 Sch. 12 paras. 12, 13 repealed (25.6.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 24(4)(a)**, 35(1) (with s. 24(6)); S.I. 2013/1124, art. 4(c) (with art. 7)

14 Section 130 applies as if—

- (a) in subsection (4), the references to section 21 of the National Trust Act 1907 (c. cxxxvi) and section 8 of the National Trust Act 1939 (c. lxxxvi) were references to section 22 of the Order confirmed by the National Trust for Scotland Order Confirmation Act 1935 (c. ii), and
- (b) in subsection (5), for the definition of “the National Trust” there were substituted—

““the National Trust” means the National Trust for Scotland for Places of Historic Interest or Natural Beauty incorporated by the Order confirmed by the National Trust for Scotland Order Confirmation Act 1935 (c. ii)”.

15 Section 131 applies as if—

- (a) in subsection (1), for “, open space or fuel or field garden allotment” there were substituted “ or open space ”, and

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- (b) in subsection (12), for the words from “common” to “1981” there were substituted—

““common” includes any town or village green;

“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground;”.

- 16 Section 132 applies as if—

- (a) in subsection (1), for “, open space or fuel or field garden allotment” there were substituted “ or open space ”, and
(b) in subsection (12), for the words from “common” to “1981” there were substituted—

““common” and “open space” have the same meanings as in section 131 (as modified by paragraph 15 of Schedule 12);”.

- 17 Section 134 applies as if—

- (a) for subsection (4) there were substituted—

“(4) This subsection applies to—

- (a) an owner, lessee, tenant (whatever the tenancy period) or occupier of the order land,
(b) a person known by the prospective purchaser (after diligent inquiry)—
(i) to be interested in the order land, or
(ii) to have power to sell and convey the order land,
(c) a person who, if the order were fully implemented, the prospective purchaser thinks would or might be entitled—
(i) as a result of the implementing of the order,
(ii) as a result of the order's having been implemented,
or
(iii) as a result of use of the order land once the order has been implemented,
to make a relevant claim.

(4A) In subsection (4)(c) “relevant claim” means a claim arising by virtue of paragraph 1 of the Second Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42).

(4B) An expression that appears in subsection (4)(b) of this section and also in section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19) has in subsection (4)(b) the meaning that it has in section 17 of that Act.”, and

- (b) in subsection (7)(d) the words “only in accordance with section 118” were omitted.

- 18 [F11Section 138(4A)] applies as if the reference to Part 11 of TCPA 1990 were a reference to Part 10 of the Town and Country Planning (Scotland) Act 1997 (c. 8).

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Textual Amendments

F11 Words in Sch. 12 para. 18 substituted (25.6.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), ss. [23\(5\)](#), [35\(1\)](#); S.I. 2013/1124, art. 4(b) (with art. 6)

- 19 Section 151 applies as if—
- (a) for paragraph (c), there were substituted—
 - “(c) section 10 of the Water (Scotland) Act 1980 (compensation for damage resulting from exercise of statutory powers)”, and
 - (b) paragraph (d) were omitted.
- 20 Section 152 applies as if—
- (a) in subsection (4), the reference to the [^{F12}Upper Tribunal were] a reference to the Lands Tribunal for Scotland,
 - (b) for subsections (5) and (6) there were substituted—
 - “(5) Section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 (which makes the construction of the railway subject to that Act and the Lands Clauses Consolidation (Scotland) Act 1845) applies in relation to authorised works as it applies in relation to the construction of a railway.
 - (6) Any rule or principle applied to the construction of section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 must be applied to the construction of subsection (3) of this section (with any necessary modifications).”, and
 - (c) in subsection (7)—
 - (i) the reference to Part 1 of the Land Compensation Act 1973 were a reference to Part 1 of the Land Compensation (Scotland) Act 1973, and
 - (ii) in paragraph (c), for “17” there were substituted “ 15 ”.

Textual Amendments

F12 Words in Sch. 12 para. 20(a) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, [Sch. 1 para. 298\(a\)](#) (with Sch. 5)

- 21 Section 164 applies as if the references to a justice of the peace were references to a sheriff.
- 22 Section 165 applies as if—
- (a) in subsection (4), the reference to chattels were a reference to moveable property,
 - (b) in subsection (5), the reference to the [^{F13}Upper Tribunal were] a reference to the Lands Tribunal for Scotland, and
 - (c) in subsection (6), the reference to [^{F14}section] 4 of the Land Compensation Act 1961 (c. 33) were a reference to sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (c. 51).

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Textual Amendments

- F13** Words in Sch. 12 para. 22(b) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 298(a)** (with Sch. 5)
- F14** Word in Sch. 12 para. 22(c) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 298(b)** (with Sch. 5)

- 23 Section 170 applies as if—
- (a) in subsection (3)—
 - (i) for the words from “the”, where it first occurs, to “(c.49)” there were substituted “ subsections (5) to (9) of section 135 of the Town and Country Planning (Scotland) Act 1997 (c. 8) (which relate to the execution and cost of certain works) ”, and
 - (ii) the words from “section 276” to the end were omitted,
 - (b) in subsection (4), for “section 289” there were substituted “ subsection (5) of section 135 ”, and
 - (c) subsection (5) were omitted.
- 24 Section 171 applies as if—
- (a) the references to an injunction were references to an interdict, and
 - (b) in subsection (4), the references to the High Court and a county court were references to the Court of Session and the sheriff.
- 25 Section 229(5) applies as if the reference to section 233 of the Local Government Act 1972 (c. 70) were a reference to section 192 of the Local Government (Scotland) Act 1973 (c. 65).
- 26 Section 235 applies as if—
- (a) for the definition of “building” there were substituted—

““building” has the meaning given by section 277(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8);”
 - (b) for the definition of “land” there were substituted—

““land” includes land covered with water and any building (as defined in section 277(1) of the Town and Country Planning (Scotland) Act 1997) and in relation to Part 7 must be read in accordance with section 159;”
 - (c) for the definition of “local planning authority” there were substituted—

““local planning authority” means a planning authority within the meaning of section 1 of the Town and Country Planning (Scotland) Act 1997;”
 - (d) in the definition of “planning permission”, the reference to Part 3 of TCPA 1990 were a reference to Part 3 of the Town and Country Planning (Scotland) Act 1997, and
 - (e) in the definition of “use”, the reference to section 336(1) of TCPA 1990 were a reference to section 277(1) of the Town and Country Planning (Scotland) Act 1997.
- 27 Part 1 of Schedule 5 applies as if paragraphs 4 to 6, 8, 9, 16 to 32 [F15, 32B(1)(a), (b) and (d)] and 38 were omitted.

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Textual Amendments

- F15** Words in [Sch. 12 para. 27](#) inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), [Sch. 13 para. 73](#); S.I. 2012/628, art. 7(a)

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