



Land Compensation (Scotland) Act 1963

1963 CHAPTER 51

PART IV

CERTIFICATION BY PLANNING AUTHORITIES OF APPROPRIATE ALTERNATIVE DEVELOPMENT

[^{F1}25 Certification of appropriate alternative development.

[Where an interest in land is proposed to be acquired by an authority possessing
^{F2}(1) compulsory purchase powers, either of the parties directly concerned may, subject to subsection (2) of this section, apply to the planning authority for a certificate under this section]

(2) [^{F3}If the authority proposing to acquire the interest] have served a notice to treat in respect thereof, or an agreement has been made for the sale thereof to that authority, and a reference has been made to the Lands Tribunal for Scotland to determine the amount of the compensation payable in respect of that interest, no application for a certificate under this section shall be made by either of the parties directly concerned after the date of that reference except either—

- (a) with the consent in writing of the other of those parties, or
- (b) with the leave of the Lands Tribunal for Scotland.

(3) An application for a certificate under this section—

- (a) shall state whether or not there are, in the applicant's opinion, any classes of development which, either immediately or at a future time, would be appropriate for the land in question if it were not proposed to be acquired by any authority possessing compulsory purchase powers and, if so, shall specify the classes of development and the times at which they would be so appropriate;
- (b) shall state the applicant's grounds for holding that opinion; and
- (c) shall be accompanied by a statement specifying the date on which a copy of the application has been or will be served on the other party directly concerned.

(4) Where an application is made to the planning authority for a certificate under this section in respect of an interest in land, the planning authority shall, not earlier than

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twenty-one days after the date specified in the statement mentioned in subsection (3) (c) of this section, issue to the applicant a certificate stating that, in the opinion of the planning authority in respect of the land in question, either—

- [planning permission would have been granted for development of one or more
- ^{F4}(a) classes specified in the certificate (whether specified in the application or not) and for any development for which the land is to be acquired, but would not have been granted for any other development; or
- (b) planning permission would have been granted for any development for which the land is to be acquired, but would not have been granted for any other development,

and for the purposes of this subsection development is development for which the land is to be acquired if the land is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for that development.]

- (5) Where, in the opinion of the planning authority, planning permission would have been granted as mentioned in subsection (4) (a) of this section, but would only have been granted subject to conditions, or at a future time, or both subject to conditions and at a future time, the certificate shall specify those conditions, or that future time, or both, as the case may be, in addition to the other matters required to be contained in the certificate.
- (6) For the purposes of subsection (5) of this section, a planning authority may formulate general requirements applicable to such classes of case as may be described therein; and any conditions required to be specified in the certificate in accordance with that subsection may, if it appears to the planning authority to be convenient to do so, be specified by reference to those requirements, subject to such special modifications thereof (if any) as may be set out in the certificate.
- (7) In determining, for the purposes of the issue of a certificate under this section, whether planning permission for any particular class of development would have been granted in respect of any land, the planning authority shall not treat development of that class as development for which planning permission would have been refused by reason only that it would have involved development of the land in question (or of that land together with other land) otherwise than in accordance with the provisions of the development plan relating thereto.

^{F5}(8)

- (9) On issuing to either of the parties directly concerned a certificate under this section in respect of an interest in land, the planning authority shall serve a copy of the certificate on the other of those parties.]

[^{F6}(9A) In assessing the compensation payable to any person in respect of any compulsory acquisition, there shall be taken into account any expenses reasonably incurred by him in connection with the issue of a certificate under this section (including expenses incurred in connection with an appeal under section 26 of this Act where any of the issues on the appeal are determined in his favour)]

Textual Amendments

F1 S. 25 substituted by virtue of [Community Land Act 1975 \(c. 77\)](#), s. 47(1), [Sch. 9 Pt. II](#); continued by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), s. 121, [Sch. 24 Pt. II](#) in relation to applications, and certificates issued in pursuance of applications, made after 12.12.1975

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- F2** S. 25(1) substituted (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 75(1), (with s. 84(5)); S.I. 1991/2092, art.3 (with art. 4, Sch. 2 Pt. II)
- F3** Words in s. 25(2) substituted (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 79, Sch. 17, Pt. I, para. 8(a), (with s. 84(5)); S.I. 1991/2092, art. 3 (with art. 4, Sch. 2 Pt. II)
- F4** S. 25(4)(a)(b) and words following substituted (25.9.1991) for paras. (a)(b) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 75(2), (with s. 84(5)); S.I. 1991/2092, art. 3 (with art. 4, Sch. 2 Pt. II)
- F5** S. 25(8) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), ss. 79, 84(6), Sch. 17 Pt. I, para. 8(b), Sch. 19 Pt. IV. (with s. 84(5)); S.I. 1991/2092, art.3, Sch. 1 (with art. 4, Sch. 2 Pt. II)
- F6** S. 25(9A) inserted (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 75(3), (with s. 84(5)); S.I. 1991/2092, art. 3 (with art. 4, Sch. 2 Pt. II)

Modifications etc. (not altering text)

- C1** S. 25(2) modified by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 77(3)(4), 335, Sch. 6 para. 7
- C2** S. 25(2) modified by Local Government, Planning and Land Act 1980 (c. 65), s. 141(5), Sch. 27 para. 23

26 Appeals against certificates under s. 25.

- (1) Where the local planning authority have issued a certificate under section 25 of this Act in respect of an interest in land,—
- (a) the person for the time being entitled to that interest, or
- (b) any authority possessing compulsory purchase powers by whom that interest is proposed to be acquired,
- may appeal to the Secretary of State against that certificate.
- (2) On any appeal under this section against a certificate the Secretary of State shall consider the matters to which the certificate relates as if the application for a certificate under section 25 of this Act had been made to him in the first instance, and shall either confirm the certificate, or vary it, or cancel it and issue a different certificate in its place, as he may consider appropriate.
- (3) Before determining any such appeal the Secretary of State shall, if any such person or authority as is mentioned in subsection (1) (a) or subsection (1) (b) of this section so desires, afford to each such person or authority and to the local planning authority an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (4) Where an application is made for a certificate under section 25 of this Act, and at the expiry of the time prescribed by a development order for the issue thereof (or, if an extended period is at any time agreed upon in writing by the parties directly concerned and the local planning authority, at the end of that period) no certificate has been issued by the local planning authority in accordance with that section, the preceding provisions of this section shall apply as if the local planning authority had issued such a certificate containing such a statement as is mentioned in subsection (4) (b) of that section.

27 Extension of ss. 25 and 26 to special cases.

- (1) Where an interest in land is proposed to be acquired [^{F7}by an authority possessing compulsory purchase powers] and, by reason that the person entitled to the interest

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is absent from the United Kingdom or cannot be found, the compensation payable in respect of the interest falls to be determined by the valuation of a valuator under section 56 of the ^{M1}Land Clauses Consolidation (Scotland) Act 1845, the valuator, before carrying out his valuation, may apply to the local planning authority for a certificate under section 25 of this Act; and the provisions of that section and of section 26 of this Act shall apply in relation to an application made by virtue of this subsection as they apply in relation to an application made by virtue of the said section 25 (1).

- (2) Where, in pursuance of an application made by virtue of subsection (1) of this section, the local planning authority issue a certificate to the valuator, the authority shall serve copies of the certificate on both the parties directly concerned.
- (3) Where an interest in land is proposed to be acquired in the circumstances mentioned in the said section 25 (1), ^{F8}... an application to the local planning authority for a certificate under that section may be made by any person entitled to any ^{F8}... annual or recurring payment or incumbrance out of the land ^{F8}... in the like circumstances and in the like manner as such an application may be made by the person entitled to the interest.
- (4) Where, in pursuance of an application made by virtue of the last preceding subsection, the local planning authority issue a certificate to the applicant, the authority shall serve copies of the certificate on both the parties directly concerned.
- (5) An application for a certificate made by virtue of subsection (1) or subsection (3) of this section shall specify the matters referred to in [^{F9}subsection (3) (a) and (b) of section 25] of this Act, and shall be accompanied by a statement specifying the date on which a copy of the application has been or will be served on each of the parties directly concerned; and, in relation to such an application, subsection (4) of that section shall have effect with the substitution, for the reference to the date specified in the statement mentioned in [^{F9}subsection (3) (c)] of that section of a reference to the date specified in accordance with this subsection, or, where more than one date is so specified, the later of those dates.
- (6) Where a certificate has been issued in pursuance of an application made by virtue of subsection (3) of this section, or in a case where an application for a certificate could have been made thereunder, the provisions of section 26 of this Act shall apply as if any reference to the person entitled to the interest in question, or to the parties directly concerned, included a reference to the person who made or could have made that application as the case may be.

Textual Amendments

- F7** Words in s. 27(1) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 79, [Sch. 17 Pt. 1, para.9](#), (with s. 84(5)); S.I. 1991/2092, [art.3](#) (with art. 4, [Sch. 2 Pt. II](#))
- F8** Words in s. 27(3) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [sch. 12 para. 25\(4\)](#), [sch. 13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F9** Words substituted by [Community Land Act 1975 \(c. 77\)](#), [Sch. 10 para. 5\(3\)\(5\)](#); continued by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [Sch. 33 para. 7\(1\)\(4\)\(5\)](#) in relation to applications, or certificates issued in pursuance of applications, made after 12.12.1975
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Marginal Citations

- M1** 1845 c. 19.

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28 Power to prescribe matters relevant to Part IV.

[^{F10}Regulations made under [^{F11}section 275(1)(c) of the Town and Country Planning (Scotland) Act 1997] or a development order may] include provision for regulating the manner in which applications under section 25 or 27 of this Act and appeals under section 26 of this Act are to be made and dealt with respectively, and other procedural matters ancillary to such applications and appeals, and in particular—

- (a) for prescribing (subject to the provisions of section 25 (4) of this Act) the time within which a certificate is required to be issued under that section;
- (b) for prescribing the manner in which notices of appeals under section 26 of this Act are to be given, and the time for giving any such notice;
- (c) for requiring local planning authorities to furnish the Secretary of State, and such other persons (if any) as may be prescribed by or under the order, with such information as may be so prescribed with respect to applications under the said section 25 or the said section 27, including information whether any such application has been made in respect of any particular land and information as to the manner in which any such application has been dealt with, together, in such cases as may be so prescribed, with copies of certificates issued under the said section 25;
- (d) for requiring a local planning authority, on issuing a certificate specifying conditions by reference to general requirements in accordance with subsection (6) of the said section 25, to supply a copy of those requirements (or of so much thereof as is relevant to the certificate) with each copy of the certificate, unless, before the certificate is issued, the requirements in question have been made available to the public in such manner as may be specified in the development order;
- (e) for requiring an authority possessing compulsory purchase powers who—
 - (i) propose to acquire ^{F12}... any land (where the land or part thereof does not consist or form part of any such area as is mentioned in section 25 (1) (a) or section 25 (1) (b) of this Act), and
 - (ii) also propose to require the discharge of the land from any such ^{F12}... incumbrance as is mentioned in section 27 (3) of this Act,to serve, at such time as may be specified in the order, notice of the proposals on the person entitled to the ^{F12}... incumbrance;
- (f) for requiring an authority possessing compulsory purchase powers, when serving a notice to treat in relation to, or purchasing, ^{F12}... any land (where the land or part thereof does not consist or form part of any such area as is mentioned in section 25 (1) (a) or section 25 (1) (b) of this Act) to give notice of the fact that they have done so to such persons as may be prescribed in the order, being persons who might be entitled to apply under section 26 (3) of this Act for a certificate relating to the land.

Textual Amendments

F10 Words in s. 28 substituted (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 79, Sch. 17 Pt. II para. 16 (with s. 84(5)); S.I. 1991/2092, art. 3

F11 Words in s. 28 substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 9(4)

F12 Words in s. 28(e)(f) repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 25(5), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

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Modifications etc. (not altering text)

C3 S. 28 applied (27.5.1997) by 1997 c. 8, ss. 275(1)(c), 278(2)

29 Proceedings for challenging validity of decision on appeal under s. 26.

- (1) If any person aggrieved by a decision of the Secretary of State under section 26 of this Act or the local planning authority desires to question the validity of that decision on the ground that it is not within the powers of this Act or that any of the requirements of this Act or of a development order or of [^{F13}the ^{M2}Tribunals and Inquiries Act 1971] or rules made thereunder have not been complied with in relation to it, that person or authority may, within six weeks from the date of the decision, make an application to the Court of Session, and the Court of Session—
 - (a) may by interim order suspend the operation of the decision until the determination of the proceedings;
 - (b) if satisfied that the decision is not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by a failure to comply with the said requirements, may quash the decision.
- (2) Subject to subsection (1) of this section, the validity of a decision on an appeal under section 26 of this Act shall not be questioned in any legal proceedings whatsoever.
- (3) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to give a decision on an appeal under section 26 of this Act.

Textual Amendments

F13 Words substituted by virtue of [Tribunals and Inquiries Act 1971 \(c. 62\), s. 18\(4\)](#)

Marginal Citations

M2 [1971 c. 62.](#)

30 Interpretation of Part IV.

- (1) In this Part of this Act “the parties directly concerned”, in relation to an interest in land, means the person entitled to the interest and the authority by whom it is proposed to be acquired.
- (2) For the purposes of sections 25 and 26 of this Act, an interest in land shall be taken to be an interest proposed to be acquired by an authority possessing compulsory purchase powers in the following (but no other) circumstances, that is to say—
 - (a) where, for the purposes of a compulsory acquisition by that authority of land consisting of or including land in which that interest subsists, a notice required to be published or served in connection with that acquisition, either by an Act or by any Standing Order of either House of Parliament relating to petitions for private bills, has been published or served in accordance with that Act or Order; or
 - (b) where a notice requiring the purchase of that interest has been served under any enactment, and in accordance with that enactment that authority are to be deemed to have served a notice to treat in respect of that interest; or

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- (c) where an offer in writing has been made by or on behalf of that authority to negotiate for the purchase of that interest.

^{F14}(3)

Textual Amendments

F14 S. 30(3) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), ss. 79, 84(6), Sch. 17 Pt. I, para. 10, **Sch. 19**, Pt.IV (with s. 84(5)); S.I. 1991/2092, art.3, **Sch. 1** (with art. 4, Sch. 2 Pt. II)

Modifications etc. (not altering text)

- C4** S. 30(2) modified by Local Government, Planning and Land Act 1980 (c. 65), s. 141, **Sch. 27 para. 24**
- C5** S. 30(2) modified by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 77(3)(4), 335, **Sch. 6 para. 8**
- C6** S. 30(2)(a) modified (15.1.2007) by Glasgow Airport Rail Link Act 2007 (asp 1), **s. 19** (with s. 50)
- C7** S. 30(2)(a) modified (19.4.2007) by Edinburgh Airport Rail Link Act 2007 (asp 16), **s. 24** (with ss. 52, 60)
- C8** S. 30(2)(a) modified (8.5.2007) by Airdrie-Bathgate Railway and Linked Improvements Act 2007 (asp 19), **s. 24** (with ss. 48, 59)

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