



Town and Country Planning (Scotland) Act 1972

1972 CHAPTER 52

PART IX

PROVISIONS ENABLING OWNER OR LESSEE TO REQUIRE PURCHASE OF HIS INTEREST

Interests affected by planning decisions or orders

169 Purchase notice on refusal or conditional grant of planning permission

(1) Where, on an application for planning permission to develop any land, permission is refused or is granted subject to conditions, then if any owner or lessee of the land claims—

- (a) that the land has become incapable of reasonably beneficial use in its existing state; and
- (b) in a case where planning permission was granted subject to conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions; and
- (c) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been granted or for which the local planning authority or the Secretary of State has undertaken to grant planning permission,

he may, within the time and in the manner prescribed by regulations under this Act, serve on the local planning authority in whose district the land is situated a notice requiring that authority to purchase his interest in the land in accordance with the following provisions of this Part of this Act.

(2) Where, for the purpose of determining whether the conditions specified in subsection (1)(a) to (c) of this section are fulfilled in relation to any land, any question arises as to what is or would in any particular circumstances be a reasonably beneficial use of that land, then, in determining that question for that purpose, no account shall be taken of any prospective use of that land which would involve the carrying out of

new development or which would contravene the condition set out in Schedule 16 to this Act.

- (3) In the application of Schedule 6 to this Act for the purposes of any determination under subsection (2) of this section-
 - (a) paragraph 3 of that Schedule shall be construed as not extending to works involving any increase in the cubic content of a building erected after the appointed day (including any building resulting from the carrying out of such works as are described in paragraph 1 of that Schedule); and
 - (b) paragraph 8 of that Schedule shall not apply to any such building.
- (4) For the purposes of this section the conditions referred to in sections 38 and 39 of this Act shall be disregarded, and no account shall be taken of any condition to which section 69 or 80 of this Act applies.
- (5) A person on whom there has been served a repairs notice under section 105 of this Act shall not in any case be entitled to serve a purchase notice under this section in respect of the building in question until the expiration of three months beginning with the date of the service of the repairs notice; and if during that period the local planning authority or the Secretary of State start the compulsory acquisition of the building in the exercise of their powers under section 104 of this Act, that person shall not be so entitled unless and until the compulsory acquisition is discontinued.
- (6) For the purposes of subsection (5) of this section a compulsory acquisition—
 - (a) is started when the local planning authority or the Secretary of State, as the case may be, serve the notice required by paragraph 3(b) of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947; and
 - (b) is discontinued, in the case of acquisition by a local planning authority, when they withdraw the compulsory purchase order or the Secretary of State decides not to confirm it and, in the case of acquisition by the Secretary of State, when he decides not to make the compulsory purchase order.
- (7) A notice under this section, or under any other provision of this Part of this Act to which this subsection is applied, is in this Act referred to as a "purchase notice".

170 Action by local planning authority on whom purchase notice is served

- (1) The local planning authority on whom a purchase notice is served under section 169 of this Act shall, before the end of the period of three months beginning with the date of service of that notice, serve on the owner or lessee by whom the purchase notice was served a notice stating either—
 - (a) that the local planning authority are willing to comply with the purchase notice; or
 - (b) that another local authority or statutory undertakers specified in the notice under this subsection have agreed to comply with it in their place; or
 - (c) that, for reasons specified in the notice under this subsection, the local planning authority are not willing to comply with the purchase notice and have not found any other local authority or statutory undertakers who will agree to comply with it in their place, and that they have transmitted a copy of the purchase notice to the Secretary of State, on a date specified in the notice under this subsection, together with a statement of the reasons so specified.

- (2) Where the local planning authority on whom a purchase notice is served by an owner or lessee have served on him a notice in accordance with subsection (1)(a) or (b) of this section, the local planning authority, or the other local authority or statutory undertakers specified in the notice, as the case may be, shall be deemed to be authorised to acquire the interest of the owner or lessee compulsorily in accordance with the relevant provisions, and to have served a notice to treat in respect thereof on the date of service of the notice under that subsection.
- (3) Where the local planning authority on whom a purchase notice is served by an owner or lessee propose to serve on him a notice in accordance with subsection (1)(c) of this section, they shall transmit a copy of the purchase notice to the Secretary of State, together with a statement of their reasons.
- (4) Where the local planning authority on whom a purchase notice is served by an owner or lessee do not, within the period specified in subsection (1) of this section, serve on him a notice under that subsection, the purchase notice shall be deemed to be confirmed at the expiration of that period, and the authority shall be deemed to be authorised to acquire the interest of the owner or lessee compulsorily in accordance with the relevant provisions, and to have served a notice to treat in respect thereof at the expiration of the said period.
- (5) In this section " the relevant provisions" means the provisions of Part VI of this Act or, in the case of statutory undertakers, any statutory provision (however expressed) under which they have power, or may be authorised, to purchase land compulsorily for the purposes of their undertaking.

171 Procedure on reference of purchase notice to Secretary of State

- (1) Where a copy of a purchase notice is transmitted to the Secretary of State under section 170(3) of this Act, the Secretary of State shall consider whether to confirm the notice or to take other action under section 172 of this Act in respect thereof.
- (2) Before confirming a purchase notice or taking any other action under section 172 of this Act in respect thereof, the Secretary of State shall give notice of his proposed action—
 - (a) to the person by whom the purchase notice was served ;
 - (b) to the local planning authority on whom the purchase notice was served ; and
 - (c) if the Secretary of State proposes to substitute any other local authority or statutory undertakers for the local planning authority on whom the purchase notice was served, to that other local authority or those statutory undertakers.
- (3) If, within such period as may be specified in a notice under subsection (2) of this section, being a period of not less than twenty-eight days from the service of that notice, any of the persons, authorities or statutory undertakers on whom that notice is served so requires, the Secretary of State, before confirming the purchase notice or taking any other action under section 172 of this Act in respect thereof, shall afford to those persons, authorities and undertakers an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) Where the Secretary of State has given notice under subsection (2) of this section of his proposed action, and any of the persons, authorities and statutory undertakers concerned have appeared before and been heard by a person appointed by the Secretary of State for the purpose, or the persons, authorities and undertakers concerned have

agreed to dispense with such a hearing, and it then appears to the Secretary of State to be expedient to take action under section 172 of this Act otherwise than in accordance with the notice given by him, the Secretary of State may take that action accordingly.

172 Action by Secretary of State in relation to purchase notice

- (1) Subject to the following provisions of this section and to section 173 of this Act, if the Secretary of State is satisfied that the conditions specified in section 169(1)(a) to (c) of this Act are fulfilled in relation to a purchase notice, he shall confirm the notice.
- (2) If it appears to the Secretary of State to be expedient to do so, he may, in lieu of confirming the purchase notice, grant planning permission for the development in respect of which the application was made, or, where planning permission for that development was granted subject to conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of that development.
- (3) If it appears to the Secretary of State that the land, or any part of the land, could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out of any other development for which planning permission ought to be granted, he may, in lieu of confirming the purchase notice, or in lieu of confirming it so far as it relates to that part of the land, as the case may be, direct that planning permission for that development shall be granted in the event of an application being made in that behalf.
- (4) If it appears to the Secretary of State to be expedient that another local authority or statutory undertakers should acquire the interest of the owner or lessee for the purpose of any of their functions, he may, if he confirms the notice, modify it, either in relation to the whole or in relation to any part of the land to which it relates, by substituting that other authority or, as the case may be, those statutory undertakers for the local planning authority on whom the notice was served.
- (5) In section 171 of this Act, any reference to the taking of action by the Secretary of State under this section is a reference to the taking by him of any such action as is mentioned in subsections (1) to (4) of this section, or to the taking by him of a decision not to confirm the purchase notice either on the grounds that any of the conditions referred to in subsection (1) of this section are not fulfilled or by virtue of section 173 of this Act.

173 Power to refuse to confirm purchase notice where land has restricted use by virtue of previous planning permission

- (1) This section shall have effect where, on an application for planning permission to develop any land which has a restricted use by virtue of a previous planning permission, permission is refused or granted subject to conditions and an owner of the land serves a purchase notice under section 169 of this Act.
- (2) For the purposes of this section, land is to be treated as having a restricted use by virtue of a previous planning permission if it is part of a larger area in respect of which planning permission was previously granted (and has not been revoked) and either—
 - (a) it remains a condition of the planning permission (however expressed) that that part shall remain undeveloped or be preserved or laid out in a particular way as amenity land in relation to the remainder; or
 - (b) the planning permission was granted on an application which contemplated (expressly or by necessary implication) that the part should not be comprised

in the development for which planning permission was sought, or should be preserved or laid out as aforesaid.

- (3) If a copy of the purchase notice is transmitted to the Secretary of State under section 170(3) of this Act the Secretary of State, although satisfied that the land has become incapable of reasonably beneficial use in its existing state, shall nevertheless not be required under section 172(1) of this Act to confirm the notice if it appears to him that the land ought, in accordance with the previous planning permission, to remain undeveloped or, as the case may be, remain or be preserved or laid out as amenity land in relation to the remainder of the large area for which that planning permission was granted.

174 Power to refuse to confirm purchase notice in respect of office premises

- (1) This section applies to any purchase notice served on or after 5th August 1965 (whether before or after the passing of this Act) in respect of land which, at the date of service of the notice, is within a controlled area as defined in section 79(2) of this Act where the purpose for which that land, or part of it, or was used at the date of service of the notice, or was last used before that date, is or was that of a building containing office premises.

- (2) In relation to a purchase notice to which this section applies, the provisions of this Act shall have effect as if, after subsection (4) of section 172 of this Act, there were inserted the following subsection—

“(4A) Where the purchase notice is one to which section 174 of this Act applies, the Secretary of State may, if he thinks fit, determine not to confirm the notice without taking any such action as is mentioned in subsections (2) to (4) of this section”;

and as if, in subsection (5) of that section, after the words " by virtue of" there were inserted the words " subsection (4A) of this section or ".

- (3) Where in pursuance of subsection (4A) of the said section 172 (as modified by subsection (2) of this section) the Secretary of State has determined not to confirm a purchase notice to which this section applies, and on a subsequent date the land to which that notice related ceases to be within an area to which section 72 of this Act applies—

- (a) a further purchase notice may be served on or after that date in respect of the planning decision to which the previous notice related; and
- (b) for the purposes of any regulations made under this Act as to the time within which a purchase notice may be served, the service of such a further purchase notice shall not be treated as out of time if it is served within the period which would be applicable in accordance with those regulations if the planning decision referred to in the preceding paragraph had been made on that subsequent date.

- (4) In determining, for the purposes of subsection (1)(b) of this section, for what purpose any land is used, or was last used, as the case may be, no account shall be taken—

- (a) of any use in accordance with planning permission granted for a limited period; or
- (b) of any use in respect of which, before the date of service of the purchase notice, an enforcement notice had been served and had become effective; or
- (c) of any use of land at a time when it is or was not covered by a building.

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- (5) For the purposes of this section " office premises " has the meaning assigned by section 71(4) of this Act and this section shall have effect as if it were included in sections 71 to 83 of this Act.
- (6) Notwithstanding subsection (5) of this section, subsection (3) of this section shall not cease to have effect at the end of the period mentioned in section 83 of this Act; and in relation to any land which, immediately before the end of that period, is land within an area to which section 72 of this Act applies, any reference in that subsection to the date on which the land ceases to be within such an area shall be construed as a reference to the end of that period.

175 Effect of Secretary of State's action in relation to purchase notice

- (1) Where the Secretary of State confirms a purchase notice, the local planning authority on whom the purchase notice was served (or, if under section 172(4) of this Act the Secretary of State modified the purchase notice by substituting another local authority or statutory undertakers for that local planning authority, that other local authority or those statutory undertakers) shall be deemed to be authorised to acquire the interest of the owner or lessee compulsorily in accordance with the relevant provisions and to have served a notice to treat in respect thereof on such date as the Secretary of State may direct.
- (2) If, before the end of the relevant period, the Secretary of State has neither confirmed the purchase notice nor taken any such action in respect thereof as is mentioned in section 172(2) or (3) of this Act, and has not notified the owner or lessee, as the case may be by whom the notice was served that he does not propose to confirm the notice, the notice shall be deemed to be confirmed at the end of that period, and the authority on whom the notice was served shall be deemed to be authorised to acquire the interest of the owner or lessee compulsorily in accordance with the relevant provisions and to have served notice to treat in respect thereof at the end of that period.
- (3) For the purposes of subsection (2) of this section the relevant period is the period of six months beginning with the date on which a copy of the purchase notice was transmitted to the Secretary of State.
- (4) Where the Secretary of State has notified the owner or lessee by whom a purchase notice has been served of a decision on his part to confirm, or not to confirm, the notice (including any decision not to confirm the notice in respect of part of the land to which it relates, and including any decision to grant any permission, or give any direction, in lieu of confirming the notice, either wholly or in part) and that decision of the Secretary of State is quashed under the provisions of Part XII of this Act, the purchase notice shall be treated as cancelled, but the owner or lessee may serve a further purchase notice in its place.
- (5) For the purposes of any regulations made under this Act as to the time within which a purchase notice may be served, the service of a purchase notice under subsection (4) of this section shall not be treated as out of time if the notice is served within the period which would be applicable in accordance with those regulations if the planning decision, in consequence of which the notice is served, had been made on the date on which the decision of the Secretary of State was quashed as mentioned in subsection (4) of this section.
- (6) In this section "the relevant provisions" has the same meaning as in section 170 of this Act.

176 Special provisions as to compensation where purchase notice served

- (1) Where by virtue of section 153 of this Act compensation is payable in respect of expenditure incurred in carrying out any work on land, then, if a purchase notice is served in respect of an interest in that land, any compensation payable in respect of the acquisition of that interest in pursuance of the purchase notice shall be reduced by an amount equal to the value of the works in respect of which compensation is payable by virtue of that section.
- (2) Where a purchase notice served in respect of an interest in land does not take effect, or does not take effect in relation to a part of the land, by reason that the Secretary of State gives a direction under section 172(3) of this Act, then if, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act it is shown that the permitted development value of that interest (or, as the case may be, of that interest so far as it relates to that part of the land) is less than its existing use value, the local planning authority shall pay to the person entitled to that interest compensation of an amount which (subject to the following provisions of this section) shall be equal to the difference.
- (3) If the planning permission which, by the direction referred to in subsection (2) of this section, is required to be granted would be granted subject to conditions for regulating the design or external appearance of buildings, or the size or height of buildings, or for regulating the number of buildings to be erected on the land, the Secretary of State, if it appears to him to be reasonable to do so having regard to the local circumstances, may direct that those conditions shall be disregarded, either altogether or to such extent as may be specified in the direction, in assessing any compensation payable under subsection (2) of this section.
- (4) Sections 167 and 168 of this Act shall have effect in relation to compensation under subsection (2) of this section as they have effect in relation to compensation to which those sections apply.
- (5) In this section permitted development value ", in relation to an interest in land in respect of which a direction is given under section 172(3) of this Act, means the value of that interest calculated with regard to that direction, but on the assumption that no planning permission would be granted otherwise than in accordance with that direction, and "existing use value", in relation to such an interest, means the value of that interest as (for the purpose of ascertaining the compensation payable on an acquisition thereof in pursuance of the purchase notice) that value would have been assessed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act 1919, as modified by the provisions of sections 48 to 51 of the Act of 1947, if no enactment repealing, modifying or superseding any of those provisions had been passed after the passing of the Act of 1947.

177 Purchase notice in respect of order revoking or modifying planning permission

- (1) Where by an order under section 42 of this Act planning permission in respect of any land is revoked, or is modified by the imposition of conditions, then if any owner or lessee of the land claims—
 - (a) that the land has become incapable of reasonably beneficial use in its existing state; and
 - (b) in a case where the planning permission was modified by the imposition of conditions, that the land cannot be rendered capable of reasonably beneficial

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use by the carrying out of the permitted development in accordance with those conditions; and

- (c) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been granted or for which the local planning authority or the Secretary of State has undertaken to grant planning permission,

he may, within the time and in the manner prescribed by regulations under this Act, serve on the local planning authority in whose district the land is situated a notice requiring that authority to purchase his interest in the land in accordance with the preceding provisions of this Part of this Act.

- (2) Section 169(7) of this Act shall apply to this section; and, subject to subsection (3) of this section, sections 169(2), 170 to 173, 175 and 176 of this Act shall apply to a notice served by virtue of subsection (1) of this section as they apply to a notice served by virtue of section 169(1) of this Act.

- (3) In the application of subsection (2) of section 169 of this Act to a purchase notice served by virtue of subsection (1) of this section, that subsection shall apply as if the words “ or which would contravene the condition set out in Schedule 16 to this Act ” were omitted; and in the application of section 172 of this Act, to a purchase notice served as aforesaid, that section shall apply as if the following subsection were substituted for subsection (2) thereof—

“(2) If it appears to the Secretary of State to be expedient to do so, he may, in lieu of confirming the purchase notice, cancel the order revoking the planning permission, or, where the order modified the permission by the imposition of conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of the development in respect of which the permission was granted”.

178 Purchase notice in respect of order requiring discontinuance of use or alteration or removal of buildings or works.

- (1) If any person entitled to an interest in land in respect of which an order is made under section 49 of this Act claims—

- (a) that by reason of the order the land is incapable of reasonably beneficial use in its existing state, and
- (b) that it cannot be rendered capable of reasonably beneficial use by the carrying out of any development for which planning permission has been granted, whether by that order or otherwise,

he may, within the time and in the manner prescribed by regulations under this Act, serve on the local planning authority in whose district the land is situated a notice requiring that authority to purchase his interest in the land in accordance with the preceding provisions of this Part of this Act.

- (2) Section 169(7) of this Act shall apply to this section; and, subject to subsection (3) of this section, sections 169(2), 170 to 173, 175 and 176 of this Act shall apply to a notice served by virtue of subsection (1) of this section as they apply to a notice served by virtue of section 169(1) of this Act.

- (3) In the application of subsection (2) of section 169 of this Act to a purchase notice served by virtue of subsection (1) of this section, that subsection shall apply as if

the words “ or which would contravene the condition set out in Schedule 16 to this Act ” were omitted; and in the application of section 172 of this Act to a purchase notice served as aforesaid, that section shall have effect subject to the following modifications, that is to say—

- (a) in subsection (1), for the reference to the conditions therein mentioned, there shall be substituted a reference to the conditions specified in subsection (1) (a) and (b) of this section; and
- (b) the following subsection shall be substituted for subsection (2)—

“(2) If it appears to the Secretary of State to be expedient to do so, he may, in lieu of confirming the purchase notice, revoke the order under section 49 of this Act, or, as the case may be, amend that order so far as appears to him to be required in order to prevent the land from being rendered incapable of reasonably beneficial use by the order”.

- (4) Where a purchase notice in respect of an interest in land is served in consequence of such an order as is mentioned in subsection (1) of this section, then if—

- (a) that interest is acquired in accordance with the preceding provisions of this Part of this Act; or
- (b) compensation is payable in respect of that interest under section 176(2) of this Act,

no compensation shall be payable in respect of that order under section 159 of this Act.

- (5) Except as provided by this section, no purchase notice shall be served in respect of an interest in land while the land is incapable of reasonably beneficial use by reason only of such an order as is mentioned in subsection (1) of this section.

179 Purchase notice on refusal or conditional grant of listed building consent

- (1) Where, on an application for listed building consent in respect of a building, consent is refused or is granted subject to conditions or, by an order under Part II of Schedule 10 to this Act, listed building consent is revoked or modified, then if any owner or lessee of the land claims—

- (a) that the land has become incapable of reasonably beneficial use in its existing state; and
- (b) in a case where consent was granted subject to conditions with respect to the execution of the works or, as the case may be, was modified by the imposition of such conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the works in accordance with those conditions; and
- (c) in any case that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other works for which listed building consent has been granted or for which the local planning authority or the Secretary of State has undertaken to grant such consent,

he may, within the time and in the manner prescribed by regulations under this Act, serve on the local planning authority in whose district the land is situated a notice requiring that authority to purchase his interest in the land in accordance with Schedule 17 to this Act.

- (2) Where, for the purpose of determining whether the conditions specified in subsection (1)(a) to (c) of this section are satisfied in relation to the land, any question arises as to what is or would in any particular circumstances be a reasonably beneficial

use of that land, then in determining that question for that purpose, no account shall be taken of any prospective use of that land which would involve the carrying out of new development or of any works requiring listed building consent which might be executed to the building, other than works for which the local planning authority or the Secretary of State have undertaken to grant such consent.

- (3) In this section and in Schedule 17 to this Act, " the land " means the building in respect of which listed building consent has been refused, or granted subject to conditions, or modified by the imposition of conditions, and in respect of which its owner or lessee serves a notice under this section, together with any land comprising the building, or contiguous or adjacent to it, and owned or occupied with it, being land as to which the owner or lessee claims that its use is substantially inseparable from that of the building and that it ought to be treated, together with the building, as a single holding.
- (4) Subsections (5) and (6) of section 169 of this Act shall apply to a listed building purchase notice as they apply to a purchase notice under that section.
- (5) A notice under this section is in this Act referred to as a " listed building purchase notice ".

180 Purchase notices in other cases

- (1) Sections 169 to 172, 175 and 176 of this Act are provisions falling within subsection (2) of section 58 of this Act; and subsection (1) of the said section 58 and subsection (2) of section 61 of this Act, shall have effect accordingly.
- (2) Where, in the case of an application for planning permission, a notice under section 70(1) of this Act is served in respect of the whole or part of the land to which the application relates, the provisions of sections 169 to 172, 175 and 176 of this Act shall have effect as if the application had been an effective application for planning permission, and as if that permission had been refused in respect of that land or that part thereof, as the case may be.